

SUBMISSION:

Competition and Consumer (Industry Codes - Winegrape Purchases) Regulations 2026

EXPOSURE DRAFT

Australian Grape & Wine
October 2026

Australian Grape and Wine Incorporated (AGW) welcomes the opportunity to respond to the exposure draft Competition and Consumer (Industry Codes - Winegrape Purchases) Regulations 2026. As the peak national body representing both grape growers and winemakers, AGW supports regulatory frameworks that promote fairness, transparency, and commercial certainty across the supply chain. While we support the overarching intent of the proposed mandatory code, this submission identifies key operational ambiguities, practical implementation challenges, and technical issues within the Exposure Draft. Addressing these areas will ensure the code achieves its objectives without disrupting established industry practices.

AGW was broadly supportive of the recommendations set out in Dr Craig Emerson's review that concluded a mandatory code was the only viable option to adequately govern commercial behavior based on the unenforceability of the voluntary code. Specifically, AGW accepted the establishment of a mandatory code with a 2,000-tonne threshold, backed measures to enhance protections against retribution, supported the inclusion of dispute resolution mechanisms like mediation and arbitration, and endorsed the removal of anti-competitive contract terms. AGW also supported the recommendation that the ACCC should be given adequate resources to enforce the code. AGW notes that payment terms were not addressed, particularly given ongoing concerns regarding excessive payment delays experienced by some growers. While some consider South Australian legislated payment terms overly long, growers in other jurisdictions envy protections that restrict producers with outstanding payments from purchasing fruit in subsequent vintages. While AGW maintains its commitment to the core objectives of the Emerson review, this submission seeks to ensure the final Code achieves its intended protections without creating unintended commercial friction or unworkable administrative burdens across the sector. Furthermore, the submission identifies provisions where ambiguity remains regarding the interpretation of particular clauses and recommends either explanatory guidance or amendments to the Code to provide greater clarity.

The effectiveness of the mandatory code will be heavily dependent on the procedures that underpin independent expert determinations. Materials such as industry-endorsed standard procedures for winegrape quality assessments, along with other guidance documents, have been maintained in the past by AGW. They can be relied upon by users of the voluntary code and have proved useful in helping prevent disputes from arising. Governments should provide ongoing funding to industry to support the development, maintenance and periodic review of materials to assist independent experts appointed under the mandatory code. This investment will ensure the code operates as intended, reducing compliance costs, improving certainty for growers and winemakers, and supporting efficient dispute resolution across the sector.

Submission

1. Definitions and Scope

- **Winegrape Definition:** The current definition excludes winegrapes purchased with the intention of making zero-alcohol wine or grape juice concentrate. The definition should be expanded to explicitly include dealcoholised wine and other winegrape products. Additionally, the overarching definition of "wine" to be adopted requires clarification.
- **Time-Sensitive Disputes:** The definition of time-sensitive disputes should be expanded to explicitly include (d) disputes impacting the harvest of winegrapes and (e) disputes impacting the processing of grapes.
- **Meaning of Large Winemaker (Clause 6):** The application of the "large winemaker" threshold is ambiguous for a corporation in its second year of production, specifically whether it relies on grape

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purchase volumes from previous years. Furthermore, Clause 39 (1) (a) requires pre-harvest judgments regarding "large winemaker" status, which lacks a formal basis for how this must be determined. For the avoidance of doubt, the wording should reflect an expectation to meet the definition, or the assessment date could be shifted later in the financial year.

