

AUSTRALIAN WINE INDUSTRY CODE OF CONDUCT
CODE ADMINISTRATION COMMITTEE
ANNUAL REPORT – 2009

SECRETARIAT

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INTRODUCTION

This is the first Annual Report of the Code Administration Committee established under the Australian Wine Industry Code of Conduct. It covers the period from the appointment of Committee members on 25 February 2009 to 30 June 2009.

The Australian Wine Industry Code of Conduct

The Australian Wine Industry Code of Conduct¹ was signed by representatives of the Winemakers' Federation of Australia (WFA) and Wine Grape Growers Australia (WGGA) on 19 December 2008.

The Code was developed for the Australian wine industry by the Wine Industry Relations Committee, a joint committee of the WFA and WGGA, following a recommendation by an Australian Senate enquiry in 2005. The Executive Councils of the WFA and WGGA have endorsed the Code and it is supported by the Federal Government's Department of Agriculture, Fisheries and Forestry.

The voluntary Code has two main aims

- to establish a common Australian wine grape supply contract framework, thus setting minimum standards for agreements between winegrape growers and winegrape purchasers
- to provide a dispute resolution system to manage disagreements which arise over price or quality assessments.

Winegrape purchasers who are Signatories to the Code agree to be bound by the Code in their commercial dealings with winegrape growers. Signatories commit to adopt the principles set out in the Code in their dealings with winegrape growers, and to provide the winegrape grower with a copy of the Code whenever a winegrape grower signs a new Agreement.

With the exception of Part 2 (Winegrape Purchase Agreements), the Code took effect on 1 January 2009. Signatories are only required to comply with Part 2 for all new agreements entered into after 1 January 2009 in relation to the supply of winegrapes for the 2010 vintage onward. With respect to existing agreements, each Signatory agrees to offer to its winegrape growers to

- apply the Code (with the exception of Part 2) with effect from 1 January 2009
- bring existing agreements in line with the provisions of Part 2 of the Code at the time of any material variation to the agreement.

¹ The Australian Wine Industry Code of Conduct can be found on the Code Administration Committee website at <http://www.wineindustrycode.org/Downloads.html>

Signatories also commit to promoting the adoption of the Code. The WFA and WGGGA have agreed to publicize and promote the Code and its dispute resolution procedures, and to work to maximize its adoption within the industry.

Signatories to the Code

A winegrape purchaser may become a signatory to the Code by providing a written notice to the Committee. The Code is not compulsory within the industry, but the WFA and WGGGA expect that the Code will achieve a high level of acceptance.

The register of signatories will be maintained and available on the WFA, WGGGA and the Code Administration Committee websites.²

The Wine Industry Code Administration Committee

The Code is overseen and administered by an independent three person Code Administration Committee with appropriate commercial experience, jointly appointed by the Boards of the WFA and WGGGA.³ The members are part-time. The current members appointed on 25 February 2009 until 30 September 2010 are

- **Presiding Member:** Graham ('Bert') Mowbray, retired Federal Magistrate and former Member of the Administrative Appeal Tribunal who holds qualifications in agriculture, agricultural economics and law. His early work experience was in agriculture, followed by a lengthy legal career, principally in public and administrative law.
- **Member:** Ian Cox, an Agribusiness Consultant with formal qualifications in agriculture, management and property valuation. Mr Cox has an extensive background in agriculture, management and finance, and previously worked as an agribusiness specialist for many years.
- **Member:** James Omond, a lawyer and principal of Omond & Co providing specialist services to the wine industry. Mr Omond's work includes specific wine-industry operational advice and trade practices/competition experience. He is an executive member of a number of organisations associated with the wine industry.⁴

The Committee is supported by an independent secretariat, The Accord Group, jointly funded by the WFA and WGGGA. The Accord Group is a firm specializing in industry code administration, mediation and training in negotiation, complaints handling and mediation.

