

Australian Wine Industry
CODE^{OF} CONDUCT

Code Management Committee

ANNUAL REPORT 2013-14

September 2014

CODE MANAGEMENT COMMITTEE – SECRETARIAT

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INTRODUCTION

This is the third Australian Wine Industry Code of Conduct Annual Report prepared by the Code Management Committee (CMC). The Code Management Committee assumed this role from the Code Administration Committee when the latter was dissolved. This report covers the period from 1 July 2013 to 30 June 2014.

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.

After a formal review of the Code in 2010, the CMC specified targets for the total number of signatories to the Code as follows:

- 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 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 Boards of the WFA and WGGA. It consists of seven members, including an independent Chair, supported by a Secretariat of three.

The composition of the CMC at 30 June 2014 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	Premium Wine Brands
Julie Ryan	Accolade Wines
Observers	
Richard Neagle	Treasury Wine Estates
Alex Sas	Accolade Wines
Secretariat	
Tony Battaglione	Winemakers Federation of Australia
Lawrie Stanford	Wine Grape Growers Australia
Sandy Davis	Minute Secretary

During 2013-14, Hamish Franks was replaced by Richard Neagle; Jeremy Stevenson was replaced by Julie Ryan; Mark McKenzie was replaced by Mike Stone and Isaac Lowrie replaced Jason Ryan.

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 2013-14

REPORT ON ACTIVITIES 2013–14

Meetings of the Code Management Committee

During 2013-14, the Code Management Committee met on 4 occasions:

- 3 July 2013
- 10 December 2013
- 10 February 2014
- 5 June 2014

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

The Code Management Committee considered that the failure to meet the agreed targets for signatories was a key issue requiring action.

A number of key issues were identified that could be improved to enhance the code operation. It was agreed that the CMC would continue to seek to improve the voluntary Code of Conduct through the following actions:

1. Improve compliance between the Code and contracts
 - Develop a template contract for grape growers and winemakers that incorporates the Code principles
 - Establish checklists to permit signatory compliance with the Code to be easily measured through a simple audit process
 - Finalise FAQs to inform the industry of the Code requirements.
2. Indicative price notifications – timing or whether or not to retain.
 - Indicative pricing had been identified as a major disincentive by wineries to sign the Code. It was also identified by the grower representatives as a major problem this vintage in that it encouraged lower across-the-board prices.
 - It was agreed that the grower perception of the need for indicative pricing should be reviewed and if appropriate, it should be modified or removed.
 - It was noted that a mechanism to better inform growers of supply and demand early in the season was desirable.
3. Does the Code give grape growers sufficient confidence to dispute?
 - It was acknowledged that this was a universal problem to all Codes
 - It was agreed to develop better tools to inform growers of how to institute the dispute settlement process
4. Poor uptake by wineries
 - It was acknowledged that this was a fundamental problem with the effectiveness of the Code as it now stands.
 - It may improve if indicative pricing is removed.
 - Encouraging signatories through promotion and education would require substantial resourcing.

- It was agreed that the adoption of the Horticulture Code of Conduct or a Mandatory Code would increase participation rates and that the committee should evaluate alternatives to the Code. It was agreed that a cost-benefit analysis of a mandatory code and of the adoption of the Horticulture Code should also be investigated by the committee.
5. Code awareness among growers, and wine companies and relevant industry organisations.
- Most farmers and many operations personnel in companies are unaware of the Code and how it relates to contracts. This requires a WFA education campaign, coupled with better tools to explain what elements are in the Code, what elements are not in the Code (eg prescription of terms of trade, how to initiate dispute settlement, etc.
6. Commercial issues –etc.
- The Code refers to matters such as retention of title and terms of trade (including price payment schedules) as important elements of contracts. Nevertheless, it is acknowledged by the Management Committee that the detail is contractual in nature and as such, will reside in contracts. It is agreed that for the purposes of education, the latter issues were more appropriately dealt with through vehicles such as fact sheets, education on the respective roles of codes and contracts, and FAQs.
 - Although commercial issues do not fit into the Code, it was recommended that WFA and WGGA discuss these issues and explore options without breaching the Australian Competition Law.

