Submission: Rural and Regional Affairs and Transport References Committee's inquiry into the adequacy of the voluntary Code of Conduct for Australian Winegrape Purchases

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About the South Australian Wine Industry Association Incorporated (SAWIA)

The South Australian Wine Industry Association (**SAWIA**) is an industry association representing the interests of wine grape growers and wine producers throughout the state of South Australia.

SAWIA is a not-for-profit incorporated association, funded by voluntary member subscriptions, grants and fee for service activities. Our mission is to provide leadership, advice and support to South Australian grape and wine businesses, assisting them to prosper within a dynamic, diverse industry.

SAWIA's membership represents approximately 96% of the winegrapes crushed in South Australia and about 40% of the vineyard area. The board of SAWIA is comprised of six members elected by the membership and seven members nominated by each of the main wine regions in South Australia (Adelaide Hills, Barossa, Clare, Coonawarra, Langhorne Creek, McLaren Vale and Riverland).

SAWIA has a strong track record as an industry leader and innovator in many areas, and proactively represents members and the greater wine industry to government and related agencies on a wide variety of matters.

Value delivered to members covers four key areas:

a) representation and leadership;

b) providing expert advice, information and resources to members on employee relations, industrial relations, Work Health and Safety, liquor licensing, environment and other matters;

c) driving programs and initiatives that improve grape and wine industry operations; and

d) creating domestic direct-to-consumer opportunities and supporting the development of export markets.

Rural and Regional Affairs and Transport References Committee's inquiry into the adequacy of the voluntary Code of Conduct for Australian Winegrape Purchases

SAWIA welcomes the Rural and Regional Affairs and Transport References Committee's (**Committee**) inquiry into the adequacy of the voluntary Code of Conduct for Australian Winegrape Purchases (**Code**), with reference to:

a) the structure of, and any inequities in, the Australian winegrape and wine processing market;

b) the nature and impact of current market and trading arrangements on the winegrape and wine processing industries;

c) the impact of the current market structure on employment conditions for workers in the supply chain;

d) the availability, transparency and accessibility of winegrape market price information and its effectiveness in forecasting winegrape prices and demand;

e) the effectiveness of the current administration of the Code;

f) the adequacy of winegrape and wine industry representation at regional, state and national levels; and

g) policy and regulatory options to improve market competition and address any inequities, including the potential benefits and limitations of a mandatory code, and the applicability of existing mandatory codes of conduct in other primary industries.

SAWIA makes the following submissions in response to the Committee's terms of reference regarding the adequacy of the Code. SAWIA provides this written submission, and acknowledges the grape and wine sector's national peak body, Australian Grape & Wine as the lead for public hearings on the matter given their custodianship of the Code.

a) *The structure of, and any inequities in, the Australian winegrape and wine processing market*

The South Australian wine industry contributes a total of approximately $2.45 billion to the state's economy[1], with 18 distinct wine regions that produce about 60% of Australia's wine production[2] (current total around 964 million litres of wine), and 80% of Australia's premium wine.

South Australia has approximately 74,732 hectares under wine grapes[3], of which 77% are red and 23% white grape varieties. The estimated total wine grape crush in 2024 in South Australia was 702,344 tonnes, accounting for 49% of Australia's crush, which was 14% below the 10-year average[4].

In 2024, the Riverland contributed 63% of the state's crush by volume and 26% of the estimated value of grapes, with the Barossa the second largest region contributing 9% of the state's crush by volume but 23% of the estimated value of grapes[5].

In the twelve months to the end of June 2024, South Australia exported[6] 370 million litres for a value of $1.60 billion (about 70% of Australia's total value). South Australia's major export markets by value are currently China, Hong Kong, UK, Singapore, USA, Canada, New Zealand, Thailand, and Malaysia. South Australian wine businesses export to about 100 countries.

The removal of trade restrictions by China in March 2024 has resulted in $395 million of wine being exported to China in the five months since. This is a solid start; however, the industry cautiously awaits pull through by the Chinese consumer and repeat orders. With the return of the China market, wine is now the State's third largest export after refined copper and copper products, and wheat[7].

In South Australia there are approximately 1,250 licensed[8] wine producers (including about 600 processing facilities, 340 cellar doors[9]) and 3,182 registered vineyard owners[10], who together directly employ around 8,990 persons[11] and indirectly support another 81,900 jobs[12]. Of these vineyard owners, approximately 60% have vineyards of less than 10 hectares in size, accounting for about 10% of the vineyard area in South Australia. By comparison, around 10% of vineyard owners have holdings equal to or larger than 50 hectares, accounting for roughly 60% of vineyard area in South Australia.

Wine sales channels include off-premise (supermarkets and wine retailers), on-premise (restaurants, clubs, pubs), direct-to-consumer (wine clubs, cellar door, online) and the bulk wine market.

Wine regions are a significant contributor to South Australia's tourism economy, which is currently worth around $10.1 billion annually[13], with at least 20%[14] of international visitors to South Australia visiting wine regions and spending around $2.34 billion annually[15].

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[1] Primary Industries Scorecard 2022-23.
[2] Wine Australia, Production, Sales, and Inventory Report 2022-23
[3] SA Winegrape Crush Survey 2024, Wine Australia
[4] National Vintage Report 2024, Wine Australia
[5] SA Winegrape Crush Survey 2024, Wine Australia
[6] South Australia State Export Report, 31 March 2024, Wine Australia
[7] Department of Treasury and Finance, SA Overseas Goods Exports, August 2024
[8] Consumer and Business Services SA
[9] The Australian and New Zealand Wine Industry Directory, 2023
[10] SA Winegrape Crush Survey 2024, Wine Australia
[11] Census 2021, Australian Bureau of Statistics
[12] Derived from Economic Contribution of the Australian Wine Sector 2019, AgEconPlus. Wine Australia website
[13] South Australian Tourism Commission (SATC), The Value of Tourism, year ending Dec 2023
[14] South Australian Tourism Commission website
[15] South Australian Tourism Commission (SATC), Visit to Regions report for the year ending March 2024

The recently commissioned report by Professor Kym Anderson titled 'Australia's Wine Industry Crisis and Ways Forward: An Independent Review'[16] (**Anderson Report**), details the current status and pressures on the industry, and options to consider in moving to a more sustainable and profitable sector. SAWIA does not seek to duplicate content of the Anderson Report in this submission, rather noting that sections 1, 2, 3, and 4 of the Anderson Report should be taken as a key reference for the Committee to set the context of the current demand-supply imbalance.

With South Australia accounting for half of the national crush, the current supply-demand imbalance is acutely felt in our State, with an oversupply of red grapes and high wine inventory levels. Both need to be addressed.

The sentiment of Professor Anderson's review is echoed in the 2023 South Australian Wine Industry Snapshot which reported the lowest business confidence in the seven years of the report, with 67% of respondents worried, and of these 27% expressed significant/extreme concern. This was particularly pronounced for small businesses, with 73% expressing considerable concern. Stress on the industry is further highlighted with 37% of respondents indicating that the financial health of their business required significant improvement. Cash flow constraints are substantial. Such pressure is placing significant burden on people, with a large number of respondents to the survey reporting that they have witnessed mental health issues and workplace stress.

Key concerns creating financial stress include rising operating costs, oversupply of red grapes, high red wine inventory (3 years average stock on hand), changing consumer preferences, reduced demand, competition from large retailers, workforce challenges, and supply chain disruptions amongst other factors.

In relation to the structure of the winegrape and wine processing market, the structure is varied, with a number of distinct business models in operation across the industry. These include, but are not limited to:

- vineyard owners/operators who predominately sell their grapes to third-party wineries;
- member-owned wine grape co-operatives, with the largest in Australia located in the Riverland with over 500 member growers;
- winery owners/operators who predominately purchase and process grapes sourced from third-party vineyard owners and/or other wineries who have surplus grapes;
- operators who own both a winery and vineyard(s), who process their own fruit in addition to any grapes purchased from third parties;
- contractor processors, who process third-party grapes into wine in exchange for a services fee, with some of these businesses also processing grapes for their own wine brands;
- 'virtual' wineries that sell wine under their own brands, but do not own any winery or vineyard assets, outsourcing all aspects of the production chain to third parties;
- independent retailers; and
- vertically integrated wine retailers, who retail third-party winemaker products, and also own vineyards and/or wineries that produce wine for their own private-label products which they also sell in their retail outlets.

Operators of each of the business models are exposed to a range of similar structural issues, risks and pressures such as the supply/demand imbalance, high domestic inventory levels and changing consumer trends, in addition to issues which are unique to each type of business model. These include inequalities in bargaining power, exposure to varying payment terms, costs of production, access to labour, and retail market concentration.

[16] https://economics.adelaide.edu.au/wine-economics/ua/media/353/winewp2024-01.pdf

b) *The nature and impact of current market and trading arrangements on the winegrape and wine processing industries*

In relation to the nature and state of the current market, there remains a significant supply/demand imbalance, with wineries holding significant red wine surpluses in addition to high inventory levels of bottled wine. As noted in the Anderson Report, Australia's stock-to-sales ratio for red wine is now close to twice its 2010s average, creating cash flow problems and leaving little room in storage tanks for the next vintage.

China's tariffs on Australian wine over the past three years, in addition to COVID-19 and declining global demand for red wine has led to depressed export prices of Australia's bulk red wine in international markets, resulting in the accumulation of a large surplus of bulk red wine.

