



Australian Wine Industry

CODE^{OF} CONDUCT

Code Management Committee

ANNUAL REPORT 2018-19

September 2019

CODE MANAGEMENT COMMITTEE – SECRETARIAT

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INTRODUCTION

This is the eighth Australian Wine Industry Code of Conduct Annual Report prepared by the Code Management Committee (CMC). This report covers the period from 1 July 2018 to 30 June 2019.

The Australian Wine Industry Code of Conduct

The Australian Wine Industry Code of Conduct ('the Code') was signed by representatives of the former 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 wine grapes 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 were agreed by the lead industry organisations of both wine grape 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 wine grape 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.

A register of signatories is maintained on the Australian Wine Industry Code of Conduct website (www.wineindustrycode.org/).

Formation of Australian Grape and Wine Inc.

WFA and WGGA (at that time trading as Australian Vignerons) at their respective Annual General Meetings on 14 November 2018 passed a Special Resolution to form a single incorporated association to be named Australian Grape and Wine Incorporated (Australian Grape & Wine). The new association commenced operations as the representative organisation for Australia's winegrape and wine producers on 1 February 2019.

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 Australian Grape & Wine. 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 2019 was:

Members

Sam Holmes
Fiona Anderson
Stuart Andrew
Jo Andrew
Chris Byrne
Helen Strachan
Jason Duldig

Representing

Independent Chair
Treasury Wine Estates
Andrew and Dale
Australian Vignerons
Riverland Wine
Pernod Ricard Winemakers
Accolade Wines

CMC Secretariat

Tony Battaglione Australian Grape & Wine
Anna Hooper Australian Grape & Wine
Damien Griffante Australian Grape & Wine
Sandy Davis Minute Secretary

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 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 2018 until October 2019.

REPORT ON ACTIVITIES 2018–19

Meetings of the Code Management Committee

In 2017-18, the Code Management Committee commenced a review of the Wine Industry Code of Conduct (the Code) with the view to improving its relevance and effectiveness. Further action towards this review was placed on hold when the ACCC initiated its market study on the winegrape industry in September 2018 in order to allow any ACCC recommendations to be considered as part of the review.

Operation of the Code in 2018-19

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.

Signatories to the Code

There were 42 signatories to the Code as at 30 June 2019:

Accolade Wines
Australia Food and Beverage Group Pty 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
Campbells 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 t/as Eden Road Wines
Feathertop Winery
First Creek Wines
Fleurieu Vintners Pty Ltd t/as Boar's Rock
Fowles Wine
Fox Gordon Pty Ltd
Gemtree Vineyards Pty Ltd
Heartland Wines Pty Ltd
Henry Holmes Wines Pty Ltd

Kirrihill Wines Pty Ltd
Limestone Coast Wines Pty Ltd
Lowe Wines
Oakridge Wines Pty Ltd
Pernod-Ricard Winemakers
Ramco Wine Group
Rusden Wines
Samarkan Pastoral Co Pty Ltd t/as Coombe Farm
Seppeltsfield Wines Pty Ltd
Serafino Wines
Shaw and 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 (WA)
Wirra Wirra Vineyards
Yalumba Wine Company

Enquiries

There were 34 enquiries received during this period, which is less than the 50 enquiries received in the 2017-18 period.

It should be noted that all 34 enquiries were related to pricing issues.

Nature of Disputes

In one enquiry, the winegrape supplier was concerned that the prices offered by the purchaser were below fair market price. After informal negotiations, the supplier and purchaser resolved the dispute by mutually terminating their contract.

Another enquiry related to a pricing issue with the same winegrape purchaser. The parties requested the appointment of an independent expert, however, they were able to mutually resolve the dispute before such appointment.

As mentioned above, all 34 enquiries related to disputes over winegrape pricing. The growers disputed that the prices offered by the purchaser were significantly lower than market price, as required by the relevant purchase agreements. The Accord Group encouraged the growers to issue notices of dispute in accordance with the Wine Code dispute resolution procedures. As far as we are aware, most, if not all, disputes were resolved by direct negotiation between the parties.

Requests for the Appointment of Independent Expert

As mentioned above, there was one request for the appointment of an independent expert. However, the dispute was resolved through informal negotiations by the parties before the

appointment was made.

Signatories

During this period, we have not received any applications to become a signatory to the Code. As a result, there are currently 42 signatories to the Code.

