

Review of the Australian Wine Industry Code of Conduct

Submissions to

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To meet the prescribed June 30 deadline please provide all submission by email or phone by 15 June at the latest.

Discussion Paper May 2010

Purpose

The purpose of this discussion paper is to provide a framework for discussions and submissions to the Review of the Australian Wine Industry Code of Conduct (the Review).

Interested parties are invited to contact the Review by phone or email to provide any commentary or suggestions in response to the issues in this paper or any other matter they may think appropriate.

The Reviewer welcomes all comments. All submissions not marked confidential will be acknowledged in the Review Report. Submission or comments that are of a confidential nature will be treated that way by the Review.

Copies of the Australian Wine Industry Code of Conduct (the Code) and other documents are available at <http://www.wineindustrycode.org>

Background

The Code has been in place for a relatively short time but consistent with the requirements of the Code it is timely to ensure that at this stage the Code is moving in the direction intended by key stakeholders.

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

The 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.

The Code has been introduced over two years and the Code requirements are now for the most part in place.

Signatories agree 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.

They also agree to promote the Code and to work to maximize its adoption within the industry.

This Review is intended to consider the Code and its operation to ensure that it is relevant, efficient and demonstrating good practice in dispute prevention and dispute management and resolution.

Terms of Reference

The Review is required to:

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

Issues

This is an indicative list and is not intended to limit submissions or be exhaustive. Stakeholders and interested parties are invited to comment on these matters as well as anything else they wish to raise. The issues and related questions below are presented to facilitate discussions and submissions only.

Performance targets for coverage of the Code:

- How does the Code improve its coverage and what are the barriers to this?
- What factors influence wine makers to sign the Code?
- Are wine makers who have not signed the code likely to be complying with the Code principles anyway?
- What are the reasons why only a limited number of issues have been raised with the Code?
- Are there particular barriers to the parties using the Code to resolve disputes?
- Could the process for the management of disputes under the Code be improved? If so, how?

Promotion and awareness of the Code

- Are key stakeholders aware of:
 - the Code;
 - the benefits of the Code;
 - the risks of the Code being ineffective including failing to attract sufficient signatories;
 - the fact that failure of this Code may lead to pressure on the Government to mandate a Code under the Trade Practices Act ie making it law?
- What, if any, are the implications for the Code and the industry of the new powers given to the ACCC under the new penalty notice regime and the change from a criminal to a civil fines regime for Part V (misleading and deceptive conduct) of the Trade Practices Act?

Timing and effect of indicative and final prices

- Are these arrangement appropriate, helpful and being applied in accordance with the expectations of the Code and its stakeholders?

Notifying growers of their rights to dispute relevant decisions

- Should the Code include provision for growers to be advised of their dispute rights and associated time limits at the time when they are notified of downgrades or rejections? If so how?
- Are growers aware of the Code and how they can use it?
- If so are growers and winemakers aware of the benefits of this form of voluntary industry based Code?
- Has the communications process worked?
- Is more promotion of the Code required and what form should this take?
- Is the Code working as is anticipated by its stakeholders?
- If so should more issues have been raised under the Code?

Procedures and timing for informal early dispute resolution

- Has the Code brought about improved communications and early intervention in areas of potential and actual dispute?
- Are their alternate ways for early intervention for example in the Film Industry Code early intervention occurs via informal telephone approaches to Managing Directors or CEOs of Companies alerting them to an issue? In some cases this has been sufficient to address the problem thus avoiding a formal dispute and saving money.
- What evidence is there that the existence of the Code has been a helpful factor in preventing or reducing disputes and creating certainty in relationships between signatories and growers and between non signatories and growers?

Handling group or class disputes under the Code

- Should the Code handle disputes from more than one person with common issues? If so, how?
- If so what fees should apply for such disputes?
- What if any Trade Practices Act issues are raised by such arrangements where the parties to the dispute raising the issues are actual or potential competitors?
- If the Code was to handle group disputes how could this be done eg by dealing with one case and using it as the guide for others. Given the time critical nature of many disputes what would be the implications for the Code and its procedures?

Application fees

- Is the Code cost effective including costs for experts taking account of alternatives such as a mandatory Code, the absence of a Code?

Time limits for dispute resolution under the Code

- Do the present time limits allow for the parties to bring matters forward in a timely manner?
- Are there ways in which these more formal processes could be sped up by informal mechanisms? If so, how?

Procedures for independent experts

- Are these procedures likely to be effective if applied widely in the industry?
- Are their suitable independent experts available to manage disputes and are they able to assist within the arrangements set out in the Code?

Inconsistency between the Code and winegrape purchase agreements, including in relation to powers of independent experts

- Is the Code limited by contracts and winegrape purchase agreements that reduce the ability of the Code to address issues?
- If so what options could be considered to address this issue?

Retention of Title Clauses

- What is the impact of retention of title on the level of disputation in the industry?
- Should this matter be addressed in the Code? How?

Fear of retaliation

- Are concerns expressed by some growers of possible retaliatory action if they seek dispute resolution justified?
- How can the parties be encouraged to trust the Code processes?
- Has the Code assisted in providing more open dialogue in the sector and have fears of retaliation against complainants been eased by the model adopted by the Code? If not what can be done to address this?

Disputes over downgrades and rejections at the weighbridge

- Is it possible to have in place arrangements to address this problem before the event?
- Are there ways in which such time critical disputes can be resolved quickly?

Any formal amendments to the Code.

- Are there specific drafting and amendments that would make the Code more effective? If so please indicate and provide drafting suggestions?

Anything else interested parties may wish to add.

- This list is specifically open ended.
- There will be other issues not included here and interested parties should feel free to raise anything they wish in regard to the operation of the Code in this industry.

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11 May 2010