





Who we are

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

We represent the interests of the more than 2,500 winemakers and 6,000 winegrape growers working in Australia. Our role is to help forge a political, social and regulatory environment - in Australia and overseas - that enables profitable and sustainable Australian wine and winegrape growing businesses. These businesses make a significant contribution to underpinning regional economies by driving growth in jobs, regional exports and food and wine tourism.

Australian Grape & Wine's voluntary membership represents over 75% of the national winegrape crush. We represent small, medium and large winemakers and winegrape 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 winegrape 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 winegrape growers and winemakers across Australia.



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Executive summary

Australian Grape & Wine welcomes the delivery of the ACCC's Wine Grapes Markets Study Interim Report (the Interim Report), and hopes this submission assists the ACCC in further considering the dynamics of the Australian wine sector. This process presents an opportunity to take a deep and comprehensive look at the sector and will hopefully identify practical steps the sector can take to improve commercial conditions along the supply-chain.

It is important to note that since the Winemakers' Federation of Australia (WFA) and Australian Vignerons (AV) lodged their respective submissions to the Market Study Issues Paper in November 2018, WFA and AV have amalgamated to form Australian Grape & Wine. This is an historic step for the sector, which now has a united voice advocating in the best interests of winegrape growers and winemakers in Australia. This submission reflects this balance of interests and seeks to ensure the ACCC's final report includes recommendations that are tested, reasoned and ultimately beneficial to all kinds of businesses along the supply chain.

It is clear the ACCC has made an effort to strengthen its understanding of the Australian wine sector since it released its Market Study Issues Paper in September 2018. We recognise the work undertaken by ACCC officials to this point, along with the efforts of many Australian Grape & Wine members who invested a significant amount of time and resources to assist in the process. This submission seeks to further clarify the commercial dynamics of our sector, and reiterate a number of points growers and winemakers have made previously, that are not reflected in the Interim Report.

Australian Grape & Wine has assessed the Interim Report through the following lenses:

- Is the ACCC's understanding of the sector accurate?
- Would any of the ACCC's interim recommendations benefit the sustainable profitability of Australian winegrape growers and/or winemakers?
- Would any of the ACCC's interim recommendations be detrimental to the sustainable profitability of Australian winegrape growers and/or winemakers?
- Are there any unintended consequences that would likely arise if the ACCC's interim recommendations were implemented?

We see a number of opportunities to improve dynamics within the Australian wine sector arising from this process, but we also see a number of significant potential pitfalls. In raising these issues, we are seeking to constructively highlight how the ACCC's final report can lead to benefits for businesses along the supply chain. In this submission, we will provide general comments on the report to strengthen the evidence-base and test some of the ACCC's broad views about the sector. We will then provide more detailed responses to each of the ACCC's recommendations, answering each of the questions put forth in the interim report.

Australian Grape & Wine also wishes to highlight the importance of winegrape growers and winemakers entering into fair and rigorous written contracts. If participants along the supply chain ensure their contracts meet their commercial requirements, as well as the ACCC's obligations around fairness and transparency, we firmly believe most of the issues raised in this Interim Report can be minimised. Furthermore, such contracts will alleviate the need for regulatory responses that could artificially impact on the market and create unintended negative consequences. Our response to interim recommendation 8 builds on this, and we are happy to support the ACCC's suggestion that unfair contract terms should be removed from all contracts.

Australian Grape & Wine thanks the ACCC for its consultation during this process and would be happy to elaborate on this submission at any stage.

General Comments on the interim report

The ACCC's Interim Report rightly notes that the issues covered in the market study are complex. With this in mind, Australian Grape & Wine appreciates the opportunity to test the ACCC's assumptions, findings and interim recommendations, and submit comments which seek to clarify and further strengthen the ACCC's understanding ahead of the release of the final report.

A number of interim recommendations are positive

Since its commencement, Australian Grape & Wine has recognised that the market study process provides an opportunity to take a deep and comprehensive look at our sector. In a general sense, we are confident the intent of a number of the ACCC's interim recommendations are positive and, if implemented in close consultation with winegrape growers and winemakers, could lead to real and practical improvements to commercial dynamics in the sector.

In particular, while there may be technical constraints to what can ultimately be achieved, we support the intent of the ACCC's recommendations relating to testing and sampling techniques, objective measures and retention of samples. We also recognise the need to improve the voluntary Wine Industry Code of Conduct, and we will soon commence a broad-ranging review of the Code, its management and its objectives, with a view to strengthening the Code and increasing the number of signatories, as recommended by the ACCC. This planned review of the Code was delayed in order to take on board recommendations from the market study. Australian Grape & Wine also supports the ACCC's interim recommendations relating to unfair contract terms, and would welcome the opportunity to work with the ACCC to ensure our winegrape growers and winemakers are aware of their responsibilities and obligations in this respect. Ensuring growers and winemakers along the supply chain enter into strong written contracts is a critical element underpinning our sector's future success.

We respond each of the ACCC's interim recommendations in detail later in this submission. In doing so, we seek to ensure the ACCC is drawing upon clear and rigorous evidence, with an understanding of some of the potential unintended consequences and practical challenges associated with their implementation.

The genesis of this process is based on unrepresentative survey results

Australian Grape & Wine remains concerned that this process is based on the findings of an unrepresentative survey, and that this may have skewed the ACCC's thinking. As noted in WFA's submission in response to the ACCC's Market Study Issues Paper, the response rate to the initial survey of winegrape growers equated to around 5 per cent of Australia's five-thousand growers, with a significant variance in response rates between regions - with very high response rates from growers in the Riverina and Murray Valley regions in particular.

In addition to the low survey response-rate, the ACCC has held winegrape grower forums in Griffith (16 grower attendees) and Mildura (29 grower attendees), with Mr Mick Keogh, Deputy Chair of the ACCC, attending these meetings. Given the relatively small attendance at these forums, and the fact that there were no equivalent winemaker forums, we are concerned that the views of a small and concentrated number of winegrape growers in the Riverina and Murray Valley regions were amplified as a result of the people attending these forums. This is not a comment on the veracity of the views of these winegrape growers, but highlights the fact that we consider the lack of views from stakeholders outside these regions to be a flaw in the process. This is important in the context of forming an accurate picture of commercial dealings across the sector and the nation.