It was noted that even if the improvements to be adopted into the Code did not succeed in improving the take-up of the Code, there was merit in the Code's maintenance since the adoption of any alternative, such as a mandatory code, would take a number of years.

Outcomes

Indicative prices

In the Committee's discussions about revising the Code to make it more effective, it was agreed there was widespread belief that the indicative price provisions had acted perversely for growers in 2014. The Committee was willing to review the provisions in the current review. Indicative pricing has also been identified as a major disincentive to wine companies for signing the Code.

WGGA proposed that indicative pricing was required to support grower decision making but that they should occur much earlier in order for this to happen. The counter proposal was that earlier indicative pricing would not act in growers favour as it inevitably would be more conservative and based on less information. It would also not alleviate price leading. Instead it might be more appropriate to have independent supply and demand information made available at around June-July and again around October-November to enable growers and winemakers to make more informed decision making.

While there was common acknowledgement of the role of supply and demand information, the grower representatives proposed that this information should be in addition to earlier indicative prices, as a means of allowing independent judgment, and action, in the event of more conservative price releases.

It was agreed that these arguments would be taken back to both WFA and WGGA.

If supply and demand outlooks were agreed then details of the analysis and information required and the timing of the presentations would be developed. It was noted that most of this information was already collected for the purpose of Outlook Conferences, although improved analysis on the bulk market and stocks may be required.

Does the Code give grape growers sufficient confidence to dispute?

Reports of intimidation of growers, either perceived or real, lead to the dispute resolution provisions not being taken up. The Committee's concern about this lead to the suggestion that Compliance Managers should be appointed – both at the wine company level (signatory) and by the peak bodies (WFA and WGGA). This would assist issues to be raised, it would help with educating wine company employees on their obligations and it would assist compliance with the Code/preventing non-compliant practices. In addition, it would provide the basis for auditing signatory actions and data collection to measure the effectiveness of the Code on behavior.

Recommendation:

That a proposal be developed to appoint Compliance Managers to ensure better adoption at the enterprise level and improved behaviours.

Poor uptake by wine companies

It was acknowledged that poor uptake of the Code by wine companies was fundamental to reducing the effectiveness of the Code. It was also acknowledged that the simplest, most effective solution to this problem was likely to be a mandatory code.

The Committee hopes that a communication plan undertaken by WFA will help broaden membership. This program includes direct communication with larger non-signatory companies as well as a broader industry-wide campaign, a FAQ broadsheet, and the possible appointment of compliance officers. It was also recommended that WFA Board members be encouraged to sign up to the Code to provide leadership to the industry. The WFA campaign would be coupled with better tools and templates to assist with elements are of the Codes. These include at-a-glance documents providing guidance on what is in the Code and what isn't (eg prescription of terms of trade, how to initiate dispute settlement, etc), templates for Code-compliant contracts and guidance to Independent Experts on conducting dispute determinations.

Recommendation:

A communication plan undertaken by WFA that involves both direct communication with larger non-signatories, the improved FAQs, a broader industry wide campaign and the possible appointment of compliance officers could help broaden membership. It was also recommended that WFA Board members be encouraged to sign the Code to send a leadership message to the industry. A WFA education campaign would be coupled with better tools to explain what elements are in the Code and what elements are not in the Code (e.g. prescription of terms of trade; how to initiate dispute settlement, etc). It would also identify other dispute resolution procedures such as the South Australian Farming Industry Dispute Resolution Code.

Voluntary vs Mandatory codes

A review of mandatory vs voluntary codes was undertaken. It was agreed that although mandatory codes would ensure the desirable level of uptake, it would also be difficult with the government's attitude to new regulation as well as expensive in terms of time and monetary cost to industry. In addition, with government as a third party to be negotiated with, the results might not reflect the aspirations of the industry parties.

It was agreed that in order for something to be in place to provide industry guidance on basic, good commercial practice, the voluntary Code should continue to be supported and all efforts made to continuously improve its application. This does not preclude further work by WGGA on alternatives to the industry's voluntary Code.

Dispute provisions

If resolution of a dispute does not eventuate between the disputing parties, an Independent Expert can be appointed to determine the Dispute with the Expert's determination incumbent on both of the parties.

