

AUSTRALIAN WINE INDUSTRY CODE OF CONDUCT

2010 REVIEW

The Code of Conduct

The Australian Wine Industry Code of Conduct 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 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.

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

The Australian Wine Industry Code Administration Committee

The Code is overseen by an independent Code Administration Committee of three members and an alternate member with appropriate commercial experience, jointly appointed by the Boards of the WFA and WGGA. The members are part-time. The Committee is supported by an independent secretariat, The Accord Group, jointly funded by the WFA and WGGA.

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.

The First Review of the Code

The Code provides that a formal review will be conducted after the 2010 vintage by a suitably qualified person/s appointed by the Committee. It is also proposed that thereafter the Committee will review the operations of the Code not less than every three years. These reviews are to be completed by 30 June in the relevant year. This is the first such review.

Objectives of the Review

The review is to focus primarily on the effectiveness of the Code in achieving its stated objectives.

As set out in the Code, the review is to

- (i) assess the extent to which the Code has reduced disputes
- (ii) assess the effectiveness of the dispute resolution system
- (iii) assess the performance of the industry against the performance targets contained in the Code, and recommend new performance targets as required
- (iv) recommend any amendments to the Code required to address any problems or issues identified during the review process.

Some Issues for the Review

In addition to the matters which arise directly from the above objectives, some issues for consideration which have been identified to date include

- performance targets for coverage of the Code
- promotion and awareness of the Code
- timing and effect of indicative and final prices
- notifying growers of their rights to dispute relevant decisions
- procedures and timing for informal early dispute resolution
- handling group or class disputes under the Code
- application fees, including for group disputes
- time limits for dispute resolution under the Code
- procedures for independent experts

- fees for independent experts, including for group disputes
- inconsistency between the Code and winegrape purchase agreements, including in relation to powers of independent experts
- retention of title clauses
- possible concern by growers at the potential for retaliatory action if they seek dispute resolution
- disputes over downgrades and rejections at the weighbridge
- any formal amendments to the Code.

This list is not in any order of importance nor is it intended to be exhaustive. It is anticipated that further issues will be raised by stakeholders and other interested parties.

Conduct of the Review

The Code Administration Committee has agreed to engage Neill Buck and Associates Pty Ltd to conduct this first review of the Code. The task will involve meeting with the Committee, industry representatives and other stakeholders including winegrape purchasers who have yet to become signatories to the Code. The review is to be finalized by 30 June 2010.

Further Information

Further information, including a copy of the Code and the Committee's first Annual Report, is available at <http://www.wineindustrycode.org>. Also attached are *Procedures for Appointment of Independent Experts* and *Procedures for Independent Experts*, documents developed by the Committee.

The ACCC's *Guidelines for developing effective voluntary industry codes of conduct*, February 2005, are at <http://www.accc.gov.au/content/index.phtml/itemId/658186>.

11 May 2010

PROCEDURES FOR APPOINTMENT OF INDEPENDENT EXPERTS

1. Whenever a Notice of Dispute is sent under the Code, the Notice or summary of it must be sent to the Code Secretariat with the appropriate fee, currently \$250.
2. The Code Secretariat will check that the matters in dispute and the parties involved are covered by the Wine Industry Code.
3. The party in receipt of the Notice of Dispute must notify the Code Committee at the Secretariat address that it has responded to the Notice.
4. As soon as it has received details of such response, or in any event within 1 business day after the response is due, the Code Secretariat will endeavour to contact both parties to assist them, if possible, to informally resolve the dispute.
5. The parties to a dispute may jointly arrange and appoint an Independent Expert so long as that person appointed is impartial and qualified to rule on the matter in dispute.
6. The Secretariat will check with the parties 21 business days (or 96 hours in the case of vineyard downgrade or rejection disputes) after the date of the Notice of Dispute whether they have agreed on the selection of an Independent Expert.
7. If the parties have not jointly agreed on the selection of an Independent Expert within 21 business days of the issue of the Notice of Dispute (or 96 hours for vineyard downgrade or rejection disputes) either party may apply to the Secretariat for the appointment of an Independent Expert. Such application must be made to the Secretariat within 28 business days (or 120 hours in the case of vineyard downgrade or rejection disputes) of the date of the Notice of Dispute.
8. If either party applies for the appointment of an Independent Expert, the Secretariat shall immediately inform the Presiding Member of the Committee (or the Acting Presiding Member) and give that person a copy of the Notice of Dispute or summary of it.
9. The Presiding Member, or the Acting Presiding Member, shall select an Independent Expert from the panel of experts and advise the Secretariat who shall advise the parties.
10. The Secretariat will give the appointed Independent Expert the Independent Expert Procedures and the Notice of Dispute or the summary of it.

PROCEDURES FOR INDEPENDENT EXPERTS

1. If the parties do not jointly agree on the selection and appointment of an Independent Expert, the Code Secretariat shall advise the Independent Expert of his/her appointment by the Code Committee and supply the Notice of Dispute or the summary of it.
2. If the parties jointly agree on the selection and appointment of an Independent Expert, the party responsible for preparing the Notice of Dispute shall supply to the Independent Expert the Notice of Dispute or the summary of it.
3. The Independent Expert will act according to its normal terms of engagement which must be consistent with the Code. In particular, the Independent Expert should:
 - advise the parties of the fees applicable, which are to be shared equally by the parties
 - obtain indemnity from any costs or expenses incurred by the parties.
4. The Independent Expert shall apply the dispute resolution procedures in the agreement between the parties and subject to that may apply his/her own procedures which may include meeting with the parties, telephone conferences, obtaining written submissions or such other procedures as the Independent Expert regards as appropriate.
5. The Independent Expert will clarify with the parties who is authorised to represent them in resolving the dispute.
6. The Independent Expert must apply the agreement between the parties.
7. The determination must be made within 14 business days of the date of his or her appointment in the case of disputes over winegrape price, or within 48 hours in the case of disputes about downgrade or rejection of winegrapes at the vineyard. However, if the matter requires extensive research, submissions from the parties and/or investigation, the Independent Expert will inform the parties of a reasonable timeframe to make the determination and make the determination within that time.
8. The Independent Expert must make a determination which shall be final and binding. Failure of any party to comply with the decision constitutes a breach of the Code which may be referred to the Code Committee for disciplinary action.
9. The parties are required by the Code to provide any relevant information that the Independent Expert requests.
10. All communications brought into existence in relation to the Dispute and provided to the Independent Expert shall be in confidence and without prejudice.
11. No documents brought into existence by a disputant for the purpose of consideration by the Independent Expert may be tendered in evidence by a party other than that disputant in any litigation of the Dispute.
12. Enquiries about the procedures can be made to the Code Secretariat.