Further, changing consumer trends and shifts in drinking habits has seen a marked compression in the domestic consumer market for Australian wine.

Notwithstanding these significant structural issues and market forces, SAWIA is of the view that the Code has no evident impact or influence on the current market, with the adequacy or effectiveness of the Code being an unrelated matter to the current market.

Rather, the voluntary, industry-led Code establishes a framework for fair and equable dealings between growers and winemakers. The Code contains provisions to address risks of bargaining power imbalance between parties, establishing protections for growers, and codifying transparent, good faith dealings between parties in respect of key trading arrangements such as:

- setting minimum contract provisions;
- providing clarity and objectivity as to grape quality assessment processes;
- establishing a structured and cost-effective process for the resolution of contractual disputes and other disputes that may arise out of supply agreement; and
- defining parameters with respect to pricing adjustments and timing of pricing notifications to growers.

SAWIA remains committed to promoting further adoption of the voluntary Code by non-signatories in South Australia.

SAWIA is also of the view that the concentration of domestic wine retailing has a significant impact on current market arrangements, warranting regulatory review to ensure that current legislative measures are sufficient to address imbalances between large retailers and vertically integrated retail businesses, and winemakers. The ability for winemakers to fairly compete for consumer spend, whilst maintaining a reasonable margin, is critical in ensuring a sustainable and profitable value chain from grower to retailer.

SAWIA draws the attention of the Committee to its submission to the Grape and Wine Sector Regulatory Impact Analysis: Consultation Paper for further information, which is annexed to the submission as Annexure 1.

c) *The impact of the current market structure on employment conditions for workers in the supply chain*

The wine industry is unique and multifaceted, transforming raw produce (i.e. wine grapes) into a high-value product — wine — which is marketed and sold globally.

Employment within the wine industry spans a diverse range of occupations, including:

- Viticulture (e.g. grape growing)
- Winemaking

- Science (e.g. laboratory work)
- Hospitality (e.g. cellar door sales, cafés, restaurants and events)
- Retail (e.g. cellar door sales, liquor retailers)
- Warehousing and packaging (e.g. bottling line operators)
- Barrel manufacturing (e.g. coopers)
- Transportation of grapes and bottled wine (e.g. drivers)
- Maintenance (e.g. mechanics and welders)
- Planning and technical production (e.g. engineers)
- Other professional roles (accountants, sales, marketing, supply chain, HSE, and export professionals).

The industry's diversity of roles, coupled with a strong emphasis on tradition, history, and heritage, results in varied levels of innovation and technological advancement across different occupations. In viticulture, which includes roles such as viticulturists, vineyard managers, and vineyard workers, manual labour remains prevalent. This includes tasks like digging, installing and repairing posts and trellising, installing bird netting, pruning, spraying and tractor and machine harvester operations. During the vintage season, a small number of vineyards are also harvested by hand.

The warehousing, logistics, and bottling areas of the industry have seen significant streamlining due to technological advancements. However, cellar operations (winemaking) remain largely manual, involving tasks like moving hoses, performing pump-overs, barrel management, and cleaning tanks or open fermenters.

The wine industry prides itself as a great industry to work in. When asked about what they value and love about the wine industry, employees single out the following[17]:

- Nature of the work – the connection to the land and opportunities for travel;
- Creativity – a blend of problem-solving, science and artistry;
- Community – a sense of belonging, regional collaboration and camaraderie within the industry;
- Workplace culture – strong relationships and a positive work environment; and
- Diversity – the variety of roles, products and locations.

Many of SAWIA's members are located in rural and regional South Australia and experience difficulties accessing and attracting unskilled, semi-skilled and skilled labour on a temporary or permanent basis. Indeed, 60% of wine businesses in a recent survey responded that labour availability has a negative effect on their business. Occupations particularly affected include cellar door positions and vineyard workers, including viticulturists[18].

The industry employs a range of different strategies to fill their workforce needs, including providing competitive terms and conditions, promoting a collaborative and supporting culture, providing professional development opportunities, attracting new entrants to the industry by collaborating with schools in wine regions,[19] and attracting overseas workers.

Visa holders can fill essential roles during peak periods such as the vintage season. Their contribution is vital to ensure the continued production and global distribution of South Australian wine.

In terms of employment, 40% of the nation's wine industry employees work in South Australia (winemaking and grape growing)[20], with Victoria employing 26%, NSW 18% and the remaining states 16%.

[17] Wine Australia 2024, Careers in viticulture and wine
[18] 2023 South Australian Wine Industry Snapshot
[19] Wine Australia 2024, Careers in viticulture and wine
[20] Australian Bureau of Statistics 2021 Census

The wine industry also supports jobs in other industries, particularly in relation to tourism. Our industry is a key tourism drawcard contributing to South Australia's $10 billion visitor economy, with 40% of international visitors historically spend time in our wine regions. The local industry attracts visitors to our wine regions where they enjoy hospitality, accommodation, food and wine experiences, support the local economy, create jobs and foster vibrant communities.

In addition to direct employment, the industry also engages the services of external service providers, including contractors, consultants and labour hire operators. In the wine industry, for example, the following services are commonly contracted:

- Contract vineyard management or vineyard services;
- Contract winemaking services;
- Wine bottling services;
- Warehousing services;
- Commissioning of new plant and machinery; and
- Transport providers to cart grapes, bulk wine, packaged wine and general courier services.

Where labour hire services are provided in accordance with the definition under the *Labour Hire Licensing Act 2017* (SA), there is requirement for the provider of such services to hold a labour hire licence in South Australia. Further, it is a breach of the Act for a client to use the services of an unlicensed provider. Compliance with the *Labour Hire Licensing Act 2017* is enforced by Consumer and Business Services.

The most common industrial arrangement for Australia's wine producers is to pay their employees in accordance with the Wine Industry Award 2020. The Wine Industry Award 2020 covers employees in the cellar door, vineyard, warehousing, wine production and laboratory. Employees employed by independent wine grape growers and vineyard contracting businesses are also covered by the award. The award provides for ordinary hours, maximum ordinary hours per day and week, weekend penalty rates, overtime rates, rest breaks and other employee entitlements.

Other Modern Awards commonly applying in the wine industry is the Restaurant Industry Award 2020, Manufacturing and Associated Industry and Occupations Award 2020, Commercial Sales Award 2020 and the Clerks – Private Sector Award 2020.

There are approximately 40 active Enterprise Agreements in the wine industry, these predominantly pertain to Australia's 15 largest wine companies. The majority of these agreements have been negotiated in collaboration with employee associations.

Agreements that have been negotiated and approved have seen annual wage increases of around 3.5%-4% for the life of the agreement, which is broadly in line with the average annual wage increases in private sector enterprise agreements of 3.6% and 4% in the March and June 2024 quarters respectively[21].

It is recognised that given the significant supply-demand imbalance and other compounding operating factors such as labour shortages and rising costs, businesses, whether that be growers, winemakers, contractors, or suppliers, are responding and adjusting how they operate. This includes through mergers and acquisitions, introduction of new technology, adoption of operational efficiency measures, owner-operators working more hours in the business, and for some making the decision to exit the industry.

This is placing significant pressure on people in the industry, with a large number of respondents to the 2023 South Australian Wine Industry Snapshot[22] reporting that they have witnessed mental health issues and workplace stress.

[21] Department of Employment and Workplace Relations 2024, Trends in Federal Enterprise Bargaining, June Quarter 2024

[22] https://www.winesa.asn.au/public/86/files/Industry%20%26%20Govt/FINAL%202023%20SA%20Wine%20Industry%20Snapshot_14Dec2023.pdf

In relation to the Code, SAWIA does not consider that the Code has any direct impact or influence on, or presents any challenges to, the current market structure on employment conditions for workers in the supply chain. Employment conditions are legislated primarily through the *Fair Work Act 2009*, and a system of Award regulations as outlined above. Such employment conditions in Australia are actively enforced by the Fair Work Ombudsman.

d) The availability, transparency and accessibility of winegrape market price information and its effectiveness in forecasting winegrape prices and demand

SAWIA is of the view that access to objective market analysis, and price transparency, is important to enable growers to make decisions regarding risk management and to help them adapt to changing market conditions.

Since the publication in September 2019 by the Australian Competition & Consumer Commission (**ACCC**) of its final report of the wine grape market study (**Final Report**), there has been a number of important steps taken across the industry in an effort to increase pricing transparency and to support growers by improving availability and accessibility of pricing information. These measures include the interactive price indicators dashboard published by Wine Australia on its website, and the removal of the indicative pricing scheme from the Code.

Growers and winemakers also have access to the National Vintage Survey[23] which provides vintage crush figures by volume and value, as well as average weighbridge purchase value by variety and region. Complementing this national report, the SA Winegrape Crush Survey[24] provides price dispersion information by variety and region, and historical weighted average price for key varieties in each region.

Through the Australian Government's Improving Market Transparency in Perishable Agricultural Good Industries initiative, a consortium comprising Australian Grape & Wine Incorporated (**AGW**), the Inland Wine Regions Alliance and Wine Australia undertook a project that resulted in the release of an online wine grape price indicator platform and a suite of price indicators, to help support growers to make informed decisions. Released in October 2023, the online platform provides growers with access to timely and reliable market data.

