Submission: Consultation paper on Unfair Trading Practices

Australian Grape & Wine
July 2026

Executive Summary

Australian Grape and Wine Incorporated (AGW) welcomes the opportunity to comment on the Consultation paper on Unfair Trading Practices (UTPs). AGW strongly supports the Government's longstanding commitment to addressing UTPs.

AGW supports the introduction of an economy-wide UTP prohibition that extends protections to small businesses in business-to-business (B2B) transactions. Ensuring fair and equitable practices throughout the supply chain is essential for the ongoing prosperity of Australian grape and wine businesses. Existing Unfair Contract Term (UCT) protections are limited to written standard form contracts and do not adequately address unfair conduct occurring outside formal agreements. By addressing harmful conduct that occurs outside UCT prohibitions and conduct that falls below the current threshold of unconscionable conduct, the reforms would provide a more effective framework for promoting fair dealings throughout wine, and other agricultural and food supply chains. In doing so, the proposed reforms have the potential to improve business confidence, support investment in regional Australia, encourage innovation and competition, and ultimately maintain greater consumer choice.

High fixed costs make it difficult for wine and winegrape producers to enter, exit or resize their operations, increasing their reliance on key buyer relationships. The wine market is highly concentrated, particularly in liquor retailing, where the four largest retailers control roughly 70% of the domestic retail liquor market and the two largest companies, Endeavour and Coles, hold a combined market share of approximately 55%. [1] This submission highlights how market concentration enables major retailers to act as dominant customers, market gatekeepers and direct competitors through private-label products. Their significant bargaining power can disadvantage small and medium wine producers, undermine competition and reduce market confidence, with impacts flowing directly through to growers.

A well-designed UTP regime should complement, not duplicate, existing legislation, including the forthcoming Mandatory Code of Conduct for Winegrape Purchases. While the Mandatory Code is expected to address many contractual issues between growers and purchasers, wine producers may face additional compliance obligations without commensurate relief in downstream markets. This builds onto a further risk that some market participants may avoid formal contracts to bypass Code requirements, allowing harmful non-contractual conduct to continue. A UTP prohibition offers an important opportunity to close this gap while also addressing unfair conduct in downstream retail markets.

AGW emphasises the need for strong regulator-led enforcement, as fear of commercial retribution often prevents growers and winemakers from pursuing complaints. Given that most small grape and wine businesses don't have in-house legal expertise, practical, sector-specific guidance will be just as important as the legislation itself. Equally important will be avoidance of duplication, complexity and unnecessary compliance burdens. Clear guidance will be required to explain how the new rules interact with the Mandatory Code of Conduct for Winegrape Purchases.

[1] IBISWorld, Industry Report G4123 Liquor Retailing in Australia, IBISWorld, 2023, p. 10 cited in the Food and Grocery Code of Conduct Review 2023–24 - Consultation paper

Summary of recommendations:

AGW strongly recommends the following actions:

Recommendation 1: Introduce an economy-wide business-to-business unfair trading practices prohibition. Extend the proposed UTP framework to protect small businesses in business-to-business (B2B) transactions and address unfair conduct that falls short of unconscionable conduct but causes significant commercial harm.

Recommendation 2: Retain the existing ACL small business threshold. Use the same small business definition and thresholds already applied under the Unfair Contract Terms regime to ensure consistency and minimise regulatory complexity.

Recommendation 3: Target conduct arising from significant bargaining power imbalances. Ensure the prohibition focuses on situations where unequal bargaining power allows larger businesses to impose unfair outcomes on suppliers and smaller market participants.

Recommendation 4: Ensure the UTP framework complements the Mandatory Winegrape Code. Design the legislation to operate alongside the Mandatory Code of Conduct for Winegrape Purchases, addressing non-contractual conduct while avoiding duplication, regulatory overlap and double penalties for the same conduct.

Recommendation 5: Capture conduct that distorts competition and fair dealing. The prohibition should address practices including unilateral contract variations, short-notice product delistings, forced supplier contributions, choice editing, third-line forcing and the misuse of information asymmetries to advantage private-label products.