Procedures for disputes over winegrape price, or over downgrades or rejection in the vineyard, or at the weighbridge, are catered by the Code.

A number of improvements have been identified that could enhance the appointment of independent experts.

Recommendations:

- **The list of independent experts is reviewed and updated annually**
- **Independent experts with expertise in contracts should also be identified for disputes that relate to contractual issues**
- **The scope of the Code should be reviewed to identify how it covers contractual issues.**

The second major issue relating to the dispute resolution procedure relates to disputes arising over a price offer made by a winegrape purchaser under clause 2.4.2 (the timing of final price determination where the buyer and seller have to agree to the price). In such disputes, the dispute is required to be resolved in a short time frame. The Committee has recommended that

the time period for these disputes be extended to mean that the dispute resolution procedure must begin within 60 days of notification of the dispute. This will enable both parties to pursue normal business activities during vintage.

Recommendation:

It is recommended that the Code be amended so that this time period be extended so that the dispute resolution procedure must begin within 60 days of notification of a dispute on pricing.

Next steps

Although continuous improvement of the Code of Conduct will continue, the CMC recommended the enhanced communication materials be made available by 1 July, when WFA would be in a position to commence a targeted (large wine companies that are not signatories) and a more general, publicity campaign. It was proposed that this campaign could be a part of WFA's scheduled regional visits as well as trade media and direct communication to members.

Disputes reported during 2013-14

In 2013-14 five dispute enquiries were received. All five disputes fell under Part 3 of the Code.

Three of the disputes were in relation to interpreting the market price for the grapes in question. Two of the disputes were in relation to winegrape pricing and interpreting the contractual specifications as they related to a vineyard assessment of the fruit.

Two of the disputes were complex in nature and required the appointment of independent experts. The parties followed the steps outlined in parts 3.1 and 3.2 of the Code to resolve the dispute. These two matters are still ongoing as of 30 June 2014.

Three of the disputes were settled informally between the parties with the assistance of the Code Secretariat.

Comments on disputes and the Code

The Secretariat has noticed an increasing willingness by the industry to use the dispute resolution processes under the Code. This shows an increasing confidence in the Code.

All new enquiries and dispute notifications are handled by the Secretariat on a confidential basis and 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 contact the parties to help clarify the issues in dispute, better understand the perspective of the disputees, identify their key interests and suggest options for settlement. This informal intervention is at no cost to the disputees who may also request the appointment of an independent expert under the Code's formal dispute resolution process if they prefer a third

party to make the determination or if the informal intervention by the Code Secretariat is not successful in resolving the issues raised.

Operation of the Code in 2013-14

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.

Improvements to the dispute resolution process

The CMC noted that improving the dispute resolution procedure 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 2014 were 40 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
- 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

In 2013-14, there were seven new signatories three of which were on the list of top 100 wine companies from which the target of 50 signatories by 31 December 2013 was to be achieved.

The total number of signatories at 30 June 2013 includes an estimated 36 of the top 100 wine companies targeted for signatories by 31 December 2013 and they represent approximately 40% of the total crush for the 2014 vintage.

FINANCIAL REPORT

The financial report for 2013-14 is provided in Table 1.

TABLE 1: FINANCIAL REPORT FOR CODE OF CONDUCT FOR YEAR ENDED 30 JUNE 2014

WFA/WGGA Shared Expense

3/07/2013	Code Management Meeting costs - Minutes	\$349.50
10/12/2013	Code Management Meeting costs - Minutes	\$322.00
	Finalisation of minutes	\$15.00
10/02/2014	Code Management Meeting costs - Minutes	\$562.00
	Code Management Meeting costs - Catering	\$125.00
25/02/2014	Accord Group Fee 25/10/12 to 24/10/13	\$3,000.00
5/06/2014	Code Management Meeting costs - Minutes	\$407.00
6/06/2014	Accord Group Fee 25/10/13 to 24/04/14 (half year)	\$1,500.00
6/06/2014	3 year domain hosting fee for Winecode website	\$68.02
Total Costs shared 50% WFA & WGGA		\$ 6,348.52

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