SAWIA acknowledges the challenges associated with providing a robust solution to pricing transparency, particularly given:

a) the limited usefulness of historic prices relative to forward-looking estimates;

b) a requirement for winemakers to provide pre-vintage pricing data to an independent body for publication may lead to winemakers artificially lowering prices which in turn sets a false floor price; and

c) the significant impact that seasonal weather conditions can have on the quantity and quality of grapes produced in a vintage year materially erodes the value and benefit growers may derive from early pricing indicators. For example, during September 2024 (spring) significant frost events occurred across multiple regions in South Australia, with early indications that around 50% of vineyards in the Riverland received some damage and approximately 18% had severe damage[25]. Other examples include natural disasters such as floods, severe storm events (including hail), drought, and also adverse weather conditions at flowering and berry set. Such seasonal and often extreme weather conditions directly lead to adjustments to grape intake requirements and associated grape pricing.

In the ACCC's follow-up report of the wine grape market study, published in December 2021 (**Follow-up Report**), the ACCC maintained the view that the best way to resolve the pricing transparency issue would be to implement recommendation 6 from its Final Report (i.e. grape

[23] Wine Australia, National Vintage Report 2024
[24] Wine Australia, SA Winegrape Crush Survey 2024
[25] Riverland Wine Industry Newsletter, 4 October 2024

buyers be required to provide pricing information to Wine Australia, to be aggregated by Wine Australia and published by winemaker, for each variety in each warm climate region, before the end of each financial year).

On balance, SAWIA considers that this approach does not address the limited value of historic pricing given that grape prices are largely dependent on expected *future* wine market conditions. Further, the recommended approach does not materially build upon the post-vintage pricing data that is already made available by Wine Australia.

SAWIA is of the view that the better approach is for winemakers, regional associations, SAWIA, AGW and Wine Australia to facilitate, in a co-ordinated manner, the publication and dissemination of regular and practical pre-vintage market analysis and information to growers including bulk wine market data, domestic wine sales data, consumer trends and insights, and grape pricing trends. Growers are also able to directly access such data on the Wine Australia website.

SAWIA considers that regulatory intervention in relation to pricing transparency is not going to solve the fundamental and primary issue faced by many growers today (particularly those with red wine grapes), that being the actual price ultimately paid for grapes which is driven by market forces that are outside the control of growers and winemakers alike.

SAWIA understands from member feedback that many winemakers engage in regular pre-vintage meetings with growers by regions, providing updates to growers on topics such as the state of the domestic and global wine industry, market and consumer trends, business performance, product innovation pipeline, and pricing trends. This is complemented by informal grower meetings when required or requested by growers. SAWIA advocates for this pro-active approach to the dissemination of market analysis as a means of informing and empowering growers with respect to pricing decisions.

e) The effectiveness of the current administration of the Code

AGW is the custodian of the Code, having a defined governance structure for the appointment of a Code Management Committee (**Code Committee**) responsible for the administration and business operations of the Code. The Code Committee comprises equal representation of winemaker and grower members, with two observers from inland grower representative organisations.

The Code Committee retains an arm's length relationship with growers and winemakers, appointing a Code Secretariat as the point of contact for parties to a dispute.

Based on member feedback, SAWIA understands that these members largely hold a 'neutral' view as to the effectiveness of the current administration of the Code. This is primarily due to the limited direct dealings and exposure (if any) most members have had with the Code Committee or the Code Secretariat.

SAWIA acknowledges the efforts made by the Code Committee since the ACCC conducted its grape market study in 2018-2019 to increase signatories to the Code, including nearly doubling numbers since 2019. Since 2021, the number of signatories to the Code has increased from 63 to 83 as of September 2024.

The uplift in signatories is reflective of industry acceptance that the current aims and objectives of the Code are appropriately balanced across growers and winemakers, with a clear focus on improvement in grower–winemaker relations in a manner consistent with the ACCC's commentary in its Final Report.

SAWIA remains committed to promoting further adoption of the voluntary Code by non-signatories, and believes that the Code Committee should continue its efforts to further increase the number of signatories, including through hosting information sessions with non-signatories, providing resources about the benefits of becoming a signatory, and the benefits and protections to growers of dealing with buyers who are Code signatories. Importantly, there should also be active promotion to growers of the dispute resolution processes available.

SAWIA understands that AGW conducted numerous workshops in 2022 to educate stakeholders about the Code, and to increase overall awareness. Those efforts and measures should be maintained.

Ultimately, the effectiveness of the Code is dependent on the effectiveness of the administration of the Code by the Code Committee in promoting and ensuring broad industry awareness and uptake of the Code, and ensuring that the Code's provisions remains contemporary and respond to the needs of growers and winemakers alike in an equitable, transparent and balanced manner.

f) The adequacy of winegrape and wine industry representation at regional, state and national levels

The wine industry has a sizeable representative structure with national, state and regional grape and wine associations. In South Australia, the representative structure is underpinned by regulations under the *Primary Industries Funding Schemes Act 1998* (**PI Funding Act)**, which set out the levy contributions growers and winemakers must make, and the responsibility of winemakers to collect such levies and onforward to the Department of Primary Industries and Regions SA (PIRSA).

National level

- The peak national body representing the interests of the industry is Australian Grape & Wine. In addition, there are several multi-state representative bodies in the inland regions, including Australian Commercial Wine Producers.

State level

Each wine producing state in Australia has a state wine association, with the representative structure in South Australia comprising:

1. South Australian Wine Industry Association (SAWIA)

    - Opt-in membership, with annual fee structure based on the amount of vines grown (hectares), amount of tonnes crushed, and the value of wine sales to licensees in South Australia. No levy funds are received by SAWIA.

    - Two primary classes of members include:
        a. Ordinary – those who manufacture for sale Australian wine or grow wine grapes for the purpose of manufacturing wine; and
        b. Associate – are those substantially interested in the promotion of Australian wine or the Australian wine industry or in the production or sale of Australian wine.

      As such, growers and winemakers can be Ordinary members of SAWIA, with the membership representing 96% of tonnes crushed in the South Australia, and 40% of the land under vine.

    - SAWIA's remit is to deliver advocacy, representation, expert advice to members on industrial relations, employee relations, liquor licensing, environmental and work, health & safety matters, and industry and market development. In 2023-24, SAWIA delivered expert advice to over 1,300 unique member requests.

    - The Executive Committee is made up of 13 members, 6 of whom are voted by the Ordinary membership, and 7 of whom are nominated by one of the main regional wine associations (Adelaide Hills, Barossa, Clare, Coonawarra, Langhorne Creek, McLaren Vale and Riverland). These 13 positions are voluntary. Through the robust governance process of nominations and appointments for the Executive Committee, members (growers and winemakers) have the opportunity to be appointed to the Executive Committee.

- Additionally, SAWIA has three expert committees, Environment, People & Workforce, and Work, Health & Safety, with membership freely open to any member, or their employees. These expert committees provide insights and recommendations to the Executive Committee for consideration.

- Since 1840, SAWIA has been representing the wine industry in South Australia and welcomes member involvement – indeed, SAWIA's representative ability, and thus our value proposition to members, is reflective of active member engagement.

2. Wine Grape Council of South Australia (WGCSA)

- Under the PI Funding Act and the *Primary Industries Funding Schemes (SA Grape Growers Industry Fund) Regulations 2021* (**SA Grape Regulations**), South Australian grape growers (excluding winemakers who grow grapes) must contribute to the SA Grape Growers Industry Fund (0.2% of the purchase price).

- Winemakers receiving grapes are responsible for deducting this contribution from payments made to growers who do not meet the definition of a winemaker. Growers are able to obtain a refund for these funds taken directly out of their grape cheque under the SA Grape Regulations, by contacting PIRSA.

- WGCSA indicates that they are '…the peak body for South Australia's independent grape growers. It is controlled and funded by its independent grape grower members.'

- The Board is made up of Council Members representing up to eight regions, and at times, independent councillors.

- It is understood through personal communications with WGCSA, that a portion of funds collected under the SA Grape Regulations from growers (who do not meet the definition of a winemaker), are provided by WGCSA to Australian Grape & Wine.

3. Regional wine associations

- There are six regional associations that receive funds from individual regulations under the PI Funding Act being, Adelaide Hills Wine Region, Barossa Australia, Clare Valley Wine and Grape Association, Langhorne Creek Grape and Wine, McLaren Vale Grape, Wine and Tourism, and Riverland Wine. Coonawarra Vignerons and the other regional wine associations in the Limestone Coast of South Australia do not have regulations under the PI Funding Act, nor do very small regional associations such as Adelaide Plains Wine Region.

- The regulations for each of the six regional associations under the PI Funding Act detail the contributions that *both* growers and winemakers must make. For example, for the Adelaide Hills, growers pay $7.65 per tonne and winemakers pay $7.65 per tonne of purchased grapes, and $15.20 per tonne for own grapes.

- The Constitution for each of these associations outlines their governance procedures in relation to the nomination and appointment of governing Board members (or equivalent).

- Many of the six regional associations also convene expert committees/groups on particular subject matters, for example viticulture, wine shows, export, and invite growers, winemakers and others to participate in such forums.

- It is important to note that the remit of McLaren Vale Grape, Wine and Tourism Association and Barossa Australia extends into tourism.

SAWIA holds quarterly meetings with the seven main regional associations to share insights and collectively progress matters on behalf of the industry. SAWIA also regularly liaises with national and other state representative bodies on policy and legislative matters, and industry development.