- **Meaning of Retribution (Clause 7):** AGW supports protecting all participants in the wine and winegrape markets against the fear of retribution. Clause 7 refers to action taken for "genuine commercial reasons", whereas the good faith provision in clause 15(7) refers to "legitimate commercial interests". AGW suggests using consistent wording so there is no suggestion that they have different meanings or impose different standards. Clause 15 (5) could be expanded to include (h) whether the grower's claim is for an improper purpose, including to delay or prevent legitimate commercial action by a large winemaker.
- **Functions of Australian Small Business and Family Enterprise Ombudsman (Clause 14):** Clause 14 (4) regarding satisfactory requirements of independent experts is insufficient. (4) (c) allows persons with qualifications, knowledge or experience in giving advice in relation to winegrape pricing or winegrape assessment or grading. This criterion alone is insufficient and should be supplemented by a requirement that independent experts satisfy two or more of the criteria in clause 14(4), including the ability to give advice in relation to pricing if they are appointed in relation to a market price related dispute.
- **Matters to be covered by agreements (Clause 19):** Clause 19 (1) (l) covers the process to be used to determine harvest and delivery time. This could be strengthened by adding that a process included in a Grower Supply Agreement (GSA) for the purposes of paragraph (1)(l) may permit the large winemaker to determine harvest and delivery times, but must require them to act reasonably, having regard to all relevant circumstances.
- Guidance material should outline relevant circumstances, for example, the maturity and condition of the winegrapes, adverse weather conditions, winery processing capacity, the need to minimise the period between harvest and delivery, and the potential impact of delay on the winegrapes and the grower.
- **Managing Surplus Grapes and First Right of Refusal Terms:** The Emerson review contained express prohibitions to deal with the operational vulnerability caused by sudden contract terminations when crops become surplus, or conversely, being tied indefinitely to restrictive "first right of refusal" arrangements. AGW notes that this is not covered in the draft code. AGW notes and accepts that this is not explicitly referred to in the draft code but would be captured under Division 2 obligations for a winemaker to act in Good Faith. Guidance material should provide some examples of where these types of clauses may contravene Division 2 obligations.

2. Grape Assessment and Written Records

- **Clarity on Timing (Clause 23):** The phrasing regarding assessments presumably relates to the final assessment prior to harvest. Clause 23 (1) (c) mentions a requirement to specify a time. It obviously is not practicable to state a specific time given the impacts of seasonal variation on harvest and, consequently, the time of final assessment. Specifying whether this relates to a specific winegrape measure of maturity at which the winemaker will make the assessment would add clarity.
- **Redundant Recording Requirements (Clause 25):** The requirement for winemakers to create a written record of the "processes and methods" for every individual assessment is unnecessary, impractical, and provides no additional benefit to growers. These processes and methods are usually fixed and are already required to be documented in the GSA under Clause 23. If the contract already specifies the methods to be used, requiring an additional record each time is redundant.
- **Post-Delivery Assessments (Clause 25):** The code currently assumes assessments are only undertaken before or shortly after delivery at the weighbridge. Winemakers commonly conduct further assessments after delivery to identify issues that cannot reasonably be determined prior to harvest, such as smoke taint

or contamination. The code must expressly recognise that assessments can occur after delivery in circumstances where it is not feasible to do so prior to harvest.

- **Notification Timeframes (Clause 25 & 28):** The requirement to notify growers within 4 hours of an assessment should be extended to 12 hours for practical purposes, unless there are time-sensitive consequences, such as fruit awaiting harvest at a weighbridge or requiring immediate independent expert assessment. Alternatively, the code should require notification within a reasonable period after the completion of the relevant assessment process.
- **Pre-Harvest Assessments (Clause 25):** Clause 25 (2) (a) should explicitly add the phrase "prior to harvest" to ensure grapes that will be rejected are not harvested. Furthermore, it must be clarified whether assessment requirements apply to every assessment or only the final assessment, and whether growers can request an assessment if they believe maturity has been reached.

3. Grading, Bonuses, and Pricing Mechanisms

- **Grading vs. Assessment Methodologies (Clause 26):** The clauses dealing with grading should not simply mirror the requirements for assessment. While grading parameters should be transparent, premium wine grading inherently involves sensory and winemaking judgments that cannot be reduced entirely to objective measures. Subjective measures, such as sensory panels, should be permissible for grading flexibility provided there is provision for them to be verified by a third party if there is a dispute. This would be acceptable provided that there is also a requirement that winemakers must clearly set out grading parameters in the GSA, with objective measures to be used where available; retain appropriate records supporting final grading decisions and be able to explain and substantiate grading outcomes if requested; and growers to receive clear written notification of the final grading outcome and any resulting pricing consequences within a reasonable timeframe.
- **Post-Fermentation Grading:** Premium grading often occurs in the winery post-fermentation through a staged classification process, with final allocations determined well after harvest. Consequently, requiring a written record of grading methods for each activity and mandating a 4-hour notification window post-harvest is impractical. Winemakers should instead set out grading parameters in the GSA, retain records supporting final decisions, and notify growers of final grading outcomes and pricing within a reasonable timeframe.
- **Bonus Payments (Clause 30):** The requirement to create a separate written record for determining bonus eligibility on each occasion is unnecessary, as these methods should be described in the GSA. The 5-day notification window for bonus determinations fails to reflect staged classification processes that can take weeks to finalise. Clearer distinctions must also be established regarding the difference between a bonus payment based on quality or another measure such as end-use, and a formal grade.
- **Spot Agreements and Timeframes (Clause 22):** Spot agreements must be clearly defined. The code must clarify whether spot agreements can utilise market prices and if so, how they must comply in a way that provides equivalent grower protection regarding pricing notification periods. As they will be unable to comply with Subdivision Clause 32 (2) and (3) and Clause 33, in circumstances where those dates have passed, suggest that if a Spot Agreement in a warm inland region is entered into after the first business day of September, they should provide a minimum price to the grower at the time the offer is made, and also comply with (4). If it is after December, they should provide a final price in the agreement. Rather than use the word “imminent”, Clause 22 (2) (b) should simply state "within 7 days" and no later than the “time" rather than “day” of intended harvest for increased clarity. Additionally, Clause 22 (2) (c) must stipulate that actions occur "prior to processing" to ensure there is clarity regarding ownership of the grape prior to any processing costs being incurred.

