

South Australia – Fair Trading
(Farming Industry Dispute Resolution Code)
Regulations 2013

SUBMISSION BY WINEMAKERS' FEDERATION OF AUSTRALIA

Tony Battaglione
General Manager, International & Regulatory Affairs
Winemakers' Federation of Australia
PO Box 2414
Kent Town SA 5071

Email: tony@wfa.org.au
Tel: 0413 014 807

INTRODUCTION

The Winemakers' Federation of Australia (WFA) is the national peak industry body representing the interests of Australian wine producers. Our mission is to lead a united and diverse Australian winemaking industry with a goal of supporting Australian winemakers to achieve sustainable and globally benchmarked profitability through evidence based policy and advocacy.

We work closely with State and regional wine industry organisations both to avoid duplication and to ensure a coordinated approach to issues and policy.

Among other activities we:

- Coordinate campaigns and advocacy work around issues such as tax, retail consolidation, responsible consumption of alcohol and labelling requirements
- Maintain a full-time Canberra office, meet regularly with political and departmental leaders and make regular submissions and presentations on the industry's behalf.
- Represent the industry at major international forums, build relationships with regulators in key markets, and work to change laws and attitudes that unfairly impinge on market access for Australian wine.
- Provide input, via our committees, on wine production to Food Standards Australia New Zealand and manage packaging issues that could damage the industry's reputation by creating problems related to trade regulations, standards, costs or education.
- Work closely with Wine Grape Growers Australia to ensure the wine industry's interests are understood when national decisions are made around biosecurity and plant health.

As a membership organisation, WFA takes its authority from the Associations Incorporations Act, 1985 (SA). Our Constitution is derived from that Act.

BACKGROUND

WFA is appreciative of the opportunity to comment on the proposed Fair Trading (Farming Industry Dispute Resolution Code) Regulations 2013 (the Farming Code) as provided for in the letter dated 4 September 2013, from the Hon Tom Kenyon MP, Minister for Manufacturing, Innovation and Trade and Minister for Small Business.

We understand that the purpose of providing a copy of the *Fair Trading (Farming Industry Dispute Resolution Code) Regulations 2013* was to allow the responsible Minister to comply with Section 28F(3) of *the Act*. That provision requires the Minister to consult with each organisation that the Minister considers to be representative of an industry likely to be affected by the code or provisions.

WFA has consulted its members on the draft Farming Code and is pleased to provide the following comments.

GENERAL COMMENTS

The wine sector already has a code of conduct in place to rule on disputes between wineries and grapegrowers. We understand that other operators in the agricultural sector may not have such Codes, and the Farming Code in these cases may have a role to play. However, we would request that the Minister takes note of the Australian Wine Industry Code of Conduct when determining the scope of application for the Farming Code.

The Australian Wine Industry Code of Conduct

The Australian Wine Industry Code of Conduct was signed by representatives of the Winemakers' Federation of Australia (WFA) and Wine Grape Growers Australia (WGGA) on 19 December 2008.

- The purpose of the voluntary Code is two-fold: firstly to establish a common framework on Australian wine grape supply contracts and secondly, to provide a dispute resolution system to manage disagreements involving price or quality assessment disputes.
- The minimum requirements set out in the Code have been agreed to by the lead industry organisations for both grapegrowers and winemakers.
- All elements of the Code apply to new grape supply contracts and major variations of agreements between grapegrowers and signatory wineries for the sale and purchase of wine grapes from the 2009 vintage and beyond
- The Code is continually updated to reflect the performance of the Code since its introduction.

Winegrape purchasers who are Signatories to the Code agree to be bound by the principles set out in the Code in their commercial dealings with winegrape growers. They also undertake to provide a grower with a copy of the Code whenever that grower signs a new Agreement.

With the exception of Part 2 (Winegrape Purchase Agreements), the Code took effect on 1 January 2009. Signatories are only required to comply with Part 2 for all new agreements for the supply of winegrapes for the 2010 vintage onward. With existing agreements, each Signatory agrees to offer to its winegrape growers to:

- apply the Code (with the exception of Part 2) with effect from 1 January 2009
- bring existing agreements in line with the provisions of Part 2 of the Code at the time of any material variation to the agreement.

Signatories also commit to promoting the adoption of the Code. The WFA and WGGA have agreed to publicize and promote the Code and its dispute resolution procedures, and to work to maximize its adoption within the industry.

Signatories to the Code

A winegrape purchaser can become a signatory to the Code by downloading, completing and returning a Code Signatory Notification form from the web site - www.wineindustrycode.org. A register of signatories is maintained and available on the WFA & WGGA websites. The Code is voluntary and becoming a signatory is not compulsory. There are no joining fees or ongoing annual costs.

The Code of Conduct specifies targets for the total number of signatories to the Code as follows:

- 25% of the top 100 Australian wine producers by tonnes processed, by 31 Dec 2012.
- 50% of the top 100 Australian wine producers by tonnes processed, by 31 Dec 2013.

All parties worked towards the signatory goals during 2012-13 and there has been a large increase in take-up of the code over the last 12 months. Total code signatories are responsible for around 37% of the national crush (around 670,000 tonnes).

SPECIFIC CONCERNS

WFA is very concerned around the possible impact of the Farming Code upon the operation of the Wine Industry Code of Conduct and its potentially adverse impacts on the signatories. Particular concerns relate to:

- Increased administrative burden with potentially wineries and grape growers having to participate in two different dispute resolution processes for the same issue
- Potential for increased expensive and lengthy legal action resulting from the possibility of two different decisions from the dispute settlement process
- Decreased participation in and reduced uptake of the Wine Industry Code of Conduct

Both WFA and the WGGG are actively involved in promoting uptake of the Wine Industry Code of Conduct and we believe the introduction of the Farming Code, if it applies to disputes where the Wine Industry Code of Conduct could apply will have significant detrimental impacts.

We would also note that in the wine sector, in the main there are written, contractual obligations that exist between a grower of wine grapes and the winery who may process those grapes. Within some of those contracts there exist dispute resolution procedures which are required to be undertaken and exercised as part of the obligations which are accepted between the parties. In addition, many companies include an express contractual dispute resolution term in their contracts for acquiring goods or services relating to the business of primary production.

The introduction of the Farming Code does not recognize that winemakers within South Australia purchase grapes from growers all over the country and grapegrowers in South Australia provide grapes to wineries interstate. The introduction of the proposed Regulations will result in one set of rules and compliance procedures for fruit purchased in South Australia and another for fruit purchased elsewhere. This has the potential to add unnecessarily to the complexity and compliance costs of their processes, and put South Australian businesses at a competitive disadvantage to their interstate competitors. It may also breach Section 92 of the Constitution of Australia concerning freedom of interstate trade.

The scope of the code

The scope of the code is extremely broad and it is unclear to what extent the reach of the Code is intended to cover. This needs to be clarified. Our reading of the draft Farming Code is that it potential applies to all parts of the supply chain from agrichemicals, additives, grape growers, winemakers, through to retailers.

CONCLUSION

WFA does not believe the Code is necessary in the wine sector, given the nature of the sector and the existence of the Australian Wine Industry Code of Conduct. The introduction of the proposed *Farming Industry Dispute Resolution Code – Regulations 2013* is not likely to bring any benefit to the wine sector and is likely to add regulatory complexity and cost to the sector.

There is potential for the Farming Code to undermine the work that the wine sector has achieved to date and, if it is introduced, we believe that signatories to the Australian Wine Industry Code of Conduct should be exempted from the provisions of the proposed given that they are already subject to a dispute resolution process which is built into their contracts.

WFA is happy to elaborate on these comments if required.