

Australian Wine Industry

CODE OF **CONDUCT**

December 2008

THE AUSTRALIAN WINE INDUSTRY CODE OF CONDUCT

The Australian Wine Industry Code of Conduct was officially launched on Friday December 19, 2008.

With the exception of Part 2 (Wine Grape Purchase Agreements), this Code takes 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 wine grapes for vintage 2010 onward. With respect to existing Agreements, each Signatory agrees to offer to its winegrape growers to:

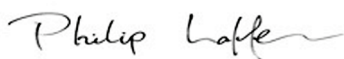
- apply the Code (with the exception of Part 2) with effect from 1 January 2009; and
- bring existing Agreements in line with the provisions of Part 2 of the Code at the time of any Material Variation to the Agreement or Associated Documents (as defined in the Code definitions).

This Code does not, by itself constitute, amend or replace any Agreement.

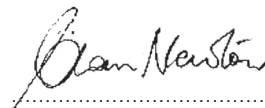
The aim of the voluntary Code is two-fold: firstly to establish a common Australian wine grape supply contract framework and secondly, to provide a dispute resolution system to manage disagreements which exist over price or quality assessments.

The Code has been developed by Wine Grape Growers Australia (WGGA) and the Winemakers' Federation of Australia (WFA) in the interests of a sustainable Australian wine industry and follows a recommendation by a Federal Senate enquiry in 2005. The research and development of the Code has been supported by the Federal Government's Department of Agriculture, Fisheries and Forestry.

Signed in Agreement on the 19th day of December 2008



Philip Laffer
President
Winemakers' Federation of Australia



Alan Newton
Chairman
Wine Grape Growers Australia



Mr Stephen Strachan,
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Winemakers' Federation of Australia



Mr Mark McKenzie
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DISCLAIMER

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LEGISLATION

All references to legislation are current at the date of the Code's release.

Capitalized words used in this Code have the meaning assigned to them in Appendix 1.

WINE CODE SECRETARIAT

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Part 1 — Preliminary

Title and Commencement of the Code

This Code is to be titled the **Australian Wine Industry Code of Conduct**. This is a non-prescribed, industry voluntary Code. Winegrape purchasers who elect to become Signatories will be governed by the Code in their commercial dealings with winegrape growers.

This Code has been developed for the Australian wine industry by the Wine Industry Relations Committee (WIRC), as a joint committee of the WFA and WGGA. The Executive Councils of WFA and WGGA have endorsed the Code.

With the exception of Part 2 (Wine Grape Purchase Agreements), this Code takes 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 wine grapes for vintage 2010 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; and
- bring existing Agreements in line with the provisions of Part 2 of the Code at the time of any Material Variation to the Agreement or Associated Documents (as defined in the Code definitions).

Except as expressly set out in this Code, the provisions of this Code are subject to all applicable Commonwealth, State and Territory laws and common law rights and obligations.

Intention

The intention of this Code is to set minimum standards for Agreements between winegrape growers and winegrape purchasers. The Signatories acknowledge that providing a clear basis for their commercial relations and an impartial, cost effective Dispute resolution scheme is important for harmonious relations between winegrape growers and winegrape purchasers.

Signatories to this Code acknowledge their existing legal obligations (for example, under the Trade Practices Act) not to engage in misleading or deceptive behaviour or unconscionable conduct.

Industry Endorsement

Signatories agree to be bound by the provisions of 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.

The register of Signatories will be maintained and available on the WFA and WGGA websites.

www.wfa.org.au

www.wgga.com.au

Signatories also commit to promoting the adoption of the Code.

WGGA and WFA agree to publicise 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 this Code by providing a written notice to the Committee.

A winegrape purchaser may cease to be a Signatory by lodging a written notice advising the Committee they no longer wish to be a Signatory. In these circumstances, the winegrape purchaser will cease to be a Signatory on the date that their notice is received by the Committee, however, they remain bound by the provisions of Agreements entered into before that date which incorporate the Code either expressly or by reference.

Signatories to this Code agree that the Committee may publish their names as Signatories and may also publish the details of any Code breaches which the Committee has found applies to that Signatory at the time of the publication of the annual report and which have not been resolved by the Signatory. Signatories agree to release the Committee and each member of the Committee from any liability to the Signatory as a result of the publication of these details, provided all published information is accurate. However, details relating to any Dispute between a Signatory and a winegrape grower(s) which are notified to the Committee in accordance with Part 3 of this Code will remain confidential and may only be disclosed by the Committee in aggregate form (without the parties being named or specific details of the Dispute being disclosed).