We also note the low number of submissions in response to the Market Study Issues Paper (15 submissions). We were surprised by this low response rate, particularly after the efforts the ACCC, WFA and AV had made to encourage winegrape growers and winemakers to make submissions. Given the large number of winegrape growers and winemakers that could be affected by the ACCC's recommendations, this response rate may suggest

the majority of winegrape growers and winemakers are content with their current business and contractual arrangements.

In consulting further and developing the final report, we hope the ACCC weighs the views of the entire wine sector and calibrates its response to the views of a small number of winegrape growers appropriately. This will help ensure the majority of businesses along the supply chain are not unintentionally harmed by future ACCC recommendations and requirements.

A number of winemaker views are not reflected in the Interim Report

As noted in the Interim Report, a number of winemaking companies invested significant time and resources into working with the ACCC to develop its understanding of the industry. This has strengthened the ACCC's evidence-base and understanding in many respects, but it is apparent that some commercial realities of the market have not been noted in the Interim Report, or been referred to only superficially.

For example, the ACCC's understanding of the allocation of risk along the supply chain remains limited, and does not recognise the various risks winemakers carry in the production of wine as soon as grapes are accepted at the weighbridge (see pages 13-15 of WFA's submission in response to the Market Study Issues Paper for more detail of risk allocation). The ACCC has also not adequately addressed the influence major retail chains have on the market, both in terms of contractual relationships between winemakers and retailers, and as a competitive relationship with retailer owned and operated, private-label wine businesses. While we go into further detail in response to the interim recommendation to implement 30-day payment terms later in this submission, we also note that there is little recognition of the reasons why winemakers often require payment terms beyond 30 days.

As noted in WFA's submission in response to the Market Study Issues Paper (pg. 11-12), the ACCC's final report would benefit from a greater recognition of the unique differences between the wine sector and other primary industries. The production of wine involves longer maturation and longer payment terms for processors than other commodities like meat, grain and fodder, higher capital investment requirements and significant risks of perishability of the product (winegrapes). Wine is also much more subject to the whims of consumer preferences for wines of a particular type and style. Fashion and consumer preferences can change quickly, and are inherently subjective in nature. This is rarely the case for other primary commodities noted above.

Given the issues relating to how the ACCC has weighted its consultation and the evidence noted above, the decision to overlook or dismiss winemaker evidence reinforces the perception that some of the interim findings lack balance.

Splitting the sector into warm and cool, or large and small, is a mistake

Winegrape growers and winemakers operate within a single Australian wine sector, with many businesses of different sizes operating across warm-inland and cool-climate regions. Australian Grape & Wine understands the ACCC's decision to focus on warm-inland regions reflects the concerns raised by winegrape growers in these regions, but we are concerned that making this differentiation may have unintended flow-on effects to the rest of the sector. We firmly believe the ACCC should not look at warm-inland regions in isolation from the rest of the sector in Australia, or as separate from the international market for bulk wine.

While there are commercial differences between much warm inland and temperate regions, any recommendations for the wine sector must be practical and workable across the entire sector. The fundamental driver of pricing competition and bargaining power along the supply chain is that typically, across the long-term cycle, the large number of winegrape growers in warm-inland regions are operating in an environment generally in oversupply. While improved market information could help business decision making and stronger and more transparent contracts would encourage smoother commercial relationships, the fact remains that it is an

economic reality that the winemaker will have an abundance of suppliers to choose from, who are producing fruit that is often surplus to their requirements.

There is considerable market value attributable to the regional reputation of some cool regions, for example, that cannot be reflected nor accurately rewarded through objective testing of wine grape characteristics. Moreover, there may be room for improvement in commercial practices in temperate regions that might be missed if the focus is aimed solely at warm inland regions. There is also a considerable amount of trade and blending of wines between warm inland and cool and temperate regions, so these different climatic regions do not operate completely separately. In addition, the nature of the links between the market for winegrapes in Australia and international bulk wine markets reinforces the importance of not looking at the warm-inland winegrape market in isolation. We all understand supply and demand dynamics determine the price offered for winegrapes, and for wine. But these dynamics should be considered in the context of the global market-place.

A surplus of winegrapes in Australia is not solely an Australian challenge, it is a global challenge. Australia's winemakers export approximately 70 per cent of production, competing in these markets against heavily subsidized and much larger wine producers in the global market. While we hope the sector's work to drive growth in key export markets will mitigate against downward pressure on prices, it is likely the global wine market will be oversupplied in 12-months-time, given the very large volumes derived in northern hemisphere producer countries for their 2018 vintages.

In addition to supply and demand dynamics, relationships between Australian winegrape growers and winemakers are also driven by currency markets. As noted in WFA's submission to the ACCC's issues paper, changes in the exchange rate are hugely influential in terms of Australia's international competitiveness. In essence, if the Australian dollar increases in value against the US dollar, the Australian wine sector – both winegrape growers and winemakers – will suffer. If the Australian dollar sits at around 70 cents, the environment will be more stable for Australian wine businesses. It is important to note that currency fluctuations could have an even greater future impact on Australian businesses, as there are more countries producing wine in greater volumes, giving purchasing countries more choice in the producers they buy from. We also note the incredible story of Australia's export growth in China over the last decade. While this has driven significant benefits for the sector, we remain conscious that demand for wine in this market can change quickly. For example, the fall in demand as a result of Chinese Government policy decisions relating to austerity measures and the practice of gift giving in 2013 had immediate and serious short term impacts on trade. We also remain alert to irritants in Australia's bilateral relationship with China at the political level, and how this could impact upon Australian exporters' ability to do business in this market. Demand for Australian wine can, and does, change very quickly, and this can impact upon winemakers' requirements for winegrapes.

Commentary relating to long-term contracts ignores some winegrape growers' preference for certainty and stability

Australian Grape & Wine is concerned about the ACCC's commentary relating to the merits of long-term supply agreements. While, of course, price is the primary influencer of commercial decision making for winegrape growers, it is but one of a number of factors that a grower takes into account in entering into a supply contract.

