

Australian Wine Industry  
CODE<sup>OF</sup> CONDUCT

Code Management Committee

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**ANNUAL REPORT 2015-16**

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*November 2016*

## **CODE MANAGEMENT COMMITTEE – SECRETARIAT**

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## **INTRODUCTION**

This is the fifth Australian Wine Industry Code of Conduct Annual Report prepared by the Code Management Committee (CMC). This report covers the period from 1 July 2015 to 30 June 2016.

### **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 2014-15, 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. This remains a key concern to the Code Management Committee

In 2015-16, there were no new signatories. The total number of signatories at 30 June 2016 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/](http://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 WGGGA. 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 2016 was:

|                        |                                    |
|------------------------|------------------------------------|
| <b>Members</b>         |                                    |
| Sam Holmes             | Independent Chair                  |
| Jason Ryan             | Treasury Wine Estates              |
| Mike Stone             | Murray Valley Winegrowers Inc.     |
| Jo Andrew              | Wine Grape Growers Australia       |
| Brian Simpson          | Wine Grapes Marketing Board        |
| Kate Thompson          | Pernod Ricard Winemakers           |
| Julie Ryan             | Accolade Wines                     |
| <b>Observers</b>       |                                    |
| Richard Neagle         | Treasury Wine Estates              |
| Alex Sas               | Accolade Wines                     |
| <b>CMC Secretariat</b> |                                    |
| Tony Battaglione       | Winemakers Federation of Australia |
| Andrew Weeks*          | Wine Grape Growers Australia       |
| Sandy Davis            | Minute Secretary                   |

\* Andrew Weeks replaced Lawrie Stanford in December 2015.

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 from October 2015 until October 2016.

## **REPORT ON ACTIVITIES 2015–16**

### **Meetings of the Code Management Committee**

During 2015-16, the Code Management Committee met twice:

- 5 August 2015
- 3 December 2015

The Code Management Committee did not meet as regularly as planned during 2015-16 due to personnel changes and structural changes in WFA and WGGA. The Chief Executive of WFA left unexpectedly in April 2016 resulting in a reduction in resources available to progress Code Management activities. In addition, WGGA appointed a new Executive Director commencing in December 2015. WGGA has undergone a major structural transformation in 2015-16 culminating in its transformation to a new entity - Australian Vignerons - in September 2016. This reduced the ability of WGGA to engage on Code Management activities during this period. It will also result in a change to the membership of the Committee for 2016-17.

The issue of indicative pricing remained a contentious one and subject of discussion. The CMC has as yet been unable to resolve unintended consequences of indicative pricing, where buyers will naturally wait as long as possible to give a price and issue conservative prices.

It was noted that removing indicative pricing may encourage more Code signatories and wineries may move to more informal discussion with growers (as occurs with other commodities) about things which will affect price.

The Boards of WGGA and WFA were asked if they would support removing indicative pricing from the Code, and tightening the requirement to issue the final prices prior to harvest. This position did not receive unanimous Board support from WFA and WGGA.

Work was undertaken on a contract template. However, this work is still in progress.

### **Ongoing and future activities**

WFA is reviewing its communication strategy to promulgate the benefits of the Code and encourage wineries to become signatories.

The failure to meet the agreed targets for signatories is a fundamental problem with the effectiveness of the code as it now stands.

### **Other issues**

The independent review of the Horticulture Code of Conduct (the Code) undertaken by Mr Mark Napper and Mr Alan Wein was completed and the reviewers' report released by the government on 8 February 2016 and it is now publicly available:

- [Independent review of the Horticulture Code](#)  PDF [1.16 MB]

The report supported the position that the Horticulture Code was not the appropriate place to include wine grape growers and processors at this time. However, the reviewers supported analysis of the wine industry and its trading practices to be undertaken with a view to an assessment of the appropriateness of including transactions between wine grape growers and processors (wine makers) under the Horticulture Code. They supported the requirement that all growers that supply to processors and exporters should have clear written terms of trade, quality specifications, price and delivery details, in order to avoid the potential for dispute.

They noted also that some wine grape growers, who trade with processors and are exempt from the Horticulture Code, called for the processor exemption under the Horticulture Code to be lifted, on the basis of some trading conditions which they perceive to be unfair and place risk on the grower.

Importantly, they found limited evidence of inappropriate conduct in both the trading relationships between growers and processors and exporters and therefore saw no compelling reason to recommend the removal of both exemptions at this time.

#### Australian Competition and Consumer Commission (ACCC) inquiry

The Australian Competition and Consumer Commission (ACCC) held six workshops in regional Australia from June 2016-September 2016 focusing on understanding competition and fair trading issues in the horticulture and viticulture industries. A report was due to be released in October 2016 providing an account of the issues raised with the ACCC during the workshops and its broader engagement with the industries. While this report will not reflect a comprehensive market study of each industry, it is expected to highlight the current views of industry participants on key competition and fair trading issues, and the ACCC's response to these issues.

### **Disputes reported during 2015-16**

#### **Enquiries**

There were three enquiries received during this period, which is equal to the number of enquiries received in the 2014-15 period.

#### **Nature of Disputes**

One enquiry related to the appointment of an independent expert, although the nature of the dispute was not disclosed.

The second enquiry related to a dispute over winegrape price. The winegrape purchase agreement contained dispute resolution clauses that referenced the Australian Wine Industry Code Administration Committee, although the winegrape purchaser was not a signatory to the Code. The Accord Group advised the grower that the clauses are not operative if the purchaser is not a signatory to the Code. They encouraged the grower to ask the purchaser to become a signatory to the Code or amend its dispute resolution clauses.

The third enquiry related to a dispute over a downgrade in the vineyard (Clause 3.2 of the Code). The enquirer wanted to know about available options in resolving the dispute. The Accord Group sent a Notice of Dispute template to the enquirer but no further correspondence about the matter was received.

#### **Requests for the Appointment of Independent Expert**

One request was received from a winegrape grower (see above) for the CVs of a list of independent experts. The Accord Group contacted the listed experts for their CVs and forwarded them on to the enquirer.

### **Signatories**

During this period, no further applications to become a signatory to the Code were received. There are currently 41 signatories.

### **Comments**

All new enquiries and dispute notifications are handled by the Secretariat on a confidential basis with the aim of resolving matters quickly and effectively. This includes providing early intervention assistance wherever possible. They also encourage winegrape purchasers to become signatories to the Code if they are not existing signatories.

### **Operation of the Code in 2015-16**

#### ***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. No new members acceded to the Code in 2015-16

### **SIGNATORIES TO THE CODE**

There were 41 signatories to the Code as at 30 June 2016:

- 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 2015-16 is provided in Table 1.

**TABLE 1: FINANCIAL REPORT FOR CODE OF CONDUCT FOR YEAR ENDED 30 JUNE 2016**

### **WFA/WGGA Shared Expense**

|   |                                 |
|---|---------------------------------|
| Code Management Meeting costs   | \$915.00                        |
| Accord Group Fee  | \$5,250.00                      |
| 10/12/2015 Cowell & Clarke Lawyers - Pro Forma<br>Contract for Winegrape Purchase | \$3,000.00                      |
| <b>Total Costs shared 50% WFA &amp; WGGA</b>                                      | <b><u><u>\$9,165.00</u></u></b> |

### **WFA Only Expense**

|               |          |
|---------------|----------|
| Meeting costs | \$874.16 |
|---------------|----------|

|                             |                               |
|-----------------------------|-------------------------------|
| <b>Additional WFA costs</b> | <b><u><u>\$874.16</u></u></b> |
|-----------------------------|-------------------------------|

## **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