

AUSTRALIAN WINE INDUSTRY CODE OF CONDUCT

CODE MANAGEMENT COMMITTEE

ANNUAL REPORT 2011 – 2012

SECRETARIAT TO THE CODE MANAGEMENT COMMITTEE

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INTRODUCTION

This is the first Annual Report of the Code Management Committee (replacing the Code Administration Committee) established under the Australian Wine Industry Code of Conduct. It covers the period from 1 July 2011 to 30 June 2012.

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 contract framework and secondly, to provide a dispute resolution system to manage disagreements involving price or quality assessments 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 about the sale and purchase of wine grapes from the 2009 vintage and beyond

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 Wine Industry Code Management Committee

The Code is overseen and administered by the Wine Industry Code Management Committee (the Code Management Committee) of eight members with three Secretariat jointly appointed by the Boards of the WFA and WGGA. The members at 30 June 2012 were:

- Chairman: Sam Holmes – Barossa Grape & Wine Association
- Secretariat: Lawrie Stanford, Wine Grape Growers Australia
- Secretariat: Andrew Wilshire, Winemakers Federation Australia
- Secretariat: Sandy Davis, Minutes
- Member: Mark McKenzie, Murray Valley Wingrowers Inc
- Member: Vic Patrick, Wine Grape Growers Australia
- Member: Brian Simpson, Riverina Wine Grapes Marketing Board
- Member: Jeremy Stevenson, Accolade Wines (Alternate: Alex Sas)
- Member: Kate Thompson, Premium Wine Brands
- Member: Hamish Franks, Treasury Wine Estates
- Member: Jason Ryan, Treasury Wine Estates

The Committee's responsibilities include facilitating resolution of disputes over winegrape prices and vineyard downgrades and rejections, and determining alleged breaches of the Code. It is required to produce an annual report to be published by 30 September each year containing:

- a description of the nature and number of disputes received;
- any comments it wishes to make about conduct or trends in the industry;
- a report on the operations of the Code, including the names of any parties removed from the Code; and
- list all current signatories to the code and new signatories since the previous annual report.

In monitoring the Code, the Committee may recommend any amendments that may assist in the operation of the Code.

OPERATION OF THE CODE 2011 – 2012

Prior to September 2011, some aspects of the Code were administered by an independent Code Administration Committee. However, a decision was taken by WFA and WGGA to dissolve this Committee as the cost associated with maintaining the Committee were not seen as justified by the number of signatories to the Code and the number of disputes which had been referred to the Committee. As a result, this Committee was dissolved in September 2011 and its functions have been referred to the Code Management Committee.

This annual report is divided into two parts: the Code Administration Committee's activities from 1 July 2011 until 30 September 2011; and the Code Management Committee activities, post-30 September 2011- 30 June 2012.

The Code Administration Committee's activities from 1 July 2011 until 30 September 2011

During this period the Committee met by Skype conferencing call on two occasions – 20 July 2011 and 17 August 2011. Matters considered by the Committee included

- Finalisation of a document on the dispute resolution process, prepared following a recommendation from the Buck Review
- Finalisation of a flow chart on the dispute resolution process to accompany this document
- A Committee recommendation to the CMC and the Boards providing a form of words for an amendment to the Code on extending time limits in compelling circumstances
- The decision of the Boards to dissolve the Committee
- The draft Annual Report for 2010-2011.

During this period there were no disputes nor any complaints of breaches notified to the Committee.

Australian Wine Industry Code Management Committee Operations

The Committee met on 8 September 2011. The key outcome from this meeting was a review of the Australian Wine Industry Code of Conduct. This work was based on the recommendations of an independent reviewer, Mr Neill Buck, a respected expert in the area of governance and compliance systems.

A follow-up teleconference to finalise the review recommendations was held on 31 October 2011. This review was completed and signed for release by WGGA and the WFA at the WFA AGM on 23 November 2011.

The key reform attempts to deal with the key deficiency in the Code experienced to that point – that of only a small number of winemaker signatories. The target for signatories was upgraded to be 25% of the top 100 Australian wine producers (by tonnes processed) by 31 December 2012 and 50% of the top 100 Australian wine producers by 31 December 2013.