It is a commercial reality that winegrape growers in warm-inland regions operate in an environment that is typically, across the long-term cycle, in a state of over-supply. There is an abundance of 'commercial grade¹ winegrapes in the market, produced by a large number of winegrape growers, and as noted above, these growers operate in a global market that is also awash with commercial grade wines produced internationally. This is a

¹ There may some differences in terminology with regard to commercial grade winegrapes. For example, sometimes they are also called "D" and "E" grade fruit, or "Grade 3" fruit. However, they are referring to grapes with the same quality characteristics.

different scenario to winegrape growers producing super-premium quality grapes in cool climates, which are much scarcer, of a higher quality, and often have a regional cachet attached to them.

While some growers make the legitimate business choice to market their product to buyers each year in an effort to gain the highest possible price, other winegrape growers place a higher value on securing a buyer for their grapes over the long-term. This helps growers to spread their risk across multiple vintages, provides certainty about their ongoing viability and helps growers to obtain banking and finance arrangements that they could not otherwise get. This approach to business is no less legitimate than those who choose to accept the risk of seeking higher prices over the short term.

Winegrape growers may also choose to enter into long-term contracts with winemakers because they enjoy a positive relationship with the purchaser, or if the purchaser proposes favorable contract terms. Some growers and winemakers have relationships spanning decades based on mutual trust, understanding and respect. In these cases, long-term contracts may be the best commercial decision for both parties, enabling growers to be profitable into the future, and ensuring winemakers can secure fruit from valued growers. It should also be recognised that when winemakers and winegrape growers commit to a long-term contract, both parties are more vulnerable to the vagaries of future market forces. Short term or annual purchase agreements are made with the knowledge of the current wine and fruit market. There is often a trade-off for both parties between long-term security of fruit supply and short-term comfort in knowing the current wine and fruit value.

The ACCC's understanding of the drivers of the oversupply situation are incomplete

Australian Grape & Wine appreciates the ACCC has made an effort to articulate the drivers behind the Australian wine sector's supply and demand imbalances of recent decades. However, we feel it is important to build upon this understanding to capture some of the missing drivers behind the oversupply situation.

Firstly, the ACCC has not considered the importance of changing consumer preferences, and the reputation of Australian wine in international markets, as a driver of oversupply. WFA's submission to the Market Study Issues Paper (pg. 6-7) provides more detail about how Australian wine has been perceived in international markets in recent years, and should be reflected in the ACCC's final report. These consumer preferences have had a clear impact on demand for Australian wine which has then significantly influenced the oversupply situation in Australia. This is a unique character of the wine sector and different to other commodities. Unlike other agricultural commodities like grains, fibre or milk, which are more homogenous and less exposed to the whims of fashion and consumer preferences, wine consumers are often looking for subjective style-related qualities in a wine, including what is fashionable to drink at a point in time. These subjective demands for wines of a certain style influence the grape variety and style requirements and can mean some assessments of fruit quality are inherently subjective and differ between purchasers.

Secondly, many Australian wine companies are changing their product mix to a greater proportion of premium wines in an effort to improve their competitiveness in Australia and overseas. This is a reaction to evidence suggesting consumers are tending to favour lower-alcohol wines, but at higher price-points. Further to this, margins at the lower-end of the market are very thin due to the ease with which retailers can replace lower-value Australian wine with lower-value wine from overseas competitors. As noted at page 15 of WFA's submission to the Market Study Issues Paper, there are very few "must-have" brands that retailers need for their businesses, with enormous competition for retail shelf space between Australian wine brands, private label retailer brand and international brands. This dynamic plays out in Australia's retail landscape, and in overseas markets. In Australia, an added pressure for wine businesses is that some of our major retailers are also winegrape growers and wine producers, meaning traditional wine companies have to compete for retail shelf space and grapes to make wine against these vertically integrated, private label brands.

Thirdly, as noted above, there is an abundance of suppliers of commercial grade fruit grown in warm-inland regions in Australia, and the wine made from these grapes often then competes in a price driven international market for commercial wine. While there is a trend towards consumers purchasing wines at higher prices, in many major markets such as the United Kingdom, there remains a core group of customers who buy wines based almost solely on the basis of price. These consumers have very little brand or country loyalty, and are happy to substitute Australian wine for wine from a different country if the price is right for them. Regulations in export countries can also influence our competitiveness in the lower-end commercial wine market. For example, to label a wine as a Chinese wine, a winemaker only needs to include 20 per cent Chinese grown grapes in the blend. This means they can source the other 80 per cent of the wine from any other country, and for a low-value product, price will be the determining factor in their purchasing decision.

Timing of deliveries has a significant impact on grower remuneration

The timing of deliveries of winegrapes can have a significant impact on grower remuneration. Winemakers generally have discretion over the timing of harvest and when deliveries are made to their wineries. There are a number of practical reasons for this arrangement, and to ensure a balanced view of the sector, we strongly encourage the ACCC to reflect these in its final report. Firstly, winemakers need to secure winegrapes with certain characteristics to make a particular wine style. This means winemakers will seek particular ripeness levels, measured by both flavor characteristics and Baumé levels, which can only be achieved by picking at a very precise time. Secondly, winemakers often use Baumé measurements to schedule the delivery of grapes, with fruit with higher Baumé levels being scheduled earlier in the harvest. Thirdly, winemakers often have practical limitations on what they can receive into processing facilities. The availability of harvesters, grape bins and transport will also influence the timing of when growers will be able to pick and deliver their fruit. In addition to this, the availability of crusher and fermenter capacity, and the risk of fruit degradation, means it is practically impossible for winemakers to accept delivery of all fruit concurrently.

The streaming of grapes to processing facilities, as vintages become more compressed as a result of a warming climate, can also lead to logistical challenges, particularly for smaller wineries which have less flexibility due to smaller processing capacities.

Issues relating to harvest scheduling and grower remuneration are important and will be considered further, but separate to this response, in the context of Australian Grape & Wine's review of the voluntary Wine Industry Code of Conduct.