The Committee's responsibilities include facilitating resolution of disputes over winegrape prices and vineyard downgrades and rejections. In addition it has the power to inquire into alleged breaches of the Code and to expel non-complying Signatories. It may publish the names of non-complying Signatories in its Annual

² <http://www.wfa.org.au>, <http://www.wgga.com.au>, and <http://www.wineindustrycode.org>

³ Part 5 of the Code

⁴ Fuller details on members can be found on the Code Administration Committee website at <http://www.wineindustrycode.org/Committee.html>

Report and on its website.

The Committee is also 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.

In monitoring the Code, the Committee may recommend any amendments that may assist in the operation of the Code.

Review of the Code

A formal review of the Code will be conducted after the 2010 vintage by suitably qualified persons appointed by the Committee.⁵ It is also proposed that thereafter the Committee will review the operations of the Code not less than every three years.

The objectives of the review will include assessing the extent to which the Code has reduced disputes and the effectiveness of the dispute resolution system. The review is to recommend any amendments to the Code required to address any issues identified during the review process.

It is intended that these reviews will be completed by 30 June in the relevant year.

OPERATION OF THE CODE – 2009

The reporting period covers the time from the appointment of Committee members on 25 February 2009 to 30 June 2009. As the Code has recently come into existence and only the dispute resolution provisions applied to the 2009 vintage there are limited matters on which the Committee can report this year.

Committee Operations

The Committee met for the first time on 27 May 2009 when it was briefed by representatives of the WFA and the WGGGA on background to the Code. It considered the listing of a panel of experts for disputes over winegrape prices or vineyard downgrades and rejections, draft procedures for appointment of independent experts, and operational procedures for independent experts.⁶

At this meeting the Committee settled a range of administrative matters – such as its

⁵ See Part 1 of the Code

⁶ An outline of the procedure for appointment of independent experts can be found on the Code Administration Committee website at http://www.wineindustrycode.org/Dispute_Resolution.html

budget, banking, and financial arrangements, the creation of a website, etc.

Signatories to the Code

A winegrape purchaser may become a signatory to the Code by providing a written notice to the Committee. Signatories at 30 June 2009 were

- Constellation Australia Limited
- Orlando Wines, a division of Pernod Ricard Pacific Pty Ltd
- Tyrrell's Vineyards Pty Ltd

The percentage of total crush represented by these signatories for the 2009 vintage was 27%.

The two remaining major companies in the industry – Fosters and Australian Vintage – had yet to sign up to the Code.⁷

The Margaret River Wine Industry Association has given its support to the Code and is encouraging its members to become signatories.

Disputes

Only one dispute was notified to the Committee during the reporting period. It involved prices offered in February 2009 to a South Australian grower by a signatory to the Code. The dispute was successfully settled after an independent expert appointed by the parties under the Code made a determination.

Breaches of the Code

No complaints of breaches of the Code have been referred to the Committee during the reporting period.

ISSUES UNDER THE CODE

It is too early in the operation of the Code for the Committee to be in a position to provide any detailed analysis of its operations, its effectiveness and possible improvements. However there are a small number of matters which have come to the Committee's attention and which warrant a comment.

Informal Early Dispute Resolution

Some other voluntary codes allow for early intervention by their secretariats seeking to facilitate resolution on an informal basis before resorting to the formal processes under the code. On receiving notification of a dispute the secretariat contacts the

⁷ Fosters has since lodged its Signatory Notification Form with the Code Secretariat on 20 August 2009

parties, usually by telephone, to try and assist them resolve the dispute informally and as expeditiously and efficiently as possible.

The Committee has agreed that a similar approach should be incorporated in the wine industry procedures, thus providing for early intervention by the Secretariat. On receipt of a Notice of Dispute, the Secretariat will contact the parties by telephone and attempt to resolve the matter without it escalating into the formal dispute resolution process.