- **Minimum Price Offers (Clause 32):** AGW supports the objective of providing growers in inland regions with an early pricing guidance and improved access to market information. However, the September price under clause 32(2) is problematic when combined with an open-ended dispute resolution procedure especially as it is not a final price. We suggest the price notification should operate more as a minimum price guarantee, rather than as a binding offer capable of acceptance or dispute. The purpose of the early notification should be to provide growers with useful information about the minimum price the winemaker presently expects will apply, subject to the commercial, market and supply information available when the final price is determined. Growers can then compare that notification with the aggregated pricing information published by Wine Australia under clause 40. This promotes transparency and allows growers to raise pricing concerns directly with the winemaker before the final price is determined. Requiring the September notification to operate as a binding offer unnecessarily duplicates the final price procedures. It also creates significant practical uncertainty. If a grower disputes an early minimum price and the parties cannot agree, it is unclear:
    - what price applies in the interim;
    - whether either party remains bound by the existing GSA and whether the grower must continue to grow/maintain the vineyard for harvest;
    - how the relationship proceeds if the dispute resolution process does not produce a binding outcome.

  These difficulties arise in relation to an initial price which may never become the final price. A winemaker can reasonably increase its final offer after considering the grower's concerns, the pricing information published by Wine Australia and more settled market and supply information. Requiring the parties to undertake formal dispute resolution in relation to the earlier figure is problematic, unlikely to produce a proportionate or useful outcome and may create unnecessary cost and uncertainty.
- **Market Price Offers (Clause 32 and 33) and Market Price Definitions:** It must be clarified whether market price calculations are intended to be applied before or after freight costs. The minimum binding price provided to Wine Australia should be "farm gate" (as delivery distances/freight will obviously vary).
- **Market Price Definitions:** It is unclear if market price is based on the assumption of a basic commodity grade. The inclusion of volume factors (d) in the market price definition introduces further complexity, and its relevance is unclear. Accompanying guidance material should clarify this.
- **Price Offer Notification (Clause 32):** Clarification is required regarding whether average pricing is based on an average price over the total number of growers or an average price per tonne. Both these could be addressed in guidance material.

4. Dispute Resolution and Grower Protections

- **Dispute Resolution and Technical Carve-Outs (Clause 41):** While we support the inclusion of mediation as an accessible baseline for broader contractual and behavioral disputes, the mandate for mediation under Clause 41(3) creates potential uncertainty regarding the finality of independent expert assessments and may introduce unnecessary delays and costs for purely technical or quantitative disputes (such as quality grading assessments or market price determinations). Where parties pre-agree to refer specific, objective matters to an independent expert, we suggest the code explicitly clarify that a binding independent expert determination takes precedence over non-binding mediation and fully satisfies the dispute resolution obligations for that technical matter on the proviso that the expert followed due process and acted within their defined authority. This would prevent either party from subsequently invoking mediation under Clause 41(3) merely to re-open or delay a procedurally sound outcome, facilitating a more seamless and commercially realistic resolution during time-sensitive harvest periods.