Responses to the ACCC's interim recommendations

In addition to the general comments above, Australian Grape & Wine provides specific comments on each of the interim recommendations below.

Recommendation 1: The ACCC recommends the National Measurement Institute (NMI) and the Australian Wine Research Institute (AWRI) work with industry to develop uniform standards for testing and measuring grape sugar levels and colour.

Australian Grape & Wine supports this interim recommendation in principle, but notes:

- significant research has already been undertaken in this area; and
- it will be technically challenging to deliver an outcome in the short to medium term.

As a general statement, Australian Grape & Wine is in favour of ensuring that methods for testing grape sugar levels, colour and other parameters that have a bearing on the payment for winegrapes are accurate and understood. The development of uniform standards for testing grape sugar levels and colour would be positive for winegrape growers and winemakers alike, and given this, Australian Grape & Wine supports this interim recommendation in principle. However, it is important to recognise that this is likely to be a long-term project and will require a significant increase in the current level of funding allocated to such research.

If the ACCC were to mandate a uniform technique for measuring grape sugar levels and colour in the near future, there would likely be a large cost to winemakers, particularly those smaller winemakers, which would likely have to be shared with winegrape growers through lower prices for winegrapes. By way of example, the Maselli autotesting Brix/pH/TA units in wide use by industry may not be compliant with new uniform testing standards developed by the NMI and AWRI, and the manufacturer may not want to invest to make them so. Further to this, smaller wineries simply do not have this kind of equipment in their wineries and it would not be reasonable to expect them to make such a costly investment. This would most likely lead smaller winemakers to drop out of the market for winegrapes.

A number of Australia's larger wineries have invested significant amounts of money in working towards developing uniform standards for their internal processes, supported by research and development made available by organisations like Wine Australia and the Australian Wine Research Institute (AWRI). We note the AWRI's submission in response to the ACCC's interim report provides further detail about the research it has undertaken in recent decades, and some of the possible technical approaches that could be a better alternative to what the ACCC has proposed. We encourage the ACCC to consider the AWRI's submission carefully in relation to this point.

The ACCC should refer to the joint-submission prepared by AWRI and Australian Grape & Wine for further detail about the technical issues relating to this interim recommendation.

Recommendation 2: The ACCC recommends that winemakers should use well-documented and objective testing and sampling techniques for quality assessments.

Australian Grape & Wine supports this interim recommendation in principle, noting there is a need to ensure these testing and sampling techniques are effectively communicated to winegrape growers.

Australian Grape & Wine supports this interim recommendation in principle. The ACCC has taken the right approach in suggesting this as a way to improve current arrangements by reducing the amount of subjective analysis used wherever possible. We acknowledge the ACCC's nuanced analysis, which does not suggest anything binding on winemakers, and recognises that in the production of wine there is are some processes

that are inherently subjective.

While it may mean some winemakers incur additional costs in reducing the level of subjective assessment they use, we believe this is an important move that would have the effect of setting a positive example for best-practice across the industry.

It is important to note that a number of larger companies have already been investing in trying to develop their own assessment techniques, in consultation with winegrape growers, to improve the objectivity of their quality assessment. However, smaller winemakers are less likely to have the resources to undertake this work, and will be keen to implement more objective procedures in a cost-effective way. We note the ACCC has recognised the costs, particularly to smaller winemakers, of reducing the number of subjective measures used in the assessment of grape quality.

We also note that while we are happy to pursue this interim recommendation, experience suggests there may be a number of practical limitations to implementing it across all wineries. For example, while vineyard assessments are positive, it should be acknowledged that there can be considerable variation in grape quality within a single vineyard. Winegrape growers and winemakers should be encouraged to focus on undertaking vigorous vineyard grape sampling plans in the lead-up to harvesting. These plans would help address the variation that growers may see in their grapes when they undertake their own vineyard tests, to when the grapes are delivered and tested at the winery weighbridge, ensuring there are no surprises in the quality of grapes delivered to the winery.

There are a number generally accepted sampling techniques for vineyards which Australian Grape & Wine encourages as reference points for growers and winemakers in this context, such as the "Winegrape Assessment in the Vineyard and Winery" publication (the Allan Report), compiled by Wendy Allan, and referred to in the Australian Wine Industry Code of Conduct.

The ACCC should refer to the joint-submission prepared by AWRI and Australian Grape & Wine for further detail about the technical issues relating to this interim recommendation.

Recommendation 3: The ACCC recommends that supply agreements should clearly outline the testing and sampling methods that winemakers will use to assess grape quality.

Australian Grape & Wine supports this interim recommendation in principle, noting that in some circumstances, testing and sampling methods could be more effectively communicated in other ways.

Australian Grape & Wine supports the view that winemakers should clearly outline the testing and sampling methods they will use to assess grape quality. This is important to ensure transparency regarding quality testing methods, allowing growers to make more informed decisions when entering into grape supply agreements (GSA), and will result in positive outcomes for both parties. As noted in our response to interim recommendation 2, the Allan Report sets out well-regarded testing and sampling techniques for quality assessment and is referred to in the Wine Industry Code of Conduct. We recommend all winemakers and winegrape growers become familiar with these techniques.

There are a range of ways in which winemakers can communicate testing and sampling methods to winegrape growers. Some winemakers have suggested it may be beneficial for growers and winemakers and winemakers to present this information outside of a GSA, suggesting the inclusion of this information in a GSA may unnecessarily increase the length and complexity of GSAs, which are often already quite long. Australian Grape & Wine believes the principle of providing this information is more important than

mandating that it be required in a certain manner. As long as winemakers are acting in good faith and presenting this information in a prominent way - whether it is embedded in a contract, included in an appendix to a GSA or made available to growers online – we are confident this will be an important and positive step for the sector to take.

Australian Grape & Wine also believes there may be merit in winemakers holding certain samples after delivery if the product is downgraded or rejected at the weighbridge, to enable an independent third party to test the sample in the case of a dispute. However, we would appreciate further advice from the ACCC about which parameters it is suggesting should be subject to future testing.

