Growers outlook forum 2024
ACCC presentation

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Who are we?

- The ACCC is an independent Commonwealth statutory authority
- We are responsible for consumer protection, fair trading, competition, product safety, and infrastructure regulation under the Competition and Consumer Act (CCA)
- Committed to ensuring that the protections of competition and consumer laws and small business industry codes of conduct apply to small businesses and the agriculture sector
- We don’t make policy

Wine grape market study – initial report and follow up review

- The ACCC Wine Grape market study final report was released in September 2019. It found a number of potential issues, including potential unfair contract terms and a lack of pricing transparency.

- The report made 10 recommendations to address the issues identified.

- A follow up review was conducted in late 2021 to review industry progress with addressing issues identified.

- Follow up report found:
  - little progress was seen in reducing payment times
  - some progress towards improving the voluntary code and removing potential unfair contract terms.

Unfair contract terms – what are they?

- The Australian Consumer Law (ACL) includes protections for consumers and small businesses against unfair contract terms (UCTs) in standard form contracts.

- Protections only apply to standard form contracts with consumers and small businesses.

Unfair Contract Term test

- A term will be unfair if it:
    1. Causes a significant **imbalance**
    2. Is **not necessary** to protect a legitimate interest
    3. Will cause **detriment**

Examples

- Terms allowing one party to vary or terminate
- Terms allowing one party to limit their obligations

Unfair contract terms – key changes

- **Changes to UCT laws came into effect on 9 November 2023:**

Old law	New law
No financial penalty	Max. penalty per contravention of: • $2.5m for individuals • $50m, 3x value of the benefit, 30% turnover (whichever highest)
Small business = less than 20 employees	Small business = less than 100 employees OR less than $10m annual turnover
Contract value under $300,000 (or, under $1m if longer than 12 months)	No value limit
-	Minor negotiations will not prevent a contract from being standard form
-	Court empowered to make orders preventing use of the same or similar terms in the trader's other standard form contracts

Unfair contract terms – the ACCC's role enforcement outcomes

- The ACCC is responsible for enforcing compliance with the Competition and Consumer Act 2010, which incorporates the Australian Consumer Law.

- We receive reports from consumers and small businesses and may investigate and take compliance or enforcement action depending on several factors that we publish.

- The ACCC has recently had public UCT outcomes in the fertiliser and chicken meat industries in which some fertiliser suppliers and chicken meat processors agreed to amend terms so they were no longer unfair.

Unfair Contract Terms in winegrapes industry

- The market study found potential unfair contract terms in agreements between winemakers and growers, including:
  - Right to renew clauses
  - Lengthy payment terms
  - Unilateral variation clauses

- In 2020 some winemakers agreed to change their supply agreements to remove some potentially unfair terms following an ACCC investigation.

- If any growers are concerned their agreements may contain unfair contract terms, the ACCC would be interested in obtaining a copy of those agreements.

Types of mandatory industry codes

Prescribed mandatory codes

- Developed and enacted by government
- Mandatory compliance for all covered by the code
- Education and enforcement by ACCC
- Pecuniary Penalties and Infringement Notices
- Example: Horticulture Code

Codes need to fit the problem

Benefits	Risks
• increase transparency	• remove flexibility
• establish minimum trading conditions	• entrench poor trading practices
• correct power imbalances	• exacerbate power imbalances

Supermarkets inquiry

- In January, ACCC directed to conduct inquiry into Australia's supermarkets sector.
- The inquiry will look at pricing practices of the supermarkets and the relationship between wholesale, including farmgate, and retail prices.

- Interim report will be provided to the Government by 31 August 2024.

- The final report is due by 28 February 2025.

Questions?

- https://www.accc.gov.au/by-industry/agriculture/wine-grape-market-study-2018-19
- https://www.accc.gov.au/business/selling-products-and-services/contracts
- https://www.accc.gov.au/business/industry-codes
- https://www.accc.gov.au/inquiries-and-consultations/supermarkets-inquiry-2024-25
- Agriculture Unit – agricultureunit@accc.gov.au