Given this extensive representative structure and network in South Australia, many opportunities are available for growers and winemakers of all sizes to get involved, share their views and insights, guide policy development and industry programs, and to champion actions to ensure the long-term sustainability and profitability of the wine industry.

g) Policy and regulatory options to improve market competition and address any inequities, including the potential benefits and limitations of a mandatory code, and the applicability of existing mandatory codes of conduct in other primary industries

SAWIA refers to its submission to the Grape and Wine Sector Regulatory Impact Analysis: Consultation Paper, which is annexed to the submission as Annexure 1, in respect to:

a) whether the Code should remain voluntary industry code, or made a mandatory code, including the benefits and limitations of each approach (see particularly SAWIA's response to question 16);

b) the regulatory options that could be invoked to address market competition and inequalities in the industry (see particularly SAWIA's response to question 18);

c) the operation of the *Wine Grapes Act 1991* (SA) (**WGA**) pursuant to which terms relating to payments made by processors to producers for wine grapes have been fixed by Ministerial order (see particularly SAWIA's response to question 5); and

d) options to improve market competition in the domestic market for wine retailing (see particularly SAWIA's response to questions 8-11), and whether the Code should be extended to cover the relationship between winemakers and retailers (see particularly SAWIA's response to question 17).

SAWIA notes that many of the market competition and structural issues impacting the wine industry such as the supply/demand imbalance, labour costs, price transparency, and financial sustainability, are commonly faced by market participants across many primary production industries across Australia, and are not unique to the wine industry. Matters such as depressed grape pricing are not matters which can, or should be, addressed through regulatory intervention.

There is also a very real risk that increased regulatory intervention in the wine industry will result in small winemakers being driven out of the grape market as a consequence of shortened grape payment terms (e.g. 30-day payment terms) and increased business complexity, red-tape and cost of compliance, leading to a concentration of buying power amongst the mid to large-size winemakers. Further regulation may also erode the grape supply industry through indirectly forcing a shift to, and reliance on, bulk wine trading in order to avoid the need to comply with heavy regulation. Interventions that are a catalyst for either scenario would not improve the position of growers.

SAWIA has had regard to the prescribed mandatory Dairy Code of Conduct (**Dairy Code**), and is of the view that the Dairy Code is not a suitable instrument to regulate the wine industry. The Dairy Code is appropriately tailored to the unique trading arrangements, operating conditions, and market forces that apply specifically to the dairy industry. Application of the Dairy Code to the wine industry would disregard the distinctive features of the wine industry and the trading relationship between growers and winemakers. To regulate milk and grapes equally would be a fundamental misstep and result in adverse outcomes for both growers and winemakers.

The Horticulture Code of Conduct regulates trade between a grower of horticulture produce and a trader (agent or merchant). The agency model and the ‘on-selling’ merchant model have very little application or relevance to the wine industry.

Conversely, the voluntary Code of Conduct for Australian Winegrape Purchases has been drafted and adapted over time to reflect, address and equitably govern the bespoke requirements, market conditions and operational characteristics of the supply relationship between growers and winemakers. SAWIA considers that the existing primary produce mandatory codes of conduct have no application to the grape and wine industry.

End of submission.

ANNEXURE 1

Grape and Wine Sector Regulatory Impact Analysis: Consultation Paper

Submission of: South Australian Wine Industry Association Incorporated

ABN: 43 807 200 928

Address: First Floor, Industry Offices
National Wine Centre
Botanic Road, Adelaide SA 5000

Telephone: (08) 8222 9278
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Date: 18 October 2024

Submissions by 20 October 2024 to:
https://haveyoursay.agriculture.gov.au/grape-wine-regulation

About the South Australian Wine Industry Association Incorporated (SAWIA)

The South Australian Wine Industry Association (SAWIA) is an industry association representing the interests of wine grape growers and wine producers throughout the state of South Australia.

SAWIA is a not-for-profit incorporated association, funded by voluntary member subscriptions, grants and fee for service activities. Our mission is to provide leadership, advice and support to South Australian grape and wine businesses, assisting them to prosper within a dynamic, diverse industry.

SAWIA's membership represents approximately 96% of the winegrapes crushed in South Australia and about 40% of the vineyard area. The board of SAWIA is comprised of six members elected by the membership and seven members nominated by each of the main wine regions in South Australia (Adelaide Hills, Barossa, Clare, Coonawarra, Langhorne Creek, McLaren Vale and Riverland).

SAWIA has a strong track record as an industry leader and innovator in many areas, and proactively represents members and the greater wine industry to government and related agencies on a wide variety of matters.

Value delivered to members covers four key areas:

a) representation and leadership;

b) providing expert advice, information and resources to members on employee relations, industrial relations, Work Health and Safety, liquor licensing, environment and other matters;

c) driving programs and initiatives that improve grape and wine industry operations; and

d) creating domestic direct-to-consumer opportunities and supporting the development of export markets.

About the South Australian wine industry

The South Australian wine industry contributes a total of about $2.45 billion to the state's economy[1], with 18 distinct wine regions that produce about 60% of Australia's wine production[2] (current total around 964 million litres of wine), and 80% of Australia's premium wine.

South Australia has approximately 74,732 hectares under wine grapes[3], of which 77% are red and 23% white grape varieties. The estimated total wine grape crush in 2024 in South Australia was 702,344 tonnes, accounting for 49% of Australia's crush, which was 14% below the 10-year average[4]. In 2024, the Riverland contributed 63% of the state's crush by volume and 26% of the estimated value of grapes, with the Barossa the second largest region contributing 9% of the state's crush by volume but 23% of the estimated value of grapes[5].

In the twelve months to the end of June 2024, South Australia exported[6] 370 million litres for a value of $1.60 billion (about 70% of Australia's total value). South Australia's major export markets by value are currently China, Hong Kong, UK, Singapore, USA, Canada, New Zealand, Thailand, and Malaysia. South Australian wine businesses export to about 100 countries.

The removal of trade restrictions by China in March 2024 has resulted in $395 million of wine being exported to China in the five months since. This is a solid start; however, the industry cautiously awaits pull through by the Chinese consumer and repeat orders. With the return of the China market, wine is now the State's third largest export after refined copper and copper products, and wheat[7].

[1] Primary Industries Scorecard 2022-23.
[2] Wine Australia, Production, Sales, and Inventory Report 2022-23
[3] SA Winegrape Crush Survey 2024, Wine Australia
[4] National Vintage Report 2024, Wine Australia
[5] SA Winegrape Crush Survey 2024, Wine Australia
[6] South Australia State Export Report, 31 March 2024, Wine Australia
[7] Department of Treasury and Finance, SA Overseas Goods Exports, August 2024

In South Australia there are approximately 1,250 licensed[8] wine producers (including about 600 processing facilities, 340 cellar doors[9]) and 3,182 registered vineyard owners[10], who together directly employ around 8,990 persons[11] and indirectly support another 81,900 jobs[12]. Of these vineyard owners, approximately 60% have vineyards of less than 10 hectares in size, accounting for about 10% of the vineyard area in South Australia. By comparison, around 10% of vineyard owners have holdings equal to or larger than 50 hectares, accounting for roughly 60% of vineyard area in South Australia.

Wine sales channels include off-premise (supermarkets and wine retailers), on-premise (restaurants, clubs, pubs), direct-to-consumer (wine clubs, cellar door, online) and the bulk wine market.

Wine regions are a significant contributor to South Australia's tourism economy, which is currently worth around $10.1 billion annually[13], with at least 20%[14] of international visitors to South Australia visiting wine regions and spending around $2.34 billion annually[15].

The recently commissioned report by Professor Kym Anderson titled 'Australia's Wine Industry Crisis and Ways Forward: An Independent Review'[16] (**Anderson Report**), details the current status and pressures on the industry, and options to consider in moving to a more sustainable and profitable sector. Given that the Anderson Report is referenced on page 5 of the Consultation Paper, SAWIA does not seek to duplicate content of the Anderson Report in this submission, rather noting that sections 1, 2, 3, and 4 should be a key reference for the Regulatory Impact Analysis to set the context of the current demand-supply imbalance.

With South Australia accounting for half of the national crush, the current supply-demand imbalance is acutely felt in our State, with an oversupply of red grapes and high wine inventory levels. Both need to be addressed.

The sentiment of Professor Anderson's review is echoed in the 2023 South Australian Wine Industry Snapshot which reported the lowest business confidence in the seven years of the report, with 67% of respondents worried, and of these 27% expressed significant/extreme concern. This was particularly pronounced for small businesses, with 73% expressing considerable concern. Stress on the industry is further highlighted with 37% of respondents indicating that the financial health of their business required significant improvement. Cash flow constraints are substantial. Such pressure is placing significant burden on people, with a large number of respondents to the survey reporting that they have witnessed mental health issues and workplace stress.

Key concerns creating financial stress include rising operating costs, oversupply of red grapes, high red wine inventory (3 years average stock on hand), changing consumer preferences, reduced demand, competition from large retailers, workforce challenges, supply chain disruptions amongst other factors.