It is important that the ACCC understands and recognises the limitations associated with retaining samples for certain assessments. For example, for bin samples, consideration must be given to variation within the bin and materials other than grapes, which can vary from bin to bin, even when taken from the same vineyard source. Secondly, while simple analytical tests for Baumé could potentially be retained and frozen for future testing without any degradation, for tests relating to colour, the process of freezing or storing a sample can change the anthocyanins used to measure colour. Clearly, these practical limitations would need to be worked through.

In any case, in the capturing of samples for future testing, it is crucial that winemakers and winegrape growers develop a set of agreed protocols to ensure the methods are appropriate and the samples are truly representative.

The ACCC should refer to the joint-submission prepared by AWRI and Australian Grape & Wine for further detail about the technical issues relating to this interim recommendation.

Recommendation 4: The ACCC recommends that winemakers be required to provide indicative prices to an independent body by 8 December for all grapes intended to be purchased from growers in warm climate regions during the subsequent harvest.

Australian Grape & Wine recognises the importance of improving market information, but expresses reservations about:

- the benefits likely to flow from this interim recommendation;
- the approach of splitting warm and cool climate market information;
- the level of detail and the evidence provided by the ACCC in making this interim recommendation:
- the fact that anecdotal evidence from winegrape growers and winemakers suggests the current approach within the existing code is ineffective and a new mechanism should be considered: and
- the unintended consequences such an approach could present to winegrape growers.

Australian Grape & Wine also suggests:

- there may be alternative approaches which could provide more market transparency, with fewer risks to the sector;
- existing market information could be collated, distilled and disseminated to growers in a more easily digestible format; and
- as a principle, market information provided by winemakers should be anonymous to avoid issues relating to commercially confidential information.

Australian Grape & Wine supports the notion that winegrape growers and winemakers need appropriate market

information to enable informed commercial decision-making, and therefore is in favour of measures that improve market transparency. We recognise that current indicative pricing arrangements are imperfect, and are not considered to be particularly helpful for business decision-making by either growers or winemakers. As noted in the ACCC's Interim Report, for winegrape growers, indicative prices are released too late in the season to inform production decisions. For winemakers, it is difficult to release indicative prices until they have an insight on prospective grape yields. These yield estimates are made after flowering, which usually occurs in November in warm-inland regions, and are one of the main contributors to winemakers' indicative pricing decisions, along with the fact that they have little understanding of the level of demand or the prices they will attract for the wines they produce, which often are not sold for a number of years after they are made. This consideration has been a disincentive for some winemakers to sign up to the Code of Conduct. There is some trepidation about potential reputation damage if an indicative fruit price cannot be later honored in a falling wine market; thus providing an incentive to release conservative fruit prices as a hedge, although there is no evidence that winemakers have done so with the ACCC's Interim Report showing that indicative prices are generally similar to final prices.

We also believe the proposed requirement to identify particular winemakers when publishing indicative prices unjustifiably infringes upon the confidentiality of contracts between winegrape growers and winemakers.

While the suggested simultaneous release of prices may remove concerns about potential "leading" or "following" behavior, it does nothing to address the strong incentive for wineries to release conservative pricing for fear of over-committing to an unsustainable price in a future falling market.

Australian Grape & Wine appreciates that in making this recommendation, the ACCC is attempting to bring greater price transparency to the sector, and in doing so, enable winegrape growers to make more informed commercial decisions. However, the interim recommendation has a number of flaws which could lead to perverse and unintended consequences for the sector.

More detail is required to make unequivocally support this interim recommendation

While the intention of ACCC is good in relation to this recommendation, it does not address the fundamental concerns of either winegrape growers or winemakers about indicative pricing. Bringing the date forward for winemakers will not change their ability to offer a more certain indicative price, as the earlier date means there is even less information available to winemakers about demand for the product in the coming vintage. This uncertainty may incentivise a winemaker to offer a more conservative indicative price as a hedge against unknown risks in the coming vintage.

We also fear this approach may lead to unintended consequences in terms of the competitiveness of winemakers in Australia. If winemakers' names were publicly published against indicative prices, retailers would most likely take this information and work back to ensure they are offering the lowest possible margin on the price of the wines they purchase, putting further pressure on both winemakers and winegrape growers. The large retailers are winemakers themselves, and therefore are well placed to make use of this information in such a manner.

The lack of detail in the interim recommendation also raises questions about flexibility during vintage. For example, as a scenario, if a winemaker had no intention of buying winegrapes from a warm inland region at 8 December, but in January concluded they needed additional grapes, would they be precluded from purchasing grapes from that region? This would potentially put winemakers in a difficult spot, particularly if they need to make up a shortfall from another region due to climatic events or other supply issues. It would also potentially deny the winegrape grower the opportunity to sell their grapes to a motivated purchaser, stifling competition and market demand.

Winegrape growers and winemakers also require further information about exactly what information would be required to be published. As the Interim Report is written, it is unclear how the ACCC expects the sector to

consider variances in the qualities winemakers are looking for within a single variety, or how organic grapes, biodynamic grapes, or grapes containing unique regional or sub-regional characteristics would be treated under this scenario. Australian Grape & Wine would be happy to work with the ACCC in its consideration of these issues as it works to develop its final report.

As a more general comment, while we are supportive of greater transparency in pricing and are happy to work towards a better outcome in terms of indicative pricing, such initiatives should be implemented via the voluntary Wine Industry Code of Conduct, as opposed to being set in legislation. Critically, we believe it is important that the ACCC outlines more clearly what it hopes to achieve by recommending this approach to indicative pricing, to allow winemakers and winegrape growers more time to assess what is possible and desirable, and how it could be considered in the context of revising the voluntary code.

The Australian Government Department of Agriculture would be the most appropriate independent body

While more work should be done before rushing into changing indicative pricing, Australian Grape & Wine believes the Australian Government Department of Agriculture would most likely be the most appropriate independent body to publish such information. This work would not be aligned with the core business of Wine Australia, although Wine Australia's *Price Dispersion Report* is highly valued by the sector. The Department, perhaps through ABARES, has the legislative underpinning and budget to undertake such work.