- **Functions of the Ombudsman (Clauses 14, 41 and 46):** It is not clear what specific criteria and processes the Ombudsman must use to identify, vet, and appoint mediators and arbitrators under Clauses 41 and 46, and how the code will ensure appointees possess sufficient commercial understanding of the winegrape sector. We recommend that the code explicitly requires the Ombudsman to establish and maintain a publicly transparent panel of accredited independent experts and mediators with proven expertise in the winegrape sector. Furthermore, the selection process must incorporate strict conflict-of-interest guidelines to ensure appointed experts have no commercial ties to the parties or competing regional entities involved in the dispute.
- **Time-Sensitive Dispute Timeframes (Clauses 46, 51 & 57):** The current structure of Clause 46 (5) introduces undue delay by mandating a 72-hour initial resolution period before formal dispute mechanisms can commence. When coupled with the 5-day window for independent expert reports (Clause 57) and subsequent 7-day reporting periods for mediators or arbitrators, the cumulative timeframe becomes unworkable during periods where time-sensitive decisions must be made swiftly. To prevent commercial loss from delayed picking or processing, for example, the code should streamline this multi-stage pathway and significantly shorten reporting deadlines.

5. Promoting Best Practice Throughout the Industry

- **The future of the voluntary Code of Conduct for Australian Winegrape Purchases**: AGW has invested significant resources in maintaining its voluntary code. As of the 2026 financial year, there were eighty-five signatories; the vast majority not covered by the proposed mandatory code. There is concern that unfair practices may continue among smaller winemakers not covered by the draft legislation, as well as a risk of costly duplication if the voluntary and mandatory codes are run in parallel. While AGW is committed to promoting best practice throughout the industry by maintaining its voluntary code, there is interest from industry in streamlining this framework to allow winemakers not captured by the mandatory code to voluntarily comply with the mandatory code so that both the mandatory code and its dispute resolution procedures could form part of their GSAs, but without the penalties nor the mandatory reporting requirements. At the very least, the dispute resolution processes and support functions of the Ombudsman should also be made available to signatories of the voluntary code to avoid the costs associated with running two separate processes.

6. Publication of Sensitive Information

- **Information that may be required to be given to Wine Australia:** AGW supports mandatory participation by large wineries in the National Vintage Survey and the Production Sales and Inventory Surveys, provided businesses which are not captured by the code remain able to participate on a voluntary basis.
- **Formalising Commercial-in-Confidence and Aggregation Rules (Part 5):** While we support market transparency to assist grower price discovery, this mechanism must not inadvertently compromise the commercial competitiveness of Australian winemakers. We acknowledge and support Wine Australia's historical practice of applying aggregation thresholds to protect commercial-in-confidence data in voluntary surveys. It is important that published data continues to serve price discovery without handing actionable commercial leverage to major downstream retail duopolies or international buyers, thereby providing competitor markets, including major liquor retailers, with valuable intelligence that further exacerbates downstream market power imbalances. It additionally risks arming large international customers with enhanced negotiating power, especially during changing market conditions. The code

could be strengthened with a sub-clause allowing the code administrator or Wine Australia to withhold the publication of specific regional inventory or pricing data if they determine that publication would cause material commercial detriment or expose proprietary commercial intelligence to downstream retail or export markets.

- **Frequency of data reporting obligations:** We seek explicit clarification in Part 5 and Schedule 1 that data reporting obligations to Wine Australia are restricted to standardised, annual reporting cycles and reports are released significantly earlier in the season than current publication schedules to ensure the data provides market signals in time to support grower decision making. The code should explicitly state that Wine Australia does not hold broad authority to issue quarterly or ad-hoc binding notices demanding commercial data outside these pre-agreed annual survey structures, thereby avoiding excessive administrative burdens on winemakers.
- **Data De-identification (Clause 40):** While we support market price transparency, publishing data that is merely "de-identified" can carry a risk of re-identification in regions or varieties with small sample sizes. We recommend that the code explicitly require Wine Australia to apply strict data aggregation and suppression rules prior to publishing market data. Specifically, data for any given GI, variety, or price bracket should only be published if it incorporates a minimum threshold (e.g., data from at least 3 or 5 independent, non-affiliated businesses). Where a sample falls below this threshold, the code must mandate that the data be suppressed or aggregated into a broader regional/state category to guarantee true commercial confidentiality.

About Us

Australian Grape & Wine (AGW) 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. AGW 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*.

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. [1]

[1] https://www.wineaustralia.com/getmedia/813bfd73-955c-40f5-aae2-c6a8c14d3d4a/MI-AgEconPlus-Gillespie-Economic Contribution-Aust-Wine-Sector-2025-report.pdf

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