In relation to the structure of the winegrape and wine processing market, the structure is varied, with a number of distinct business models in operation across the industry. These include, but are not limited to:

- vineyard owners/operators who predominately sell their grapes to third-party wineries;
- member-owned wine grape co-operatives, with the largest in Australia located in the Riverland with over 500 member growers;
- winery owners/operators who predominately purchase and process grapes sourced from third-party vineyard owners and/or other wineries who have surplus grapes;
- operators who own both a winery and vineyard(s), who process their own fruit in addition to any grapes purchased from third parties;
- contractor processors, who process third-party grapes into wine in exchange for a services fee, with some of these businesses also processing grapes for their own wine brand;

[8] Consumer and Business Services SA
[9] The Australian and New Zealand Wine Industry Directory, 2023
[10] SA Winegrape Crush Survey 2024, Wine Australia
[11] Census 2021, Australian Bureau of Statistics
[12] Derived from Economic Contribution of the Australian Wine Sector 2019, AgEconPlus. Wine Australia website
[13] South Australian Tourism Commission (SATC), The Value of Tourism, year ending Dec 2023
[14] South Australian Tourism Commission website
[15] South Australian Tourism Commission (SATC), Visit to Regions report for the year ending March 2024
[16] https://economics.adelaide.edu.au/wine-economics/ua/media/353/winewp2024-01.pdf

- ‘virtual’ wineries that sell wine under their own brands, but do not own any winery or vineyard assets, outsourcing all aspects of the production chain to third parties;

- independent wine retailers and retail chain operators; and

- vertically integrated wine retailers, who retail third-party winemaker products, and also own vineyards and/or wineries that produce wine for their own private-label products which they also sell in their retail outlets.

Operators of each of the business models are exposed to a range of similar structural issues, risks and pressures such as the supply/demand imbalance, high domestic inventory levels and changing consumer trends, in addition to issues which are unique to each type of business model. These include inequalities in bargaining power, exposure to varying payment terms, costs of production, access to labour, and retail market concentration.

SAWIA welcomes the independent impact analysis being led by Dr Craig Emerson of the regulatory options for the Australian grape and wine sector concerning fair trading, competitive relationships, contracting practices and risk allocation (**Regulatory Impact Analysis**).

SAWIA makes the following submissions in response to the consultation paper associated with the Regulatory Impact Analysis.

Question 1: Beyond the Riverland, Riverina and Murray-Darling regions, are there other wine regions in Australia that clearly display the features of market failure in the form of weak bargaining power with wine producers that warrant regulatory intervention?

The ongoing supply/demand imbalance, high domestic inventory levels held by winemakers, declining global demand for red wine, and shifts in consumer trends and consumption habits are significant issues faced across all wine regions in South Australia, and are not unique to the inland regions.

Market forces have been particularly pronounced in the Riverland, Riverina and Murray-Darling regions, which in turn has put downwards pressure on grape prices over recent vintages, but it is important to note that other regions in South Australia are also experiencing significant pressures due to the current market forces.

Question 2: What improvements could be made to the quality assessment processes?

Following publication in September 2019 by the Australian Competition & Consumer Commission (**ACCC**) of its final report of the wine grape market study (**Final Report**), significant improvements were made to the Code of Conduct for Australian Winegrape Purchases released in September 2021 (**Code**) to improve and implement objective, industry standard grape quality assessment procedures.

When assessing or grading grapes, Code signatories are required to avoid the use of subjective methodologies to determine price in circumstances where there are credible objective measures readily available to measure the same or similar characteristics. The Australian Wine Research Institute (**AWRI**), in consultation with Australian Grape and Wine Incorporated (**AGW**), has published a suite of Industry Endorsed Standard Procedures for sugar, colour and titratable acidity for which signatories are required to use.

Industry guidelines have also been published by the AWRI which serve as an explanatory reference to the Industry Endorsed Standard Procedures, and provide guidance on how to apply them successfully.

It is acknowledged that assessment of quality may in part rely on the organoleptic assessment by a winemaker, given that objective measurement of flavour profile is not yet practical at an operational level. SAWIA notes that the Code permits parties to a grape supply agreement to mutually agree to the use of such methods.

The introduction of additional objective and widely adopted assessment techniques (for example, smoke taint) would be of benefit to growers and winemakers alike. This will require further investment in research and the development of technology which when combined with current sensory evaluation methods and data, will support winemakers to make informed, verifiable and consistent quality assessment decisions.

In a cost-constrained climate, the availability of funding is a significant impediment to ongoing research and development activities.

Aside from quality assessment processes, grape quality can be heavily influenced by the time of harvest. What a winemaker may consider to be the optimal picking time (based on factors including flavour profile and sugar level) can vary to what a grower may consider to be the optimal picking time. The assessment and determination of grape quality at the weighbridge can have implications on the final grape price received by a grower.

To this end, SAWIA notes that clause 3.6(a) of the Code expressly requires Code signatories to deal with growers in good faith. This includes the process for determining the harvest/delivery time, which is a mandated element of supply agreements under clause 3.5 of the Code.

Question 3: What approaches should be adopted to deal with a lack of price transparency?

Access to objective market analysis, and price transparency, is important to enable growers to make decisions regarding risk management and to help them adapt to changing market conditions.

Since the publication of the ACCC's Final Report, there has been a number of important steps taken across the industry in an effort to increase pricing transparency and to support growers with access to pricing information. These measures include the interactive price indicators dashboard published by Wine Australia on its website, and the removal of the indicative pricing scheme from the Code.

Growers also have access to the National Vintage Survey which provides vintage crush figures by volume and value, as well as average weighbridge purchase value by variety and region, including price dispersion. Complementing this national report, the SA Winegrape Crush Survey[17] provides price dispersion information by variety and region, and historical weighted average price for key varieties in each region.

SAWIA acknowledges the challenges associated with providing a robust solution to pricing transparency, particularly given:

a) the limited usefulness of historic prices relative to forward-looking estimates;

b) a requirement for winemakers to provide pre-vintage pricing data to an independent body for publication may lead to winemakers artificially lowering prices which in turn sets a false floor price; and

c) the significant impact that seasonal weather conditions can have on the quantity and quality of grapes produced in a vintage year materially erodes the value and benefit growers may derive from early pricing. For example, during September 2024 (spring) significant frost events occurred across multiple regions in South Australia, with early indications that around 50% of vineyards in the Riverland received some damage and approximately 18% had severe damage[18]. Other examples include natural disasters such as floods, severe storm events (including hail), drought and adverse weather conditions at flowering and berry set. Such seasonal and often extreme weather conditions directly lead to adjustment to grape intake requirements and associated grape pricing.

In the ACCC's follow-up report of the wine grape market study, published in December 2021 (**Follow-up Report**), the ACCC maintained the view that the best way to resolve the pricing transparency issue would be to implement recommendation 6 from its Final Report (i.e. grape buyers be required to provide pricing information to Wine Australia, to be aggregated by Wine Australia and published by winemaker, for each variety in each warm climate region, before the end of each financial year).

On balance, SAWIA considers that this approach does not address the limited value of historic pricing given that grape prices are largely dependent on expected *future* wine market conditions, and does not materially build upon the post-vintage pricing data that it is already made available by Wine Australia.

SAWIA is of the view that the better approach is for winemakers, regional associations, SAWIA, AGW and Wine Australia to facilitate, in a co-ordinated manner, the publication and dissemination of regular and practical pre-vintage market analysis and information to growers including bulk wine market data, domestic wine sales data, consumer trends and insights, and grape pricing trends. Growers are also able to directly access such data on the Wine Australia website.

[17] Wine Australia, SA Winegrape Crush Survey 2024
[18] Riverland Wine Industry Newsletter, 4 October 2024

Ideally, the dissemination of such information and analysis should be ongoing in order to enable growers to make informed decisions in respect of matters such as the use of vineyard inputs.

SAWIA considers that regulatory intervention in relation to pricing transparency is not going to solve the fundamental and primary issue faced by many growers today (particularly those with red wine grapes), that being the actual price ultimately paid for grapes which is driven by market forces that are outside the control of growers and winemakers alike.

SAWIA understands from member feedback that many winemakers engage in regular pre-vintage meetings with growers by regions, providing updates to growers on topics such as the state of the domestic and global wine industry, market and consumer trends, business performance, product innovation pipeline, and pricing trends. This is complemented by informal grower meetings when required or requested by growers. SAWIA advocates for this pro-active approach to the dissemination of market analysis as a means of informing and empowering growers with respect to pricing decisions.

Question 4: Should the unilateral variation of supply agreements be prohibited?

SAWIA considers that unilateral variation rights in grape supply agreements should be prohibited.

As noted by the ACCC in its Final Report, "*terms that allow winemakers broad unilateral discretion to vary terms of supply agreements are likely to be unfair*", with unilateral rights to vary price and quality assessment specifications particularly considered to have the potential to result in a significant reduction in the value of the supply agreement and cause financial detriment to a grower.

The ACCC has also expressed the view that terms that give winemakers broad rights to unilaterally vary terms of an agreement may be unfair. This view is consistent with the intention and scope of the unfair contract terms regime (**UCT**) under the Australian Consumer Law (**ACL**).

It is noted by SAWIA that the stated principles of the Code of Conduct for Australian Winegrape Purchases (**Code**) also align with the prohibition of unilateral variations.

SAWIA recognises that changes to grape quality specifications and grape quality assessment procedures may be desirable or necessary from time to time in order to keep step with consumer preferences for certain wine styles, to respond to regulatory requirements, or to reflect improvements in industry-accepted sampling and assessment techniques. However, SAWIA considers that any legitimate basis for varying such terms should be expressly and clearly stipulated in supply agreements and should require the other party's consent. This position is consistent with the principles of the Code.

Whilst it is observed that where legitimate grounds for variations exist (such as to respond to changes to regulations), it may be reasonable for unilateral variation to be permitted that do not cause detriment or adverse outcomes for the other party, SAWIA is of the view that on balance, for the sake of certainty, fairness and transparency between contracted parties, unilateral variations should be prohibited.