Winegrape growers and winemakers may be better served by an alternative approach, but this would require significant consultation and buy-in from the sector.

In considering how indicative pricing and market transparency could be improved, Australian Grape & Wine is happy to contemplate a range of alternative approaches and work with members to see what is possible.

One alternative approach may be to seek market information earlier in the growing season, to help inform growers' commercial decision making. While this should be considered in the context of a review of the Wine Industry Code of Conduct, there may be merit in exploring whether winemakers could provide information, on an anonymous basis, in September or October. It has been suggested by one winegrape grower that this could potentially be presented in the form of an indicative price-range, in recognition of the practical impossibility of offering a clear indicative price that early in the season (see comments on page 12 in relation to the difficulty winemakers have in providing indicative prices early in the season). While it may not be perfect, this could provide an independent body with a picture of the likely trends in indicative pricing, and provide growers with a more informed choice about spray and watering regimes in a more useful and timely manner. This approach could potentially be supplemented by an independent body collating, distilling and disseminating other publicly available information relating to international bulk wine prices, climatic forecasts, demand forecasts, global plantings and wine inventory levels. Given the strong correlation between wine grape prices in Australia and international bulk wine prices (see page 10 of WFA's submission responding to the Market Study Issues Paper), this information would be particularly useful to growers in their decision making processes if delivered at the right time of the growing season.

Australian Grape & Wine puts this view forward noting that it has not been endorsed as a workable alternative by all winemakers and winegrape growers. Indeed, some have stated the level of information in September and October is so limited that it would not be possible to offer even a range of prices with any certainty, and that given the ACCC has noted the existing level of deviation between the indicative price and final price seems to be acceptable, there is a risk this could draw more uncertainty into the market.

However, this hypothetical approach serves as an example of the kind of approach that could potentially be considered in the context of a review of the Wine Industry Code of Conduct. More research and consultation is required in the meantime.

We encourage the ACCC to work with Australian Grape & Wine, winegrape growers and winemakers, to provide more detail about ahead of finalising this recommendation.

Proposals to change how indicative pricing works should be considered as part of any review of the voluntary wine industry code of conduct.

As noted in our response to interim recommendation 7, Australian Grape & Wine is committed to reviewing the functionality, management and makeup of the Wine Industry Code of Conduct and to increasing the number of winemaker signatories to the code. Any change to the approach to indicative pricing should be considered with this review in mind.

It is important to note that Australian Grape & Wine is already canvassing non-signatories to the Code, informing them of the forthcoming review and strongly encouraging them to become signatories.

Recommendation 5: The ACCC recommends that, after communicating final prices directly to growers, winemakers be required to provide final prices (both the non-quality adjusted price and a quality-adjusted weighted average price) to an independent body which will then make that pricing information publicly available on 1 May [or another date considered suitable by industry].

Australian Grape & Wine has a number of reservations about this interim recommendation, including

- the possibility of perverse and unintended consequences for winemakers and grape growers alike;
- the fact that grapes are often still being harvested around 1 May each year; and
- that there is already satisfactory information available in the form of the Wine Australia Price Dispersion Report.

Australian Grape & Wine questions whether the proposed benefits of this interim recommendation would outweigh the likely perverse and unintended consequences of implementing such a proposal. While the Interim Report focuses on negative commercial dynamics between winemakers and winegrape growers, it is important to note that winemakers and growers frequently have long-standing, positive and mutually helpful relationships.

It is important that in proposing recommendations, the ACCC does not unintentionally restrict what can be done in these relationships. As a hypothetical example:

- If a winegrape grower grew a crop in excess to requirements, or was unable to sell fruit on the spot market, they may choose to sell their fruit at a cost that is lower than the average price for that variety in the region. The winemaker may only be able to offer a lower price due to the highly speculative nature of choosing to partake in such a commitment, often without a known outlet of sale for the resulting wine.
- A winemaker may wish to assist the grower by purchasing this fruit, even if it is excess to requirements, in order to help the grower cover costs. This would be a mutually beneficial transaction.
- It would be an unfortunate situation if a winemaker's reputation was unfairly tarnished as a result of this positive transaction, for purchasing fruit at a price far lower than their indicative price, or well below the regional and varietal average price. Indeed, it may create a disincentive to entering into such a commercial agreement in the future; with the resulting outcome being that the grower in this instance would not have a sale for this fruit, and would wear a total loss for the season.

Australian Grape & Wine is also concerned that this proposal would infringe on confidentiality rights with regard to contracts. Like people working in various sectors of the Australian economy, winemakers may negotiate on price and pay different growers different prices, as a result of particular regional or varietal characteristics. On the

other side of the coin, in some circumstances winegrape growers may be able to achieve different sale prices from different winemakers for fruit off the same vineyard. This is a fundamental business practice in a free market and anonymity in reporting against these prices is a critical issue for all sector participants, and the proper functioning of the market for winegrapes.

Another key point in response to this interim recommendation is that we are not convinced the ACCC has made a compelling case that what it is proposing would be any more materially beneficial than the current Wine Australia Price Dispersion Report. The price dispersion report is already an excellent resource for winemakers and grape growers alike and is well-established and highly-regarded by the sector. We recognise the ACCC's criticism of the limitations of the report, but we believe the best response to this is to consider whether there may be opportunities to improve its presentation and accessibility, and potentially its coverage. This is a more cost-effective approach to improving market information after vintage, as we are confident the content and analysis within the report would serve essentially the same purpose as the ACCC's interim recommendation. While this has not been discussed in any detail, Australian Grape & Wine would also be open to working with Wine Australia to explore whether it is possible to publish report earlier in the year by some degree.

Noting the reservations above may make this point irrelevant, Australian Grape & Wine does not support the 1 May reporting date proposed by the ACCC in this interim recommendation. While we want to see market information as soon as it is available, the reason for not agreeing with this interim recommendation is entirely practical. It would be practically impossible for an independent body to publish information by this date as in some cases, grapes will still be in the process of ripening or being harvested (as is the case of winegrapes in some cool climate regions and for, for example, botrytis Semillon in the Riverina, which hangs on the vine as late as possible to develop the required amount of sweetness). Further to this, for an independent body to publish information by 1 May, it would require winemakers to lodge their pricing information well in advance of this date.

