

Australian Wine Industry
CODE^{OF} CONDUCT

Code Management Committee

ANNUAL REPORT 2014-15

September 2015

CODE MANAGEMENT COMMITTEE – SECRETARIAT

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INTRODUCTION

This is the fourth Australian Wine Industry Code of Conduct Annual Report prepared by the Code Management Committee (CMC). This report covers the period from 1 July 2014 to 30 June 2015.

The Australian Wine Industry Code of Conduct

The Australian Wine Industry Code of Conduct ('the Code') was signed by representatives of the Winemakers' Federation of Australia (WFA) and Wine Grape Growers Australia (WGGA) on 19 December 2008. With the exception of Part 2 (Winegrape Purchase Agreements), the Code took effect on 1 January 2009. Part 2 took effect for all new agreements for the supply of winegrapes for the 2010 vintage onward.

The Code is voluntary, there are no joining fees or ongoing annual costs.

The purpose of the Code is two-fold:

- to establish a common framework for Australian wine grape supply contracts and
- to provide a dispute resolution system to manage price or quality assessment disputes.

The minimum requirements set out in the Code have been agreed by the lead industry organisations of both winegrape growers and winemakers.

Winegrape purchasers who are Signatories to the Code agree to be bound by the principles of 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.

The CMC acknowledges that signatories to the Code remain well below the target of half of the top 100 Australian wine producers (by tonnes processed) signing the code by the end of 2013.

During 2014, the CMC accepted that the number of signatories to the Code had fallen short of targets and embarked on a parallel program of researching alternatives to the Code while also making changes to improve the efficacy and effectiveness of the existing code.

In 2014-15, there was one new signatory. The total number of signatories at 30 June 2015 includes around 36 of the top 100 wine companies, representing approximately 40% of the total crush for the 2014 vintage.

WFA and WGGA have agreed to publicise and promote the Code and its dispute resolution procedures, and to work to maximise its adoption within the industry. A register of signatories is maintained on the Australian Wine Industry Code of Conduct website (www.wineindustrycode.org/).

The Wine Industry Code Management Committee

The Code is overseen and administered by the Wine Industry Code Management Committee (CMC) jointly appointed by the Board of the WFA and Executive Committee of WGGA. It consists of six members, an independent Chair, supported by a Secretariat of two, with the assistance of a minute taker.

The composition of the CMC at 30 June 2015 was:

Members	
Sam Holmes	Independent Chair
Isaac Lowrie	Treasury Wine Estates
Mike Stone	Murray Valley Winegrowers Inc.
Vic Patrick	Wine Grape Growers Australia
Brian Simpson	Wine Grapes Marketing Board
Kate Thompson	Pernod Ricard Winemakers
Julie Ryan*	Accolade Wines
Observers	
Richard Neagle	Treasury Wine Estates
Alex Sas	Accolade Wines
CMC Secretariat	
Tony Battaglone	Winemakers Federation of Australia
Lawrie Stanford	Wine Grape Growers Australia
Sandy Davis	Minute Secretary

*Julie Ryan was on maternity leave from March 2015, and Jeremy Stevenson assumed her role for the remainder of 2014-15

The Committee's responsibilities include acting as the custodian of the Code, monitoring and assessing the Code's performance, improving the Code, 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
- a list all current signatories to the code and new signatories since the previous annual report.

In monitoring the Code, the Committee may recommend amendments to assist the Code's operation.

Secretariat to the Code

The Code Management Committee appoints a Secretariat to the Code (jointly funded by WGGGA and WFA) to provide secretariat services to the Code's administration and to which the Committee may delegate any of its powers or duties under the Code.

The Accord Group was the appointed secretariat for the Australian Wine Industry Code during 2014-15 and until October 2015.

REPORT ON ACTIVITIES 2014–15

Meetings of the Code Management Committee

During 2014-15, the Code Management Committee met on three occasions:

- 4 September 2014
- 4 December 2014
- 15 June 2015

As part of a wide-ranging review of the Code to make it more effective, an amendment was agreed in December 2014 to allow more time in which to resolve disputes. This amendment applied for the 2015 harvest and beyond.

The amendment deals with a concern, expressed by growers, that during the busy harvest period, time is not available to effectively mount and resolve a dispute under the Code's time stipulations. It is considered that growers, being more often the disputing party and with fruit in jeopardy while the dispute awaits resolution, were at a particular disadvantage.

The Code had stipulated a 14 day period from the time the dispute is notified by the disputing party, for the parties to come to a mutually agreed outcome. The change allows for a mutually agreed outcome to be reached 60 days after the notification, if the notification is lodged before April 30. April 30 is taken to be a date that covers by far the majority of notifications that may occur 'during the harvest period'.

It should be noted that the other provisions for disputes over winegrape price remain the same.

In respect to the Code's effectiveness, other key outcomes from the meetings were:

- A proposal to establish compliance officers at the enterprise level is being developed;
- FAQs were posted on the WGGGA, WFA and Code websites prior to Christmas;
- Following the decision to extend the deadline for dispute notification to 60 days from notification of final price, the code was amended, and industry informed of the change;
- A plain English explanation of the Code amendment was drafted and is available on the website(s);
- A press release advising of the change was released prior to vintage and was picked up in the press on a number of occasions, with a number of interviews taking place;
- The desirability of improved market information in the form of market outlook data in June/July and coming vintage data in October/November was agreed by the WFA Board. A submission supporting this was made to the Agricultural Competitiveness White Paper by WFA;
- WGGGA considered whether this data could replace indicative pricing, however, this was rejected. The WGGGA view was that both improved information and indicative prices were required for effective, open and transparent decision-making by sellers of winegrapes;
- WFA consulted wineries about the possibility of earlier release of indicative pricing – wineries considered that this would be inaccurate and, as a consequence, unhelpful to all parties;
- The list of independent experts was reviewed, and the decision taken to do this annually.