Time Limits

On its face the Code provides inflexible time limits for various actions by the parties: for example for price disputes, 7 business days for lodging a Notice of Dispute with the Committee, 7 business days for a response, and 28 business days for requests to the Committee for appointment of an independent expert. The timeframes for disputes involving downgrades or rejections is much tighter.⁸

The Committee is uncertain whether the intention is that these time limits be enforced rigorously or whether there should be some scope for the Committee to use its discretion to extend the limits in compelling circumstances. Alternatively it could extend the time limit if the winegrape purchaser agrees. If so, the question arises as to what would amount to compelling circumstances.

Notices to Growers

Notwithstanding the answer to the question raised above on the Committee's discretion to extend time limits, the Committee strongly **recommends** that the Signatories include with all notifications of prices, downgrades or rejections a written statement in a prescribed form alerting the growers to the time limits under the Code and the possible consequences of failing to comply with these limits.

Disputes over Downgrades and Rejections at the Weighbridge

The Code does not currently provide for use of independent experts in resolving disputes over downgrades and rejections at the weighbridge.⁹ Clearly these are matters that require very quick settlement.

The Committee **recommends** that the WFA and WGGGA examine whether a pool of independent experts could be established for resolving these weighbridge disputes. Such people should have suitable experience and cover an appropriate geographic spread.

Retention of Title Clauses

After the end of the reporting period the Committee had drawn to its attention a case suggesting the vulnerability of growers as unsecured creditors where receivers had been appointed to a winemaker. The media report in this matter suggested that over 100 growers were owed about \$4m.

⁸ See Parts 3.1 and 3.2 of the Code

⁹ See Part 3.3 of the Code

In view of the implications of failure by larger wineries, the Committee **recommends** that the WFA and WGGGA give consideration to whether Retention of Title Clauses may assist in such circumstances, and if so, whether they should be a standard clause in winegrape purchase agreements and included in Part 2 of the Code.¹⁰

Promotion of the Code

Clearly it is early in the life of the Code. Part I of the Code says on performance targets

Performance will be measured by the total numbers of Signatories, and the percentage of the national annual winegrape harvest purchased by those Signatories. The percentage-of-crush performance targets are:

- *75% of the purchased crush in first vintage after implementation*
- *85% of the purchased crush in the second vintage after implementation*

To date the number of major companies that have become Signatories has been encouraging. We are not in a position to know how well known the Code is among growers.

The Committee therefore encourages the WFA and the WGGGA to undertake further promotion among their members about the importance and benefits from participation in the Code.

Alternate Committee Members

The Code currently makes no provision for any Alternate Committee Member.¹¹ As the Committee understands that the WFA and WGGGA propose to appoint a permanent Alternate Committee Member to cover for absences of members, the Committee **recommends** that Part 5 of the Code be amended at an appropriate time to allow for such a member.

Quorum for the Committee

The Code provides that a quorum shall comprise “the Presiding Member and all other Members”.¹²

The Committee believes that on occasion this may present some difficulty and understands the WFA and WGGGA would support a quorum of two.

The Committee therefore **recommends** that the Code be amended to set a quorum of any two members, or any three members where one of the members present is the Alternate Member.

¹⁰ Clause 2.10.1 of the Code is a more limited provision on title in winegrapes

¹¹ See Part 5 of the Code

¹² Clause 5.1.5

Appointment of an Acting Presiding Member

The Code is currently silent on whether the Presiding Member can appoint a Member to preside when the Presiding Member is absent.

It would be desirable to make express provision for this in the Code.

ACKNOWLEDGEMENTS

The Committee Members are grateful to the WFA and WGGGA for the opportunity presented them to participate in this new venture for the wine industry. They also wish to express thanks for the help given by WFA and WGGGA officers.

The Committee extends its especial appreciation to its Secretariat, The Accord Group, in particular Ms Nathalie Birt, for their ready and professional assistance in the establishment of the Committee and the early operations of the Code.

30 September 2009