Comments

This period has seen less enquiries than the busy period in 2017-18. However, it is encouraging that seemingly all enquirers were able to resolve their dispute through the early stages of the dispute resolution process outlined in the Code. The level of Code dispute activity shows that growers and purchasers have confidence in using the processes available under the Code at first instance to resolve issues.

OTHER ISSUES

Australian Competition and Consumer Commission (ACCC) Wine Industry Market Study

In July and August 2018, the ACCC invited wine grape growers to provide feedback about competition issues in their industry through an online survey. The questions related to:

- contracting practices
- competition among wine grape buyers
- reliability and transparency of pricing information
- quality assessment of wine grapes
- timing of payment
- the Australian Wine Industry Code of Conduct
- available mechanisms for dispute resolution
- collective bargaining

The survey was conducted to help the ACCC better understand:

- how widespread any concerns and potential issues are among growers
- whether the concerns and potential issues are more prevalent in particular regions, or types of regions
- the effect of certain industry practices on growers.
- the survey was open to wine grape growers from 20 July 2018 to 20 August 2018

On 26 September 2018, the results of the survey were published by the ACCC ([Wine Grape Grower Survey – Results Report](#)) along with an announcement that the ACCC would conduct a market study of the Australian wine grape industry.

The purpose of the market study was to complete an in-depth review of the industry and identify any market failures or trade practices issues that may be preventing the functioning of competitive markets or resulting in detriment to winegrape growers.

On 26 September 2018, the ACCC released an [issues paper](#) seeking submissions from growers, winemakers, retailers and others operating in the industry by 2 November 2018.

On 3 June 2019, the ACCC released its interim report. Submissions on the interim report by 28 June 2019. The final report is due for release in September 2019.

Recommendations of the interim report

The ACCC dedicates a whole section of its interim report to the Code (Section 7) beginning on page 118 of the report, and makes a number of recommendations up front that relate to how the Code should be amended. These include:

- To provide a structured process for the review of adverse quality assessment decisions made at the winery (including at the weighbridge);
- To provide a structured process for arbitration of contractual disputes, as well as other types of disputes that may arise out of supply agreements, with the objective being to improve access to impartial dispute resolution procedures and help address the power imbalance between the two parties; and
- To guarantee equal representation of growers (including grower representative bodies) and winemakers on the Code Management Committee.

There are a number of other recommendations in the report that will have ramifications for the Code in its current form. These include price notifications, payment terms and that fact that the code is voluntary.

These, recommendations will form the basis for the scope for this review.

Structure of the Code Management Committee

The ACCC's interim recommendation is that the Code be amended to guarantee equal representation of growers (including grower representative bodies) and winemakers on the Code Committee. Their report states that equal grower and winemaker representation is likely to:

- lead to increased interaction between grower representatives and winemakers to improve the dispute resolution procedures under the Code;
- allow grower representatives to increase grower awareness of the Code and promote access to Code processes;
- lead to balanced administration of the Code, including having increased consideration of grower interests when amendments to the Code are considered; and
- increase grower confidence in the Code.

The ACCC also recommended that Australian Grape & Wine appoint a Code Sub-Committee of the Board, equally representing growers and winemakers, to decide on proposed amendments to the Code.

Australian Grape & Wine has since reviewed the Terms of Reference for the Code Management Committee (CMC) and taken up ACCC advice to have equal grower and winemaker representation. It has also appointed an independent Chair.

Review of the Code

Final recommendations and a revised Code are expected to be submitted to the Australian Grape & Wine Board on 13 November 2019. This will allow any amendments to be incorporated by vintage 2020.

Australian Grape & Wine will undertake a membership drive for signatories prior to vintage 2020.

ACKNOWLEDGEMENTS

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

- The Accord Group
- Australian Grape and Wine Incorporated
- Winemakers' Federation of Australia; and
- Australian Vignerons

FINANCIAL REPORT

The financial report for 2018-19 is provided below:

TABLE 1: FINANCIAL REPORT FOR CODE OF CONDUCT FOR YEAR ENDED 30 JUNE 2019

WFA/AV Shared Expense

Accord Group Fee + Code Website hosting fee	\$2,250.00
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Total Costs shared 50% WFA & AV	\$2,250.00
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WFA Only Expense

Meeting costs	\$68.55
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Australian Grape & Wine Only Expense

Accord Group Fee	\$2250.00
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Domain hosting Fee	\$21.77
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Total	\$4,590.32
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