Question 5: What are reasonable payment times for grape growers?

As noted by the ACCC in the Follow-up Report, many major winemakers have moved to shorter payment terms since the ACCC grape market study conducted in 2018-2019. The results of a recent questionnaire issued by SAWIA to a number of members illustrate and confirm that payment terms have indeed been shortened in some grape supply contracts, with a shift particularly by some large winemakers to offering final payment by 31 July in the year of supply, with a significant portion of the total payment being made within 30 days of the end of month of delivery.

The question as to what constitutes 'reasonable' payment terms is largely situation-dependant. For instance, large winemakers often have greater financial capacity and resources to service debt than the average grower. Conversely, many small winemakers face significantly higher funding costs making it harder to offer and meet shorter payment terms in what is a highly competitive and price-sensitive domestic wine market.

SAWIA is supportive of a tiered-payment terms structure as a minimum standard, rather than a requirement for a lump sum payment to be made within 30 days of final grape delivery as recommended by the ACCC in its Final Report for winemakers with a total processing capacity exceeding 10,000 tonnes.

SAWIA members have expressed concerns about any shift to mandate a requirement for full payment to be made within the same financial year of grape delivery (i.e. by 30 June), noting that winemakers cannot usually sell finished wine for between 6 to 24 months after vintage. It should also be noted that liquor retailers and distributors often seek 60-to-90-day payment terms which reflects the common timeframe it takes retailers and distributors to sell the product. It must also be remembered that 60% of South Australian wine is exported to markets around the world, and SAWIA understands that customers in export markets commonly operate on 120-to-150-day payment terms. Therefore, any review of payment terms must take into account that well over half the wine produced ends up on retail shelves in export countries where Australian businesses and government have no (or limited) control over distributor and retailer behaviour.

Significantly shortened payment terms will also present significant financial difficulties for many small winemakers who are faced with the same challenges associated with the time it takes to recover costs of grapes and wine production.

There is also a very real risk that shortened payment terms will result in small winemakers paying less for grapes, or drive them out of the grape market, leading to a concentration of buying power amongst the mid to large-size winemakers. Either scenario would not improve the position of growers.

In South Australia, the *Wine Grapes Act 1991* (SA) (**WGA**) has three pertinent sections in relation to terms of payment, being:

a) Section 5 which allows the Minister, by order, to recommend a price for wine grapes grown in a production area and sold to a processor. PIRSA have advised that this section has only been enacted once, in 1999 for Langhorne Creek. SAWIA does not expect, or envisage a situation where the Minister should issue an order under Section 5, given that pricing is a commercial matter which is highly nuanced and often itemised by variety, region, sub-region, end product allocation, and quality grade.

b) Section 6 which allows a Minister, by order, to fix terms and conditions to the payment for wine grapes delivered to a processor in South Australia. The current order in place requires three payments, with the final payment to be made by 30 September, but with no penalty for a breach of this order. However, the grower can personally take action against a processor who defaults on payment, with the incentive being that the order provides for penalty interest to be paid on any defaults.

   Information recently provided by the Department of Primary Industries and Regions SA (**PIRSA**) indicates that since 2019 they have received six complaints from growers regarding late payment for grapes delivered. For these cases, PIRSA wrote to the relevant party outlining their obligations under the WGA, with no further action required thereafter.

c) Section 9 imposes a criminal penalty on a processor accepting the delivery of wine grapes for processing unless all amounts that have previously fallen due for payment for wine grapes received by the processor in a previous season, have been paid in full.

   PIRSA has advised that to their knowledge, a prosecution has never been commenced for breach of Section 9 of the WGA.

The operation of the WGA in South Australia provides a legislative support mechanism for the timing of grape payments, which applies equally to signatories and non-signatories of the Code.

SAWIA is of the view that any proposal to vary the current Ministerial order under which three grape payments are to be made in South Australia under the WGA must be predicated on broad industry consultation and support for any change.

The reach and potential consequences of the current regulatory mechanisms (including the WGA) should not be overlooked or understated when assessing if further invention is necessary. It would be prudent for these current measures to be first examined as the means of driving and achieving appropriate payment terms across the industry.

Question 6: Should unilateral termination clauses be prohibited or permitted only in prescribed circumstances?

Contract terms which permit unilateral termination by a party are commonly recognised as falling within the remit of the unfair contract terms regime under the ACL, where the exercise of such rights would cause significant imbalance in the parties' rights and obligations under the contract, and where it is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term.

SAWIA recognises the paramount importance to growers of having a secured, contracted buyer, for their grapes. The ACCC noted in its Final Report that winemakers are generally in a better strategic position to manage demand risks, with termination clauses which allow for termination on short notice effectively transferring the risk onto growers with the likely result that growers will suffer significant detriment if exercised.

SAWIA considers that unilateral termination clauses in grape supply agreements should be permitted only in prescribed circumstances, noting that the Code already highlights that in the ACCC's Final Report the termination of agreements at short notice merely because grapes become surplus to their requirements, may be considered as unfair contract terms.

SAWIA would welcome an examination by the Code Committee of the feasibility of amending the Code to include a set of limited prescribed circumstances to the prohibition of unilateral termination rights in supply agreements, taking into account the views of growers and winemakers.

Question 7: What other issues are being faced by grape growers when dealing with winemakers?

SAWIA seeks to promote respectful and productive relationships between growers and winemakers at all times to ensure a profitable and sustainable future for all participants along the value chain. Growers and winemakers both play a vital role, and it is incumbent on all participants in the grape and wine sector to operate in a manner which reflects this.

Questions 8 - 11: ***Market concentration in the domestic retailing of wine & options for intervention in the domestic market for wine retailing***

Today's high market concentration level in the liquor retail sector has been partly facilitated by the ease at which liquor retailers can acquire more retail establishments under the *Competition and Consumer Act 2010*.

Consolidation of domestic liquor retail in recent years has changed the operating environment for many wine producers, and continues to do so. The resulting issues faced by winemakers are exacerbated by the fact that retailers act as gatekeepers for retail shelf space, control frequency of promotions, have access to competitor innovations and pricing tactics, collect large amounts of customer purchasing data and insights that are not available to winemakers, have the power to de-list products on short notice (often leaving a producer exposed with remaining inventory on hand), and are also direct competitors through private-label wine brands which have rapidly increased in prevalence in recent years. This cross-over of retailing and producing arguably provides an unfair advantage to retailers, resulting in winemakers often being price takers.

SAWIA is of the view that the concentration of domestic wine retailing warrants regulatory review to ensure that current legislative measures are sufficient to address imbalances between vertically integrated retailers and winemakers.

In relation to the options for intervention in the domestic market for wine retailing, SAWIA considers that the following measures may assist to mitigate the issues associated with market concentration and power imbalances:

- equal access to information – provide winemakers with access to the same search, scan and in-store purchase data information as retailers. This information offers market insights and trends that assist retailers in creating their own products to sell, and enables them to act quickly on consumer trends;
- a cost-effective dispute resolution framework to support the raising and investigation of complaints between retailers and winemakers;
- consumers having access to information in-store and/or on-bottle to distinguish a retailer own-brand from an independent producer brand in order to support consumers to make informed purchasing choices. This may take the form of a well understood and widely accepted logo or mark on wine labels to clearly convey whether a product is a retailer own-brand or an independent producer brand; and
- examination of the feasibility of including wine in the Food and Grocery Code of Conduct, with protections for winemakers with respect to sales agreements/trading terms between retailers and winemakers. SAWIA notes that whilst in the Final Report on the Independent Review of the Food and Grocery Code of Conduct, it was determined that wine (and certain other items) not be brought under the Food and Grocery Code of Conduct, SAWIA considers there to be merit in the dealings between winemakers and retailers being covered by the Food and Grocery Code of Conduct or a similar regulatory instrument.

Any such measures would require extensive consultation with wine industry stakeholders and other interested parties prior to implementation, and must carefully consider the different types of retailers (e.g. independent retailers versus retail chain operators and vertically integrated retail businesses) to ensure there are no unintended consequences.

Question 12: What other objectives, if any, should guide the Code to improve relations between wine producers and their suppliers?

SAWIA acknowledges that AGW is responsible for all aspects of the application, amendment and enforcement of the Code.

SAWIA considers that the principles, aims and objectives of the Code as currently drafted provide clear guidance and a fair and equitable framework for dealings between winemakers and growers. The current objectives of the Code strike a reasoned and appropriate balance between the rights and interests of growers and winemakers. However, it is acknowledged that it is incumbent on the Code Committee to continuously review and update the provisions of the Code to ensure the operation of the Code remains equitable and transparent, and remains responsive to the issues, requirements and external factors facing growers and winemakers.

The amendments to the Code, as published in September 2021 in response to the ACCC's Final Report, introduced substantially improved protections for growers and transparency between parties in respect of key elements including minimum contract provisions, clarity and objectivity as to grape quality assessment processes, a structured and cost-effective process for resolution of contractual disputes and other disputes that may arise out of supply agreements, and defined parameters with respect to pricing adjustments and timing of notification to growers.

Since 2021, the number of signatories to the Code has increased from 63 to 83 as of September 2024. The uplift in signatories is reflective of industry acceptance that the current aims and objectives of the Code are appropriately balanced across growers and winemakers, with a clear focus on improvement in grower–winemaker relations in a manner consistent with the ACCC's commentary in its Final Report. Indeed, the ACCC in its Follow-up Report acknowledged the significant efforts made by AGW to improve the coverage and strength of the Code, and noted that major winemakers have signed up to the Code.

