



Frequently Asked Questions about becoming a signatory to the Code

What is the purpose of the Code?

WGGA and WFA believe that a framework for fair and equitable grape purchase agreements and an impartial, cost effective dispute resolution scheme will help improve commercial relationships between wineries and winegrape growers. In turn, this will demonstrate to both consumers and retailers that the industry has sound and fair commercial practices in place.

Why should I sign the Code?

All wineries are strongly encouraged to sign the Code, to demonstrate an intention to deal fairly with suppliers. Signing the Code provides direct benefits to wineries, by

- providing protection in case of a dispute arising with a supplier, because there will be a written agreement in place with an impartial dispute resolution process,
- demonstrating that the business you run is fair and reasonable (WGGA and WFA promotes the Code as best practice for wineries),
- improving the ability of wine companies to negotiate similar arrangements with retailers, and
- the dispute resolution process creating the potential to resolve disputes without recourse to expensive and time-consuming legal proceedings that also undermine the grower-wine company relationship.

What happens if I don't sign?

There are no individual consequences or penalties for not becoming a signatory to the Code. Nevertheless, the more signatories there are, the more effective the code will be and the more it will deliver benefits to the sector.

What happens if I do sign – who will know about it?

WGGA and WFA promote the list of Code signatories on their websites. In addition, WGGA willingly advises all its members, as well as Federal and State Ministers for Agriculture and Trade and the major wine buyers (Coles and Woolworths) of the wineries that are signatories.

I know some WFA Board members that aren't signatories – why should I join if they don't?

The current signatories to the Code make up around 40 per cent of the Australian winegrape crush. Three of the largest wine companies in Australia; Accolade, Treasury Wine Estates and Pernod Ricard Australia (all WFA Board members) are signatories. Although we would like all wineries to sign up, every winery has to make their own decision. Remember, the more wineries that sign up, the more effective and beneficial the Code will be for everyone.

I'll revisit signing if more wineries in my region sign up

The Code Management Committee asks you to consider that by signing, your actions will encourage others in the region to sign the Code and the industry's standing in the community will be improved.

What if my payment terms are different from those described in the Code?

The Code allows alternative payments schedules as long as these are negotiated with the supplier.

The requirements for terms of payment are specified in clause 2.6 of the Code. More about these ...

The terms of payment are to be clearly stated and, unless otherwise agreed by the parties to the Agreement, will be consistent with the industry standard of 1/3 at the end of the month following the month of delivery, 1/3 at the end of June, and the balance at the end of September of the year that the first payment commenced.

The payment terms for any price adjustment or payments based on wine assessment shall be specified in the Agreement.

Any penalties for late payments shall be stipulated in the Agreement.

In South Australia, terms of payment are prescribed in legislation. However, for wineries in other states alternative payment dates may be negotiated with suppliers (as long as those agreed terms are stated in their contracts).

There is more about the flexibility in the Code's pricing requirements under the next question.

What if I don't want to give an indicative price?

Where an agreement provides a fixed price an indicative price is not required. Note that any provisions for price adjustment must be clearly spelt out in the Agreement.

Indicative prices are required where an agreement requires a price offer or a negotiation as part of the price calculation.

Where indicative prices are required, the Code states that they must be provided to growers in certain timeframes (depending on their region and when the contract is entered into).

Where an agreement requires the final price to be agreed between the parties there are other requirements. If a pre-vintage inspection is made prior to the final price offer, the offer must be made as soon as practicable and at least prior to the anticipated harvest date and in all other cases, at least 10 business days prior to the anticipated harvest date.

I am not comfortable with having a third party resolve a dispute between me and my supplier

The dispute mechanism is intended to help resolve disputes between the purchaser and the grower in a timely and cost effective manner and to preserve the commercial relationship between the parties. It may be useful to consider that other options for resolution may be more expensive and acrimonious.

More about the dispute resolution process ...

The Code sets out the dispute resolution process for disputes in relation to price or downgrades and rejections. It exists to benefit *both* parties and can help minimise the time and cost of resolving a dispute and allows for the appointment of an independent expert if necessary. Payment for the independent expert is shared equally between the parties and the independent expert's determination will be binding on all parties.

The first part of the dispute process requires a notice of dispute to be sent by the disputing party and a dispute summary to be sent to the Committee Management Committee ('the Committee'). The process then requires a response to the dispute notice to be sent to the disputing party by the purchaser (and a notification that a response has been provided to the Committee).

If through these actions, the disputing parties fail to resolve the dispute themselves (within 60 business days the notice of a price dispute, if the dispute is notified before April 30, or 14 days business days otherwise, or within 72 hours from the notice of dispute for a downgrade/rejection dispute), then an independent expert is chosen by agreement between both parties.

If the parties do not agree on an independent expert within a set time period (and if a party makes an application to the Committee for an appointment of an independent expert within a further set time period) the Committee will nominate an independent expert.

The Code requires the parties to share the cost of an independent expert equally and states that the determination of the independent expert will be binding.

The Committee also assists by providing a list of impartial and appropriately qualified experts.

This process is designed to be cheaper and quicker than long and expensive recourse to the legal system.

I don't need to have written contracts with my growers – we rely on good relationships

Congratulations – you and your supplier are in a good position. The Code Management Committee agrees that good relationships are a fundamental underpinning to effective commercial dealings. In an ideal world, that is all that is necessary.

Things can go wrong though, businesses can be sold or management changes, so a written contract will provide clarity and protect the buyer, the grower and the relationship between the two if anything does go wrong or circumstances change.

Keep in mind that even “handshake” agreements or “mutual understanding” are legally binding contracts the moment both parties agree to something, but, with no written record, it can be very hard to support a claim if there is a disagreement. A written contract also ensures that the parties have understood each other.

Good relationships are not ruined by written contracts. Contracts provide tangible evidence that grower and purchaser respect each other and value the ongoing relationship.

I've been advised not to sign because of our existing grape supply agreements

The Code provides for transition from old to new contracts. The Dispute Resolution elements of the Code will apply for signatories immediately after signing the Code and all elements will apply to new contracts as they are introduced. Signatories also commit to bringing existing contracts in line with Part 2 (Winegrape Purchase Agreements) when a material change is made to an existing contract.

I don't contract any fruit

Wineries that don't contract any fruit can still sign the Code to demonstrate support for the principles of good commercial practice in the industry. Doing so will also mean you will be prepared if the situation changes.

We already do everything in the Code so why should we bother to sign it?

Then, there is no real reason not to sign it. It is costless to sign-up to the Code, it takes minimal effort and will encourage others in the industry to sign it. The more signatories, the more likely the positive image for the wine sector with government, customers and consumers.

I don't need to sign the Australian Wine Industry Code of Conduct because our region has its own code?

The Committee is unaware of any formal, equivalent code in existence.