Ongoing and future activities

- The CMC Terms of Reference have been reviewed and redrafted.
- Recommended procedures for the independent dispute firm's dealing with dispute notifications are being drafted.
- A toolkit for Independent Experts has been drafted including:
 - Standard Code documents
 - A dispute form
 - A dispute outcome notification
- Independent expert skill sets are being drafted – this includes technical, viticulture skills and commercial skills.

- The Committee is seeking code compliant templates for a spot purchase contract and a longer term contract, incorporating notes and options – the spot purchase contract which has been considered to date is not Code Compliant.

WFA continues to communicate the benefits of the Code and encourage wineries to become signatories.

The CMC considered that the failure to meet the agreed targets for signatories was a key issue requiring action. It was acknowledged that this was a fundamental problem with the effectiveness of the code as it now stands.

Disputes reported during 2014-15

Enquiries

The Accord Group received three enquiries over the past year.

Nature of Disputes

Only one came under Part 3 of the Code (dispute over winegrape price), but was ineligible as timing requirements had not been met.

Of the other two enquiries, one was in relation to a contractual matter, which was referred to a specialist on the Code's Independent Experts list but did not come under cl 3.1.4 of the Code.

The other enquiry was in relation to the Code's dispute resolution clauses and how to apply these in a new wine grape purchase contract.

Requests for the Appointment of Independent Expert

There were no requests for the appointment of an independent expert during 2014-15.

However, two matters that were ongoing as of the last reporting period did result in the appointment of independent experts. The parties followed the steps outlined in Clauses 3.1 and 3.2 of the Code to resolve the dispute. The independent expert referred the parties to a solicitor for legal opinion regarding the interpretation of key clauses relating to contract law. This then allowed the independent expert to proceed with the process of determination, which was provided to both parties and the matters subsequently settled.

Requests for Other Assistance

No other requests were made for assistance.

Signatories

During this period one wine grape purchaser made an application to become a signatory to the Code.

Comments

The Secretariat has noticed an increasing confidence in the dispute resolution process under the Code, as demonstrated by a willingness to comply with the

processes once a formal request for dispute resolution has been made.

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

Operation of the Code in 2014-15

Membership targets

As noted elsewhere in this report, membership targets were not met and this represents a major failing in the effectiveness of the Code. Only one new member acceded to the Code in 2014-15

Improvements to the dispute resolution process

The CMC noted that improving the dispute resolution procedures should minimise the risk of breach, but protocols for the CMC to follow were also required for dealing with alleged Code breaches.

It was agreed to pursue the development of:

- a tool kit of standard documents for independent experts to provide procedural guidance in making independent determinations
- a proforma engagement letter for the expert and guidance on instructing the expert (to be prepared with reference to standard engagement letters and the Code dispute form)
- Terms of Reference for the CMC - including confidentiality provisions and a supporting protocol for handling disputes and breach allegations.

SIGNATORIES TO THE CODE

The number of signatories as at 30 June 2015 were 41 and were:

- Accolade Wines Ltd
- D'Arenberg Pty Ltd
- Ballast Stone Estate Wines
- Balnaves Vineyard Services Pty Ltd t/as Balnaves of Coonawarra
- Bleasdale Vineyards Pty Ltd
- Brown Brothers Milawa Vineyard Pty Ltd
- Campbell Wines Pty Ltd
- Cheviot Wine Group
- Colbinabbin Estate Vineyard Management Pty Ltd
- Cumulus Wines Pty Ltd
- Difabio Estate Wines Pty Ltd
- Dorrien Winemaking
- Eden Road Wine Company Pty Ltd t/ as Eden Road Wines
- First Creek Wines
- Fleurieu Vintners Pty Ltd t/as Boar's Rock
- Fox Gordon Pty Ltd
- Fowles Wine
- Gemtree Vineyards Pty Ltd
- Heartland Wines Pty Ltd
- Henry Holmes Wines Pty Ltd
- Kirrihill Wines Pty Ltd
- Limestone Coast Wines Pty Ltd
- Lion-Wine Pty Ltd
- Lowe Wines
- Oakridge Wines

- Pernod Ricard Winemakers
- Ramco Wine Group
- Rusden Wines Pty Ltd
- Samarkan Pastoral Co Pty Ltd t/as Coombe Farm
- Seppeltsfield Wines Pty Ltd
- Serafino Wines
- Shaw & Smith Pty Ltd
- Shingleback Wine Pty Ltd
- Tahbilk Pty Ltd on behalf of the Tahbilk Group
- Tinlins Wines Pty Ltd
- Treasury Wine Estates
- Trentham Estate
- Tyrrell's Vineyards Pty Ltd
- Voyager Estate
- Wirra Wirra Vineyards
- Yalumba Wine Company

FINANCIAL REPORT

The financial report for 2014-15 is provided in Table 1.

TABLE 1: FINANCIAL REPORT FOR CODE OF CONDUCT FOR YEAR ENDED 30 JUNE 2015

WFA/WGGA Shared Expense

Total Costs shared 50% WFA & WGGA

\$ 6,398.00

ACKNOWLEDGEMENTS

The Code Management Committee members would like to acknowledge the support and cooperation throughout the year of:

- the Accord Group
- Winemakers' Federation of Australia
- Wine Grape Growers Australia