Question 13: Is the membership of the Code adequate to achieve its objectives?

As also noted in response to question 12, the ACCC in its Follow-up Report acknowledged that that major winemakers have become signatories to the Code since the 2018-2019 grape market study.

Although there remains a large number of small to medium-size winemakers in South Australia who are non-signatories, SAWIA is aware that AGW is considering a new requirement on producers to be a signatory to the Code as a prerequisite to obtaining certification under the industry sustainability standard. Under such a measure, in order to be able to carry a Sustainable Winegrowing Australia logo on its wine labels, a wine producer would need to become a Code signatory. AGW considers this policy position to be a significant measure for increasing Code signatories in a climate where sustainability has become a key focus of major wine retail markets overseas.

SAWIA encourages the Code Committee to invest in further and ongoing efforts to increase the number of signatories to the Code and to offer practical solutions to barriers to adoption.

Question 14: Does the Code effectively address issues between winemakers and their suppliers in the irrigated inland wine regions of Australia and elsewhere in the wine grape industry stemming from bargaining power imbalances?

SAWIA considers that the Code is a valuable industry-led regulatory instrument with provisions to address risks of bargaining power imbalance between growers and winemakers.

In its Final Report, the ACCC's overall view was that the version of the code at the time was not working as intended to balance the interests of growers and winemakers, and considered that that the code had the potential to provide greater benefits to the industry if certain amendments were adopted along with an increase in uptake by winemakers. As noted above in response to Question 12, SAWIA considers that the amendments introduced in the updated (and now current) Code released in 2021 in response to the Final Report represent important improvements towards addressing bargaining power imbalance.

Further, since the release of the revised Code in 2021, the number of signatories has increased from 63 to 83. The increasing adoption by industry of the Code since 2021 demonstrates industry support and acceptance of the principles and protections set out in the Code. This is further underpinned by the WGA in South Australia which is applicable to all wine grape purchases in South Australia (with the exception of wine grape sales by a member of a registered co-operative to the co-operative).

The Code Committee is responsible for administering the Code, which includes making determinations regarding complaints about breaches of the Code. Where the Committee determines that there is a breach of the Code, the Committee may, in its discretion, remove the applicable signatory and/or refer the matter to the ACCC or another relevant regulatory authority. SAWIA acknowledges that the consequences for breach of the Code may not, in some cases, act as a sufficient deterrent against non-compliant conduct by winemakers, however there is a number of alternate regulatory avenues that may be available to an aggrieved party depending on the nature of the breach and the resources available to that party to seek redress.

Finally, whilst the importance of the Code at regulating grower and winemaker dealings cannot be understated, SAWIA is of the view that the Code should not be viewed in isolation from the overall regulatory framework (including the Australian Consumer Law and the Unfair Contract Terms protections) when considering approaches for addressing bargaining power imbalances.

As appropriately noted in the forward from Dr Craig Emerson in the Consultation Paper associated with the Regulatory Impact Analysis, regulatory interventions aimed at improving the bargaining power of growers need to also take into account the relatively weak bargaining power of winemakers when selling their wine products to retailers. Further, whilst this bargaining power with retailers can be considered in the domestic market, it must be remembered that 60% of wine ends up on retail shelves in export countries where Australian businesses and government have no (or limited) control over distributor and retailer behaviour.

Broad regulatory interventions, which may take the form of a mandatory code of conduct, run the risk of driving winemakers out of the wine grape market which is not in the general interests of grape growers, or that of winemakers.

Question 15: Have dispute resolution provisions in the voluntary code been effective in practice?

The amended Code published in 2021 introduced a number of material and practical improvements to the dispute resolution process in response to the ACCC's Final Report. The improved processes in the Code include:

- a structured independent expert determination and conciliation process;
- an expedited dispute resolution process for time sensitive disputes such as price deductions or rejection of grapes;
- the quality assessment process now involves the use of industry endorsed standard procedures and in the event of a dispute, the standard procedures (or procedures at least as rigorous) are to be followed; and
- a structured conciliation processes (without lawyers), with set timeframes for the carrying out of the associated actions by the parties.

Based on feedback that SAWIA has received from members who are signatories to the Code, SAWIA understands that the improved dispute resolution provisions in the Code have made it easier and simpler for growers to lodge disputes, however the procedures should be better communicated to growers to assist growers to understand the processes and their options for initiating a formal dispute under the Code.

SAWIA also understands that the number of disputes that are referred to the Code Secretariat under the dispute procedures is relatively low, with a number of disputes resolved on a commercial basis rather than going through to independent determinations.

There is no evidence to suggest that the relatively low uptake of the dispute resolution provisions in the Code is a reflection of the processes being viewed as ineffective. Rather, SAWIA understands that in the current industry climate, parties may be opting to settle disputes through a mix of formal (e.g. mediation, legal processes) and informal means in order to conserve scarce resources (primarily being time and money). SAWIA is supportive of the Code Committee continuing to monitor and strengthen the dispute resolution provisions under the Code, and to actively promote the availability of the dispute processes to growers, for the mutual benefit of all parties.

Question 16: Should the Code be retained as a voluntary industry code, or made a prescribed voluntary code, or a mandatory code?

On balance, SAWIA is of the view that at the present time the Code should remain a voluntary, industry-led instrument for regulating dealings between growers and winemakers.

As demonstrated through the significant improvements made to the Code in 2021, the industry is collectively motivated and willing to implement and adopt measures to ensure the framework for governing supply relationships between growers and winemakers is equitable and transparent, and remains responsive to the issues, requirements and external factors facing contracting parties.

SAWIA understands that the key outstanding issues with the Code as expressed by some growers are payment terms and grape pricing. SAWIA's view on grape payment terms are addressed elsewhere in this submission. In relation to grape pricing, that is a product of a range of complex factors which are outside the remit of any code or other regulatory intervention, whether voluntary or mandatory. These include supply/demand imbalances, bulk wine prices on the international market, domestic wine inventory levels, seasonal weather events, and shifts in consumer trends. Expected future wine market conditions are not a matter for legislative intervention.

The unintended and adverse consequences of a mandatory code also need to be kept front of mind. These can include an increase in the administrative burden and costs of compliance, shifting the market towards a bulk wine trading environment to avoid heavy grape supply regulation, and imposing rigid processes and obligations which fail to keep step with industry and market conditions. These concerns were also raised by growers at the recent Code of Conduct Forum hosted by the Wine Grape Council of South Australia on 6 June 2024[19].

SAWIA also notes that in order to provide an informed view as to the risks versus the benefits to the industry of a mandatory or prescribed code, the content of such a code would need to be considered and properly assessed in the context of the significant issues and challenges currently facing growers and winemakers and the regulatory interventions and mechanisms (such as the UCT regime and the ACL) already in place.

Question 17: Should the Code be extended to cover the relationship between winemakers and retailers?

The provisions of the Code are intentionally unique to the relationship, and factors which influence the relationship, between growers and winemakers, whereas the issues confronted by winemakers in their dealings with retailers are vastly different. The magnitude of the differences warrants investigation of separate methods and bespoke instruments for addressing those issues.

AGW, in its March 2024 response to the Senate Select Committee on Supermarket Prices, noted that there is potential that inclusion of wine in a revised Food and Grocery Code of Conduct would assist in addressing imbalances in bargaining power between large supermarkets and their suppliers. This position was echoed in AGW's February 2024 submission to the Consultation Paper on the Independent Review of the Food and Grocery Code (2023-24), which notes that the wine sector is broadly supportive of the inclusion of wine under the Food and Grocery Code of Conduct.

SAWIA would welcome closer examination of the inclusion of wine in the Food and Grocery Code of Conduct (or other similar instrument or mechanism) in order to increase transparency, and to level the playing field, on issues including, without limitation, product ranging, range reviews, timeframes for acceptance of price increases, promotions funding, and supply chain procedures.

Question 18: What legislation, federal or state, could be invoked in addressing market failures in the Australian wine industry?

SAWIA considers that the current regulatory environment comprised of a suite of Federal and State legislation aimed at regulating matters including competition and anti-competitive practices, the relationships between suppliers, retailers and consumers, unfair contract terms, director's duties, debt recovery, and grape payment terms and payment times legislation (WGA in South Australia), is broadly sufficient in responding to perceived market failures in the Australian wine industry.

The non-regulatory voluntary Code complements this legislative framework by establishing fair and equitable minimum standards for dealings between growers and winemakers.

Caution is to be exercised in reaching any conclusion that further legislative measures and government intervention in the form of the application of competition laws and a mandatory code of conduct are the appropriate way to address market issues. In the first instance, the Code Committee should continue to review and update provisions of the Code to ensure the Code's operation is equitable and transparent, and remains responsive to the issues, requirements and external factors facing growers and winemakers. Significant efforts must also continue to ensure increased uptake of the Code by winemakers.

[19] https://www.wgcsa.com.au/code-of-conduct-forum.html

On 6 June 2024, the Wine Grape Council of South Australia hosted a Code of Conduct Forum for grape growers[20]. Across the attendees, the number one issue growers expressed that they want to see addressed in the sector included: addressing oversupply (including removal of unprofitable vineyards); consistent grading and assessment of grapes; labour costs; payment terms; improved pricing and pricing transparency; and open communication.