Recommendation 6: Adopt a whole-of-supply-chain approach. Recognise that unfair conduct in downstream retail markets can have significant impacts on growers and winemakers upstream, and ensure protections apply throughout the supply chain.

Recommendation 7: Strengthen regulator-led enforcement. Provide the ACCC with effective enforcement tools that address barriers created by fear of commercial retribution.

Recommendation 8: Make the full range of remedies available. Align available penalties and remedies with those applying under the Unfair Contract Terms regime to ensure consistency.

Recommendation 9: Develop sector-specific compliance guidance. Produce practical guidance for winegrape growers and wineries explaining how UTP provisions, UCT laws and the Mandatory Winegrape Code interact, and outlining compliance obligations for both B2B and consumer transactions.

Recommendation 10: Address the non-contractual conduct gap. Ensure the UTP framework captures harmful conduct occurring outside formal written contracts, reducing incentives to avoid contractual arrangements and improving protections for growers and winemakers.

Question 1: Should the proposed general prohibition (section 28B) be extended to also protect small businesses where they acquire goods or services as a consumer?

Existing UCT legislation provides a level of defense for small businesses against harmful terms such as protracted payments, however its fundamental limitation is that it only applies where a standard form contract exists. UCT laws offer zero protection against unfair commercial conduct that occurs outside the bounds of a written agreement.

AGW supports extending unfair trading practice protections to business-to-business (B2B) transactions. A principles-based general prohibition is needed to deter harmful practices that currently fail to meet the high threshold for unconscionable conduct under the Australian Consumer Law.

Question 2: Should any adjustments be made to the proposed general prohibition when extending it to apply in respect of supply to small businesses?

To avoid unintended regulatory burden on small producers, any B2B extension of the prohibition should focus where bargaining power imbalance leads to financial detriment to the supplier.

Question 3: Would it be appropriate to use the same small business threshold as is currently used in the unfair contract terms provisions of the ACL. or is another threshold appropriate?

Yes. Introducing additional definitions would add unnecessary confusion.

Question 5: Are there interactions with other regulatory frameworks (including industry codes or other sector-specific laws) that should be considered in relation to this option?

The impending transition to a Mandatory Code of Conduct for Winegrape Purchases will improve trading practices between grape suppliers and purchasers. However, a major concern is the risk of unintended consequences, particularly during the current climate where the industry remains in a state of structural oversupply. The wine industry has already expressed disappointment that this Code failed to capture the downstream power dynamics of the major liquor retailers. Harmful practices in the winegrape market such as lack of price transparency can be a function of what occurs further downstream between wine producers and the major retailers. Because a mandatory Code introduces stricter standards, an unintended consequence may be that grape purchasers choose not to commit to forward contracts if they lack confidence in the domestic liquor retail market. New UTP regulations should adopt a whole-of-supply-chain approach and function concurrently with this code without creating conflicting compliance burdens.

Question 7: What would be the likely benefits to small businesses from extending the proposed general prohibition to small businesses?

A general prohibition would prevent and deter practices that are potentially unfair or that distort economic decision-making but fall short of unconscionable conduct. This would help guarantee that fair and equitable business practices exist throughout the supply chain, improving business confidence and decision-making.

Question 8: Would there be any additional compliance costs for businesses if the proposed general prohibition was extended to protect small businesses noting the Bill if passed would already require businesses to comply in respect of supply to consumers?

Many small-to-medium wineries rely heavily on direct-to-consumer (DTC) sales, including revenue generated through wine clubs. These businesses require clear, practical, and unambiguous guidance to help them understand and meet any new regulatory compliance obligations arising from the proposed measures. Whilst we note that the issue of compliance costs for businesses in respect to supply to consumers was dealt with in the passing of the Unfair Trading Practices Bill 2026, now is the time to ensure that sector-specific explanatory materials are developed to outline compliance requirements and risks for both B2B transactions and direct supply to consumers. This will be required to ensure there is a strong understanding of compliance for cancellation paths and fee disclosures to avoid the need for costly legal advice and to protect small producers from inadvertent breaches under the expanded general prohibition.

