

Australian Wine Industry
CODE^{OF} CONDUCT

Code Management Committee

ANNUAL REPORT 2016-17

September 2017

CODE MANAGEMENT COMMITTEE – SECRETARIAT

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INTRODUCTION

This is the sixth Australian Wine Industry Code of Conduct Annual Report prepared by the Code Management Committee (CMC). This report covers the period from 1 July 2016 to 30 June 2017.

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 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 have been 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 by the end of 2013.

In 2016-17, there were no new signatories. The total number of signatories at 30 June 2017 remains at around 36 of the top 100 wine companies, representing approximately 40% of the total crush for the 2017 vintage.

WFA and AV 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 Boards of the WFA and AV. 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:

Members	
Sam Holmes	Independent Chair
Will Duffy	Treasury Wine Estates
Stuart Andrew	Andrew and Dale
Jo Andrew	Australian Vignerons
Chris Byrne	Riverland Wine
Helen Strachan	Pernod Ricard Winemakers
Jason Duldig	Accolade Wines
Observers	
Richard Neagle	Treasury Wine Estates
Alex Sas	Accolade Wines
CMC Secretariat	
Tony Battaglione	Winemakers Federation of Australia
Andrew Weeks	Australian Vignerons
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 wine grape 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 2016 until October 2017.

REPORT ON ACTIVITIES 2016–17

Meetings of the Code Management Committee

The Code Management Committee did not meet as regularly as planned during 2016-17 due to personnel changes and structural changes in WFA and (the then) 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 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 Australian Vignerons to engage on Code Management activities during this period. It also resulted in a change to the membership of the Committee for 2016-17.

Operation of the Code in 2016-17

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 2016-17.

Signatories to the Code

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

- Accolade Wines Australia Limited
- 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

Enquiries

There were 29 enquiries received during this period, which is significantly more than the three enquiries received in the 2015-16 period.

It should be noted that 27 enquiries related to the same pricing issue with a specific wine grape purchaser.

Nature of Disputes

One enquiry related to the downgrade of grapes after they were blended, despite verbal assurances about the grape categorization, following inspection in the vineyard and ferment. The grower raised concerns about this being 'an unfair and widespread business practice'. The Accord Group encouraged the grower to contact its industry association representative and to seek legal advice about the matter.

The second enquiry also related to the downgrade of grapes after they were blended. The grower issued a notice of dispute to the wine grape purchaser but the purchaser did not agree to the grower's desired outcome. The grower asked to be released from their contract and the purchaser agreed.

As mentioned above, 27 enquiries related to a dispute over wine grape price with one wine grape purchaser. 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 notified growers of their right to issue notices of dispute in accordance with the Wine Code dispute resolution procedures. The Growers Association also assisted in coordinating this effort and communicating with growers in dispute. As far as we are aware, most if not all of the disputes were resolved by direct negotiation between the parties.

Requests for the Appointment of Independent Expert

There were no requests for the appointment of an independent expert in 2016-17.

Signatories

During this period, we did not receive any applications to become a signatory to the Code. There are currently 41 signatories.

Comments

This period has seen the highest level of dispute activity and enquiries received by the Secretariat in the history of the Code. It is encouraging that most enquirers were able to resolve their dispute through the early stages of the dispute resolution process outlined in the Code.

The challenge is to further increase awareness and uptake of the Code by growers and purchasers. One way to do this is promoting the Code through industry events and engaging with key stakeholders. The Secretariat was invited to present at an industry forum during this period and the presentation was well received by the audience.

OTHER ISSUES

Australian Competition and Consumer Commission (ACCC) inquiry

The Australian Competition and Consumer Commission report into the competition and fair trading issues facing the horticulture and viticulture industries was released on 27 October 2016. This report identified a number of areas of concern, particularly about the Horticulture Code of Conduct.

Key issues raised by stakeholders included:

- The ineffectiveness of the current Horticulture Code of Conduct.
- Concerns about late and non-payment of growers by wholesalers.
- A fear of raising complaints due to concerns about retribution.
- Uncertainty in contracting practices across both industries.

The report identifies a number of areas in which the ACCC will be conducting further work in both industries. These include examining allegations of late payments, interactions between growers and retailers under the Food and Grocery Code, and assessing standard form contracts across both industries to promote compliance with the upcoming business-to-business unfair contract term law.

The report also identifies a number of contracting and competition issues in the viticulture industry that require further consideration and the ACCC's Agriculture Unit is looking at these in greater detail.

The report is available at: *Perspectives in horticulture and viticulture - Industry views on competition and fair trading issues* .

Changes to the Wine Equalisation Tax Legislation

In the May 2016 budget, the Australian Government announced a number of WET Reforms designed to tighten eligibility to receive the Wine Equalisation Tax (WET Rebate). On 5 April 2017, the Australian Government released exposure draft legislation and associated explanatory material that would amend the *A New Tax System (Wine Equalisation Tax) Act 1999* to give effect to the reforms to the Wine Equalisation Tax (WET) rebate announced on 2 December 2016. The *Treasury Laws Amendment (2017 Measures No. 4) Bill 2017* was introduced into Parliament in June 2016.

Under the legislation, to be eligible to claim the WET rebate, ownership of the grapes will mean that some form of contract must be in place at the weighbridge. This may take the form of an exchange of letters, but a more formal contract provides more surety. This provides an opportunity for contract amendments to reflect the provisions of the Code for current non-signatories.

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; and
- Australian Vignerons

FINANCIAL REPORT

The financial report for 2016-17 is provided in Table 1.

TABLE 1: FINANCIAL REPORT FOR CODE OF CONDUCT FOR YEAR ENDED 30 JUNE 2017

WFA/WGGA Shared Expense

Accord Group Fee	\$4,500.00
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Total Costs shared 50% WFA & WGGA	\$4,500.00
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WFA Only Expense

Meeting costs	nil
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Additional WFA costs	nil
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