SAIWA is of the view that these issues, along with others expressed by growers at the said Forum, are either:

a) already appropriately covered by the current legislative framework, or the Code; or

b) are not issues which are appropriate to address through regulatory intervention.

Indeed, many of the issues such as supply/demand imbalance, labour costs, price transparency, and financial sustainability, are commonly faced by market participants across many primary production and other industries across Australia, and are not unique to the wine industry. Matters such as depressed grape pricing are not matters which can, or should be, addressed through regulatory intervention.

It is also important that the potential adverse impacts of further or increased regulatory intervention are kept front of mind, including:

- increased business complexity, red-tape and cost of compliance;
- protracted processes and burdensome compliance obligations;
- restricting innovation and agility to respond and adapt;
- eroding the grape supply industry through indirectly forcing a shift to, and reliance on, bulk wine trading; and
- creating division between growers and winemakers.

These adverse impacts were noted by the growers at the Code of Conduct Forum in June 2024.

As stated above in response to questions 8-11, SAWIA is of the view that the concentration of domestic wine retailing warrants regulatory review to ensure that current legislative measures are sufficient to address imbalances between large retailers and vertically integrated retail businesses, and winemakers. The ability for winemakers to fairly compete for consumer spend, whilst maintaining a reasonable margin, is critical in ensuring a sustainable and profitable value chain from grower to retailer.

Question 19: Are the recently amended unfair contract laws relevant to dealings between wine grape producers and winemakers and/or winemakers and large wine retailers? If not, why?

In its Final Report, the ACCC noted that the vast majority of supply agreements considered by the ACCC as part of its grape market study appeared to be standard form, involving limited or no negotiation of terms. The ACCC also cited numerous examples of terms in grape supply agreements that it considered may be unfair and therefore covered by the UCT laws.

The amended unfair contract terms (**UCT**) laws, which commenced in November 2023, made UCTs illegal, attracting substantial penalties under the *Competition and Consumer Act 2010,* and also expanded the class of small businesses that can rely on UCT protections to those businesses that either employ fewer than 100 people or have a turnover of less than $10 million for the previous income year.

The lowering of the threshold as to what constitutes a *small business* has had minimal bearing and relevance on grape growers and winemakers due to fact that the majority of growers and winemakers are either family-based operations or smaller enterprises. However, the fact that winemakers and

[20] https://www.wgcsa.com.au/code-of-conduct-forum.html

retailers found to have unfair contract terms in their supply agreements may now face significant financial penalties for contraventions of the UCT regime is considered by SAWIA to be of significant relevance to dealings between grape growers and winemakers, and also to relations between winemakers and large liquor retailers.

SAWIA considers that the increased powers given to the Courts under the UCT reforms, along with the introduction of the significant financial penalties for any person or business that 'proposes, applies, relies or purports to apply or rely on' an unfair contract term, are relevant to dealings between growers and winemakers, and winemakers and large retailers, acting as a significant deterrent to the inclusion and exercise of unfair contract terms.

The reforms also make it easier for both regulators, growers and winemakers to claim that contracts are standard form and are thereby protected by the enhanced UCT regime.

SAWIA anticipates that the UCT law reforms will elicit improvements in commercial practices in both the wine and winegrape markets. However, it is acknowledged that the UCT reforms need to be tested before the Courts and legal precedence established, and then well understood by industry participants.

SAWIA recognises and acknowledges that there is a small number of large winemakers who fall outside of the remit of the small business threshold under the UCT laws due to workforce size and/or annual turnover, and therefore are not afforded the protections under the UCT regime.

To this end, SAWIA notes the submission made by Australian Grape and Wine Incorporated (**AGW**) in May 2024 to the interim report in response to the independent review of the Food & Grocery Code 2023-2024. Specifically, AGW expressed the view that the wine industry would benefit from the inclusion of wine in the Food and Grocery Code of Conduct (**F&G Code**), and that the provisions in the F&G Code such as how products are delisted, quality specifications, product ranging, shelf space allocation and range reviews, and timeframes for acceptance of price increases, would induce significant improvements to supply agreements between winemakers and large retailers.

Question 20: Are the proposed policy options relating to unfair trading practices potentially relevant to dealing with bargaining power imbalances in the wine industry?

The policy options set out in the Consultation Regulation Impact Statement issued by Treasury in August 2023 (**Regulation Impact Statement**) to address ‘unfair trading practices’, and specifically Option 3 (a general prohibition on unfair trading practices) and Option 4 (a combination of general and specific prohibition) would potentially be relevant to dealing with bargaining power imbalances in the wine industry if properly framed.

As detailed in the Regulation Impact Statement, the potential benefit of Option 4, which is likely to have the highest regulatory impact, would be to provide protections to small businesses from the widest range of both current and emerging unfair trading practices, and would enable future and evolving unfair trading practices to be captured.

However, SAWIA notes that:

- the specific details of how these policy options would be implemented through legislation has not been published and remains largely unknown. This detail is needed in order to reach an informed view about the application and potential impact (benefit and burden) of the policy options on the wine industry; and

- with the ongoing supply/demand imbalance, deflated grape pricing across many Australian grape producing regions, and the increasing cost pressures being faced by growers and winemakers, the benefits and timing of the introduction of any additional regulatory intervention needs to be carefully weighed-up against any additional financial and administrative cost or burden on small businesses.

Question 21: What are the non-legislative obstacles to small producers of wine grapes engaging in collective bargaining with large wineries? Are they fearful of retribution?

In its Final Report, the ACCC noted that "*[c]ollective bargaining can enable growers to mitigate the impact of bargaining power imbalances, allowing them to negotiate more balanced terms*." SAWIA notes that collective bargaining may have potential in the grape supply industry and be mutually beneficial to growers and winemakers alike, however there are several key non-legislative obstacles to small growers engaging in collective bargaining. These include, without limitation:

(i) lack of grower awareness of collective bargaining and the potential for collective bargaining to be a useful mechanism to reduce bargaining power imbalances;

(ii) lack of grower understanding of the ACCC notification and authorisation processes associated with obtaining legal protection to collectively bargain;

(iii) the marked shift from winemakers issuing long-term grape supply agreements (e.g. covering up to 5 to 10 vintages), to short-term grape supply and spot buy contracts. The value growers would typically derive from the 'public benefits' of collectively negotiating and securing a long-term supply arrangement are materially diluted in the case of short-term supply agreements;

(iv) many growers have existing supply agreements on foot with varied expiry dates. This timing issue may suppress the appetite of some growers to participate in a collective negotiation or compromise the ability of some growers to fully realise the benefit of a collective bargaining arrangement;

(v) winemakers lack incentives to negotiate with a collective bargaining group in circumstances where there are sufficient alternative suppliers in a particular region who are not part of the group; and

(vi) grower concerns of losing a potential buyer, especially for growers in the concentrated warm-climate inland regions.

Question 22: What measures should be contemplated to deal with supplier fears of retribution?

SAWIA acknowledges that there may exist a fear of retribution held by growers in their dealings with winemakers which presents an obstacle to the pursuit of rights under the Code or other regulatory avenues, and winemakers in their dealings with retailers with similar adverse consequences. However, this is not unique to the wine industry, with supplier relationships generally exhibiting an element of dependency and reliance on its customers or buyers.

It is noted that one of the recommendations set out in the Independent Review of the Food and Grocery Code of Conduct – Final Report, published in June 2024 (**F&G Code Final Report**), is that retribution be captured under the obligation to act in good faith under the Food and Grocery Code of Conduct. Whilst the Code of Conduct for Australian Winegrape Purchases does not expressly impose a positive obligation on winemakers to refrain from retributory conduct, SAWIA notes that the Code expressly requires signatories to deal with growers in good faith.

SAWIA considers there to be a material risk that legislated penalties for winemakers who engage in retributory conduct may indeed further disincentivise growers from reporting retributory behaviour. This risk may also be exacerbated in the case of a grower who supplies grapes as part of an authorised collective bargaining group.

SAWIA notes the recommendation made in the F&G Code Final Report for the introduction of a confidential and anonymous complaints mechanism in the Food and Grocery Code of Conduct to enable suppliers to raise and report issues directly with the ACCC without fear of retribution or victimisation.

Additional remarks

SAWIA remains committed to promoting further adoption of the voluntary Code by non-signatories.

SAWIA encourages the Code Committee to continuing reviewing and updating the Code to ensure its operation remains equitable and transparent, and remains responsive to the issues, requirements and external factors facing growers and winemakers. Significant efforts must also continue to ensure ongoing uptake of the Code by winemakers. SAWIA is also supportive of the Code Committee continuing to monitor and strengthen the dispute resolution provisions under the Code, and actively promoting the availability of the dispute processes to growers, for the mutual benefit of all parties.

The significant turbulence in the wine industry with market forces resulting in lower prices and constrained intake, will not be resolved through a mandatory code. Creating demand for South Australian wine (at all price points) in domestic and export markets, balancing the supply base (grape and wine inventory), ensuring a fair and transparent Code for the purchase of winegrapes, and ensuring a fair and equitable retailing environment to drive sales across all wine brands, are paramount to restoring balance and profitability for all in the sector.

SAWIA again thanks Dr Craig Emerson for undertaking this Regulatory Impact Analysis for the grape and wine sector.

SAWIA seeks a meeting with Dr Craig Emerson to discuss this submission further, and would be pleased to provide any assistance to aid the Regulatory Impact Analysis.

End of submission.