Question 9: What types of unfair trading practices are occurring in business-to-business dealings, and what harm does this cause small businesses?

Consolidation in the liquor retail market has created a duopoly where major retailers act as both the primary customer and a major competitor through their "buyers' own brand" private labels. The Real Review's 'Who Makes My Wine' lists 240 brands owned by Endeavour and close to 100 by Coles. According to a Four Corners episode 21st February 2024, Coles claimed that it had 260 private label wines. These major retailers act simultaneously as direct competitors, dominant buyers, and powerful gatekeepers. Their disproportionate market power allows them to engage in harmful B2B practices, including:

- Exploiting information asymmetries: both during contract negotiations, and by taking advantage of superior market insights to gain competitive advantage for their own brands;
- Potential to use consumer choice editing to artificially suppress competitor products in favour of private labels, thereby eroding the shelf space for other producers;
- Imposing short-notice product de-listings, forcing small suppliers to bear the cost of stranded inventory; and
- An ability to unilaterally alter terms of trade without adequate consultation or compensation.

These practices cause severe margin squeeze, cash flow crises, and will ultimately lead to a reduction in consumer choice. Despite being the subject of significant concern from many winemakers, many of the behaviors of major retailers have, to date, escaped legal scrutiny, Under the existing legislative framework, case law on the unconscionable conduct prohibition has been described as 'developing slowly', and in the absence of change, regulators will continue to be limited in their ability to respond to unfair trading practices. [2] Furthermore, there has been a challenge in finding sufficient evidence to support action by retailers leveraging their strong bargaining power. Contributing to this is the fear of retribution by those who speak out.

Information asymmetries give major retailers an unfair advantage over consumer insights and market trends. While the sector has widely praised the recent "State of the Grapes" report released by Endeavour, the reality is that the retailer holds the primary market data long before anyone else. Furthermore, Endeavour has not yet formally announced whether they will release an updated 2026 State of the Grapes report.

[2] https://oia.pmc.gov.au/published-impact-analyses-and-reports/protecting-consumers-unfair-trading-practices

Question 10: What factors affect whether a small business is likely to be harmed by unfair trading practices in business-to-business dealings (e.g. bargaining power imbalances, whether it is a medium or long-term relationship, whether the small business is a purchaser or supplier, whether an industry code applies)?

As previously described, the primary factor is a broader regulatory environment that has provided for commercial concentration. The Australian market is characterised by dominant duopolies and oligopolies. Giving major retailers the unchecked power to aggressively drive down prices benefits consumers in the short term, but over time has and continues to systematically wipe out independent competition.

Question 11: If the Government were to introduce an economy-wide unfair trading practices prohibition that applies to business-to-business conduct, what types of conduct should be captured and are there any specific forms of conduct that should be protected against?

Protections must target unilateral contract variations, short-notice product delistings, practices such as choice editing that manipulate consumer decision-making, forced contributions to retail trade spends, third-line forcing, and the exploitation of retail data information asymmetries to unfairly advantage major retailers' private labels.

Question 12: Would a new economy-wide unfair trading practices prohibition that applies to business-to-business conduct interact with other existing laws and regulations (such as industry codes)? How should any overlap or duplication be managed?

Following on from recommendations in the Emerson Review, [3] a Mandatory Code of Conduct for Winegrape Purchases is expected to take effect from 1 January 2027. It is expected that it will apply to wine producers who purchase 2,000 tonnes of grapes per annum, providing deadlines for price offers in warm inland regions, preventing anti-competitive terms in contracts, addressing lengthy payment terms, tightening the conditions for making price deductions or product rejections and protecting against retribution. However, non-contractual conduct is likely to be exempted raising concerns that to avoid being captured under the regulatory obligations of the Mandatory Code or UCT provisions, some purchasers will deliberately avoid entering into formal, written contracts with growers, but rather enter into last minute agreements or “spot market” purchases. This non-contractual conduct gap presents a risk of unintended behavioral shifts in the market to the detriment of growers. An economy-wide B2B UTP prohibition could go towards addressing the non-contractual conduct gap.