Recommendation 6: The ACCC recommends that long-term payment periods should be phased out of standard form contracts and an industry standard by introduced to require payment in full for grapes no later than 30 days after delivery.

Australian Grape & Wine does not support this recommendation as evidence suggests it would:

- reduce competition;
- put downward pressure on winegrape prices;
- provide a competitive edge to large wine companies and retailers at the expense of small and medium sized wine producers; and
- serve to drive smaller wine buyers out of the market.

Australian Grape & Wine proposes that the legislated South Australian three tier payment system is a more appropriate business enabling industry standard to pursue.

Australian Grape & Wine is deeply concerned by this interim recommendation. While we recognise the ACCC has identified particularly lengthy payment terms in the range of nine to twelve months as being particularly egregious, the interim proposal to mandate 30 day payment terms would most likely impose a broad range of negative, competition inhibiting consequences on the market. There are more effective measures that could be taken to deal with the problems associated with lengthy contract terms, while ensuring other unintended consequences do not arise.

Thirty-day payment terms are not industry standard

Thirty-day payment terms are not common at any point along the Australian wine sector supply chain, and the proposal to implement such terms ignores commercial realities for winemakers. As noted at page 14 of WFA's submission responding to the Market Study Issues Paper, "winemakers assume the risk burden (of producing wine) in its entirety at the moment a delivery of winegrapes is accepted at the weighbridge. It can be many years before the wine produced from these winegrapes is sold". During this process the winemaker assumes the costs of maturing wine (such as capital investment in tanks, oak barrels, and warehousing facilities). The winemaker also has no certainty about whether they will be able to sell the wine at all, and if they can, they will not receive payment from retailers or export customers within thirty-days. Australian Grape & Wine understands retailer payment terms tend to be 60-90 days, with export payments often extending further to 120 days or more.

Implementing 30-day payment terms across the sector would lead to wine businesses experiencing real and potentially devastating cash-flow issues, potentially leading to questions about their long-term viability.

This interim recommendation would lead to decreased competition in the market

We understand and support the ACCC's desire to increase competition for winegrapes in Australia's wine regions. However, this interim recommendation would lead to the very opposite result.

While it would result in a materially adverse financial impact for all winemakers, particularly in the short term, large winemaker companies (and particularly retailers with vertically integrated supply chains) would most likely be better placed to meet these payment terms in the long run. This would provide a competitive advantage to large companies, and in particular, large retailer companies who already directly control the majority of the domestic retail market in Australia through their private and exclusive labels, and have the cash flow to meet such requirements.

Thirty-day payment terms would create enormous cash-flow difficulties for small and medium winemakers. Firstly, it is unlikely smaller companies would have the access to capital necessary to pay growers within this timeframe. It is likely this could lead to these companies dropping out of the market for wine grapes, diminishing competition in the market. Secondly, smaller winemakers (with stronger balance sheets and access to capital) may choose to secure their own grape supplies by purchasing or leasing their own vineyards.

Alternatively, smaller winemakers with limited access to capital may be forced to purchase more bulk wine on better payment terms to supplement their production. However, purchasing bulk wine to make up a shortfall due to limited working capital to source wine grapes may not be of a desirable quality and also risks adverse taxation consequences.

For many small and medium winemakers, the WET Rebate is a critical component of their profitability. In order to qualify for the WET rebate, winemakers need to demonstrate that 85 per cent of the wine in its final form as packaged branded product was produced from the source product (or a product made from the source product) owned by the producer before the winemaking process commenced (excluding crushing). Small winemakers need to have written contracts and own the grapes prior to crushing to claim the WET Rebate. If 30-day payment terms were to restrict winemakers' access to capital, it risks undermining the entire intent of the WET Rebate reforms legislated in 2017.

A further potential behavioural response is that winemakers may choose to purchase grapes on the spot market, reducing growers' ability to source capital and exposing them to more market risk. At its most extreme, there is a not insignificant possibility that many small winemakers would choose to exit the industry, or at least the market for warm-inland wine grapes, on the basis that 30-day payment terms are simply unworkable from a cash-flow perspective. These potentially negative impacts on smaller winemakers would amount to a perverse outcome for competition in the sector.

These concerns would not be assuaged by exempting medium and small producers (for example, those crushing under 10,000 tonnes) either. If the ACCC required large winemakers to pay within 30 days, but did not impose the same requirements on small and medium winemakers, growers will effectively be incentivized to preferentially deal with larger companies. This would present the unintentional consequence of the ACCC reducing competition and artificially increasing the market power and competitiveness of the larger companies, to the detriment of smaller players in the market.

Such a recommendation would also provide a competitive edge to retailer-owned wine businesses. They could ensure the retail arm of the business pays the winery within 30 days, enabling the winery to pay growers more quickly than their competitors. Given the immense market power retailers hold over winemakers in Australia, this would be a perverse and unjustifiable outcome for the sector.

Many winegrape growers like to spread their income

A number of growers have expressed a preference to receive multiple payments throughout the year, often across financial years, to help manage their cash flow and taxation liabilities. The imposition of a 30-day payment requirement would mean growers no longer had this flexibility to agree to beneficial terms with winemakers, potentially creating unwanted tax implications.

Ensuring the ability to make bonus payments would need to be considered if 30-day payment terms were introduced

If 30-day payment terms were introduced, it could make the payment of bonuses practically difficult. While we recognise the use of bonus payments is not uniformly used across the sector, for some growers and winemakers they remain a useful incentive for delivering winegrapes of a high quality. Noting the ACCC's Interim Report makes clear it is not seeking to remove bonus payments, there are potential unintended consequences of regulating payment terms that may reduce the opportunity to provide bonuses. If payment terms are mandated or incorporated in the Code, then this issue must be explicitly recognized.

Within the sector, some of the quality bonus payments are finalised when final wine allocation tastings are undertaken. These final tastings are usually undertaken throughout May and June, which for the majority of grapes purchased, would be well after the grapes have been paid for. In consultation with winegrape growers and winemakers, Australian Grape & Wine has not seen widespread support for the removal of bonuses. Indeed, many winegrape growers like them and understand the rationale for their existence, and what they need to do to receive them.

