



Submission to:

*Enhancements to Unfair Contract  
Terms Protections Consultation  
Regulation Impact Statement*

16 March 2020



FOR INDUSTRY, BY INDUSTRY

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## Who are we

Australian Grape and Wine Incorporated (Australian Grape & Wine) is Australia's national association of grape and wine producers. Our activities focus on providing leadership, strategy, advocacy and support that serves Australian wine businesses now and into the future.

We represent the interests of the more than 5,000 grape growers and 2,500 winemakers working in Australia. Our role is to help forge a political, social and regulatory environment that enables profitable and sustainable Australian grape and wine businesses. These businesses make a significant contribution to growing regional economies by driving growth in jobs, regional exports, food and wine tourism as well as providing profitability and jobs to the service industries that support the wine sector.

Australian Grape & Wine's voluntary membership represents over 75% of the national grape crush. We represent small, medium and large winemakers, and grape growers from across the country. Policy decisions by the Australian Grape & Wine Board require 80% support, ensuring no single category can dominate the decision-making process, and guaranteeing policy is only determined if it provides significant industry benefit. In practice, most decisions are determined by consensus.

Australian Grape & Wine is recognised as a representative organisation for grape and wine producers under the *Wine Australia Act 2013*, and is incorporated under the *SA Associations Incorporation Act 1985*. We work in partnership with the Australian Government to develop and implement policy that is in the best interests of grape growers and winemakers across Australia.

Australian Grape & Wine welcome the opportunity to provide the following submission on behalf of the sector to the Inquiry into Australia's Waste Management and Recycling Industries.

## Response to consultation Regulation Impact Statement

Australian Grape & Wine appreciates the opportunity to make a short submission to the Treasury's consideration of Enhancements to Unfair Contract Term Protections.

The ACCC's Wine Grape Market Study, completed in September 2019 considered a broad range of issues relating to contractual arrangements and commercial relationships between grape growers and winemakers in Australia. The Market Study did not, however, extend further along the supply chain to commercial and contractual arrangements between winemakers and retailers.

Australian Grape & Wine lodged two formal submissions to Market Study process. In September 2018 we<sup>1</sup> made a [submission](#) responding to the ACCC's Market Study Issues Paper, and in July 2019 we made a [submission](#) in response to the ACCC's Market Study Interim Report. In each of these submissions, we provide our point of view about a range of contractual issues, including those which respond directly to the ACCC's comments relating to what it perceives as potential unfair contract terms. We would encourage the Treasury to consider these submissions in the context of this consultation process.

As a second general point, while we agree entirely on the need to ensure contracts are fair, transparent and legally enforceable, we submit that singular contract terms must be considered in the context of the entire contract. As noted on page 22 of the consultation RIS, this poses a challenge for business owners and the ACCC as they seek to consider their options in relation to unfair contract terms. From Australian Grape & Wine's perspective, we also note that the focus on individual contract terms can impose unnecessary and costly

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<sup>1</sup> This submission was made by the Winemakers' Federation of Australia (WFA), which in February 2019 amalgamated with the peak wine grape grower body, Australian Vignerons, to form Australian Grape and Wine Incorporated.

restrictions on flexibility for both grape growers and winemakers. For example, a scenario could arise in which a winemaker and a grape grower agree to a contract in which, *inter alia*:

1. The grape grower agrees to supply grapes to the winemaker;
2. The winemaker is to pay the grape grower in longer than average payment terms; and
3. The winemaker is to pay the grape grower a higher price for the grapes than he or she would otherwise have received under shorter payment terms.

The ACCC would argue that point 2 is an unfair contract term and should be removed from the contract, even in circumstances in which the winemaker and grape grower have agreed that the other elements of the contract are beneficial to both parties.

While it is clear the ACCC and the Treasury have identified a need to ensure contracts are fairer for small businesses, we would urge the Treasury to consider ways to do this which ensure mutually agreed and beneficial arrangements can be maintained into the future.

In addition to these general comments, Australian Grape & Wine would also like to make a specific comment in relation to Minimum Standards. We support the option presented at section 9.4 of the consultation RIS (Option 2 – exempt minimum standards under state and territory laws).

An example of where a minimum standard is working well can be taken from the South Australian Wine Grapes Industry Act, which provides for a minimum standard “three tier” payment system, ensuring growers are paid in full by September each year. This arrangement was designed as a means to ensure egregious behavior by grape purchasers was stamped out in South Australia, while also balancing wine business concerns relating to cash flow each year. In many instances, grape growers and winemakers are able to agree to contractual terms that, for example, mean growers are paid in advance of the minimum standard. This minimum standard approach has been rolled-out by a number of wine businesses across Australia more broadly, through the Wine Industry Code of conduct, and is serving the interests of grape growers and winemakers alike well.

We would be happy to discuss any of these issues in further detail at the Treasury’s request. The Treasury may be particularly interested in our progress toward a revitalized Wine Industry Code of Conduct, which we will have in place ahead of the 2021 vintage.

## Contact

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