However, the inevitable overlap between these frameworks also creates challenges that must be carefully managed to prevent duplicate compliance burdens and avoid inconsistencies while ensuring comprehensive protection for grape growers. For example, if a dispute arises over a specific operational issue covered by the Mandatory Wine Code (e.g. grape quality assessments or late payments), the Code should act as the primary regulatory instrument. Clear legislative mechanisms must be included to ensure businesses are not penalised twice for the exact same conduct. The Australian Competition and Consumer Commission (ACCC) should provide sector-specific compliance guidance on the boundaries for the wine industry, detailing what constitutes a breach of the Code, a breach of UCT legislation and an UTP.

[3] https://www.wineaustralia.com/getmedia/bd6a3350-b364-49d5-81cf-b823b29fe79d/WA_EmersonReport2025_v5.pdf

Question 14: Previous consultations identified barriers that prevent small businesses from enforcing their rights. How would such barriers affect the effectiveness of any new protection?

There is a profound fear of commercial retribution across the wine supply chain. This fear severely limits the willingness of any single grape grower or winemaker to initiate litigation or formally complain about supply chain abuses. This is compounded by the prohibitive costs, immense risks of legal action, and systemic power imbalances. It explains why businesses don't currently pursue complaints, and their reticence to provide explicit examples for fear of being identified.

The problem occurs in parallel to a lack of faith that there will be anything to gain from raising a dispute. For growers, it is expected that the Mandatory Code will address this concern however as previously stated, the Mandatory Code covers only part of the wine supply chain. The situation for wine producers would be improved through providing the ACCC infringement notice powers along with greater ability to enforce compliance through civil pecuniary penalties

Question 17: If a general prohibition that addresses the unfair trading practices affecting small businesses was introduced, should the full range of remedies, including civil pecuniary penalties, be available?

AGW supports making a full range of remedies available. The threat of civil pecuniary penalties would serve as an effective deterrent against businesses engaging in harmful trading practices.

What is the maximum civil penalty a court should be able to impose for a breach of any such provision? Should this be aligned with the maximum penalties available for other key provisions under the ACL?

For consistency, AGW supports aligning UTP remedies with those available under the UCT legislation.

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About Australian Grape & Wine

Australian Grape & Wine is Australia's national association of winegrape and wine producers with the role to help forge a political, social and regulatory environment - in Australia and overseas - that enables profitable and sustainable Australian Grape & Wine businesses. To do this, activities focus upon the objective of providing leadership, strategy, advocacy, and practical support. Australian Grape & Wine represents small, medium and large winemakers and winegrape growers.

The grape and wine businesses that Australian Grape & Wine supports are unique in agriculture as a value-added product with regional exports and food and wine tourism, making a significant contribution to Australia's rural and regional economies and driving economic growth. There are over two thousand producers and approximately five thousand grape growers, a vast majority based in regional Australia.

The Australian grape and wine sector is a major contributor to Australia's economy and to rural and regional communities. The grape and wine sector:

- Supports 203,392 direct and indirect full- and part-time jobs.
- Generates $15 billion in income from direct and flow-on employment.
- Contributes $51.3 billion to Australia's gross output.
- Adds $25.4 billion in value-added to the Australian economy. [4]

Australian Grape & Wine is recognised as the representative organisation for winegrape and wine producers under the *Wine Australia Act 2013* and is incorporated under the *SA Associations Incorporation Act 1985*.

Australian Grape & Wine has a proud history working 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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[4] https://www.wineaustralia.com/getmedia/813bfd73-955c-40f5-aae2-c6a8c14d3d4a/MI-AgEconPlus-Gillespie-Economic-Contribution-Aust-Wine-Sector-2025-report.pdf