Other reforms to the Code were:

- Informal dispute resolution is promoted by both the WFA and WGGA.
- A fee for informal dispute resolution processes was removed.
- A provision was removed which prohibited parties going to the ACCC with a dispute after all other avenues available under the Code were exploited.
- The primary obligation for fair and equitable treatment is now stated in the Code, in the 'Intention' section.

- Provisions were made for more timely adoption of amendments to the Code that have been agreed between the WFA and WGGA.

In addition to the above changes to the Code itself, the opportunity was taken to change the administrative arrangements. This was done to achieve cost savings by closing down the independent Code Administration Committee and assigning some of its functions to the industry Code Management Committee. Dispute resolution was nevertheless kept at arms-length from industry by retaining the Accord Group, the secretariat to the now defunct Code Administration Committee, to administer this function.

Signatories to the Code

A winegrape purchaser can become a signatory to the Code by completing and returning a Code Signatory Notification form from the web site - www.wineindustrycode.org. Signatories at 30 June 2012 were

- Balnaves Vineyard Services Pty Ltd t/as Balnaves of Coonawarra
- Accolade Wines Ltd
- Henry Holmes Wines Pty Ltd
- Orlando Wines, a division of Premium Wine Brands Pty Ltd
- Rusden Wines Pty Ltd
- Treasury Wine Estates Ltd, the demerged wine business of the Foster's Group Ltd
- Tyrrell's Vineyards Pty Ltd
- d'Arenberg Pty Ltd

These Signatories represented approximately 31% of the total crush for the 2012 vintage.

Disputes

Disputes under Part 3

A total of 3 disputes were raised with the Code Secretariat during this period.

Two disputes over winegrape price were raised with the Code Secretariat. In the first matter, the grower sold the fruit to another winery, which resolved the dispute with the Signatory.

In the second matter, the Secretariat facilitated agreement between the parties which settled the dispute.

One dispute relating to rejection in the vineyard was raised with the Code Secretariat. The parties jointly appointed an independent expert who delivered a determination on how the dispute should be resolved.

Complaints relating to alleged breach of the Code under Part 4

One complaint relating to an alleged breach of the Code was lodged with the Secretariat. This matter was in progress as at 30 June 2012.

Comments

The Secretariat has noted a general willingness by parties in dispute to follow the correct dispute resolution process under the Code.

All new enquiries and dispute notifications are handled on a confidential basis with the aim of resolving matters quickly and cost effectively.

Once the complainant has sent a notice of dispute to the other party and received a written response from them, the Secretariat may call or email the parties to help clarify the issues in dispute, identify their key interests, better understand each other's perspective and develop options for settlement.

This early intervention assistance is at no cost to the disputants who may also request the appointment of an independent expert under the Code's formal dispute resolution process if they would like a neutral, independent person to decide on how the dispute should be settled.

UPTAKE OF THE CODE

The Code commenced operation on 1 January 2009 and has now been operating for some 42 months. It had only attracted eight Signatories by the end of 2011-12 representing an estimated 31% of the total crush. One new Signatory joined the Code in 2011-12. There have been three disputes under Part 3 of the Code and one complaint under Part 4.

The Code of Conduct specifies performance targets in *Part 1: Preliminaries* as follows:

Performance will be measured by the total numbers of Signatories. The targets are:

- 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

WFA has committed to increasing the number of signatories to the code, targeting Australia's 60 largest wineries by crushing volume during 2012-13.

FINANCIAL REPORT

The financial report for 2011-12 is provided in Table 1:

Table 1: Financial report for Code of Conduct for Year ended 30 June 2012

4/10/2011	Accord Group retainer and sitting fees 1/7/11 to 30/9/11	7,000.00
	Final payment under original agreement	<u>7,000.00</u>
9/09/2011	Code Management Meeting costs	562.73
31/10/2011	Teleconference - Intercall Australia	85.00
11/01/2012	Code of Conduct booklet & distribution	540.00
21/02/2012	Website update & domain name renewal	1,381.82
		<u>2,569.55</u>

Costs above of \$2,569.55 shared 50% WFA & WGGA

ACKNOWLEDGEMENTS

The Committee Members are grateful to the Accord Group, WFA and WGGA and their officers for their assistance and cooperation during the year.