30-day payment terms would inhibit winemakers' ability to help growers in periods of difficulty

As noted in our response to interim recommendation 5, it is not unusual for winemakers to purchase fruit beyond what they require in order to maintain the ongoing profitability of winegrape growers. To enable this, winemakers may offer to purchase fruit on extended payment terms, to help the grower cover costs in a difficult year. Thirty-day payment terms would render this impossible, potentially leaving growers without a purchaser or out of pocket at the end of the growing season.

The South Australian three tier payment scheme that has been included in the current, voluntary Wine Industry Code of Conduct works well and should be adopted more broadly as an industry standard

Having noted the various potential problems associated with 30-day payments, and recognizing the ACCC's desire to address what it considers to be egregiously long payment terms for winegrapes, Australian Grape & Wine proposes that the sector explores the potential of adopting the three tier payment schedule legislated in South Australia as a minimum standard for commercial dealings between winemakers and winegrape growers. We see this as a logical compromise that is generally accepted as positive in South Australia, and is already used

as a baseline for agreements by signatories to the Wine Industry Code of Conduct.

This proposal would provide baseline certainty for winegrape growers and winemakers alike, and would not diminish the ability for growers and winemakers to arrange payments earlier if agreed within a contract. This flexibility is critical to all parties along the supply chain. Indeed, this is not uncommon, particularly in instances where growers are dealing with cash flow difficulties and winemakers wish to secure their services into the future.

We are confident this approach would be broadly acceptable to winemakers and winegrape growers alike. However, it should be considered in the context of the review of the Wine Industry Code of Conduct, which is discussed further in response to interim recommendation 7. As noted above, it is critical that winemakers and winegrape growers have the flexibility to mutually agree to payment terms in their individual contracts that could reduce the timeframe for payment of winegrapes. While there is general agreement on this point, some winegrape growers have suggested that in the context of the review of the Australian Wine Industry Code of Conduct, the sector could explore the potential of encouraging winemakers to use their best endeavors to pay growers by an earlier date, like 30 June, while maintaining the three tier payment schedule as a minimum standard.

While we are open to contemplating such an approach, a number of winemakers have expressed concerns about how it could work in practice. For example, if winegrapes are still ripening into May, as is often the case for grapes destined for dessert wines, for example, this would leave the winemaker with less than 30-days to pay for the grapes. The most important point in these circumstances is that growers and winemakers have the flexibility to come to payment term arrangements that suit both parties as practically as possible. We also note that another unintended consequence of proposing a particular "best-endeavors" date could be that it would act as a disincentive to new signatories to the Wine Industry Code of Conduct. It is clear that the most important action to achieve mutually agreeable payment terms will arise from the individual contracts between growers and winemakers.

This is an important issue for winegrape growers and winemakers alike, and should be considered by the sector in a methodical and evidence-based manner, to ensure unintended consequences are considered and risks are mitigated. Australian Grape & Wine is keen to work with the ACCC and sector stakeholders to consider the best possible option for the sector. The review of the Wine Industry Code of Conduct may provide a good forum for this discussion.

Recommendation 7: The ACCC recommends that the Code be substantially strengthened, and that all winemakers in Australia with crushing capacities above 10,000 tonnes become signatories to the Code.

Australian Grape & Wine will undertake a comprehensive review of the Wine Industry Code of Conduct with a view to strengthening it and driving a greater number of signatories from across the sector.

Australian Grape & Wine appreciates the ACCC's comments on the Australian Wine Industry Code of Conduct, including the recognition that the code is a useful vehicle for resolving disputes, and the recommendations that it be further strengthened in terms of its content and the number of its signatories.

We are happy to inform the ACCC that Australian Grape & Wine will soon commence a comprehensive review of the Code, in line with the recommendations of the ACCC's Interim Report. We will also soon form a new Code Management Committee, which will include equal representation from winegrape growers and winemakers, reporting to a sub-committee of the board, also comprised of equal grower and winemaker representation.

We are not waiting for the ACCC to complete its market study process to begin this work. We agree the Code needs to be strengthened, and we are committed to developing an improved model that will serve to drive more

winemakers to become signatories. Indeed, early conversations with some large winemakers who are not currently signed-up to the code have been positive, with a number of such companies committing to become a signatory if the Code can be revised in a positive way.

In response to the ACCC's suggestion that all winemakers of a size greater than 10,000 tonnes should become signatories, we believe there are pitfalls and more information is required from the ACCC before developing its final report. How did the ACCC reach the figure of 10,000 tonnes, and why would this be necessary? Further to this, as stated in our general comments above, we do not support the idea that the Australian wine sector should isolate certain segments of the industry in this manner.

Recommendation 8: The ACCC recommends that winemakers review their standard form contracts and remove any unfair contract terms.

Australian Grape & Wine agrees with this interim recommendation, and strongly encourages growers and winemakers entering into clear and fair written contracts. As noted in the executive summary to this submission, if participants along the supply chain ensure their contracts meet their commercial requirements, as well as the ACCC's obligations around fairness and transparency, we firmly believe most of the commercial issues raised in this interim report can be minimized. Strong written contracts would also serve to alleviate the need for regulatory responses that could artificially impact on the market and create unintended negative consequences.

While there is a clear role for winemakers to review their contracts in line with the information in the ACCC's Interim Report, we also believe many wine and winegrape grower businesses may not have a sound understanding of what should be in a fair and proper supply contract. Given this, there may be a role for Australian Grape & Wine to help promote a better understanding across the sector of what a fair and proper contract is. We would like to work with the ACCC to do this, drawing from our excellent experience of working with the ATO to help winemakers comply with their WET obligations.

Conclusion

Australian Grape & Wine thanks the ACCC for the opportunity to present this submission. If ACCC officials have any questions about our position on the interim report, please contact us using the details below.

We look forward to working with the ACCC to deliver real and lasting benefits to Australia's winegrape growers and winemakers into the future.

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