Horticulture Code of Conduct

Some transactions in the winegrape supply industry are subject to the mandatory Trade Practices (Horticulture Code of Conduct) Regulations 2006. When Signatories to this Code participate in a transaction covered by the Horticulture Code of Conduct, the Horticulture Code of Conduct will prevail over this Code to the extent of any inconsistency.

Administration of Code

The Code will be managed by a Code Administration Committee (the Committee), comprising independent members jointly appointed by WFA and WGGGA, in accordance with Part 5.

Review

A formal review of the Code will be conducted by the Committee after vintage 2010 by a suitably qualified person/s appointed by the Committee and thereafter the Committee will review the operations of the Code not less than every three years.

The objectives of the review of the Code shall be 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; and
- (iv) Recommend any amendments to the Code required to address any problems or issues identified during the review process.

It is intended that this review will be completed by 30 June in the relevant year.

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

Code performance will be reported annually on a regional basis including number of Signatories, percentage of crush represented by the Signatories, the number of Disputes notified to the Committee and resolved under the provisions of the Code, as well as the number of breaches of the Code reported and resolved under the provisions of the Code.

Part 2 — Winegrape Purchase Agreements

As a minimum, all Agreements must:

- 1 be in writing, contain the elements set out in clauses 2.1 to 2.15. and be entered into and, if applicable, varied in accordance with clauses 2.16 and 2.17.
- 2 appropriately refer to any other important elements of the Agreement; and
- 3 be clear and concise and in plain English.

Minimum terms and conditions to be contained in an Agreement

2.1 Application of Code.

- 2.1.1 Each Agreement must contain a statement that the parties to the Agreement agree that it is governed by the Code and that, in the event of any inconsistency, the provisions of the Code in force on the date that the Agreement was entered into will prevail and will apply as if they formed part of the Agreement. If there is a change to the Code, each Signatory must make an offer to its winegrape growers to amend existing Agreements to reflect that change within three months of the date of endorsement of the change in accordance with clause 5.1.7.

2.2 Parties to an Agreement and Term of the Agreement

- 2.2.1 All parties involved in the winegrape purchase arrangements are to be identified in the Agreement including the winegrape purchaser, the winegrape grower and any landowner or lessee (if applicable).

All Agreements must specify the duration of the Agreement including commencement date and expiry date, or the termination mechanism (including applicable notice periods) where there is no fixed expiry date.

2.3 Pricing Methods

- 2.3.1 All Agreements must contain a fixed price and/or a clear statement as to how the final price payable will be determined.

2.4 Price Notification

- 2.4.1 Where the Agreement requires a price offer or a negotiation as part of the calculation of the price for the winegrapes, the winegrape purchaser must, unless prevented due to unforeseen and extraordinary reasons:

2.4.1.1 by 15 December each year - provide to its winegrape growers in the Hunter Valley, Riverina, Murray Darling/Swan Hill and Riverland regions Indicative Regional Prices for each variety of winegrape.

2.4.1.2 By 15 January each year – use its best reasonable endeavours to provide to its winegrape growers in all other regions Indicative Regional Prices for each variety of winegrape.

If an Agreement does not exist on the relevant date but is subsequently entered into prior to the vintage period (for example, an Agreement entered into in February), then the winegrape purchaser must provide the Indicative Regional Prices referred to above to the winegrape grower at the time the Agreement is entered into, unless the actual price offer is made at that time.

- 2.4.2 Notwithstanding clause 2.4.1, in all regions where the relevant Agreement requires the price to be agreed between the parties, any winegrape price offer required under the Agreement must be made:
- (a) if the winegrape purchaser undertakes a pre-vintage vineyard inspection prior to making a final winegrape price offer - as soon as practicable and, at the latest, prior to the anticipated harvest date for those winegrapes; and
 - (b) in all other cases – at least 10 Business Days prior to the anticipated harvest date for those winegrapes.

2.5 Price Adjustment

- 2.5.1 Any provision for price adjustment must be clearly spelt out and specify in a transparent manner any bonuses or penalties and the mechanism(s) used to determine bonuses/penalties.

2.6 Terms of Payment

- 2.6.1 The terms of payment are to be clearly stated and, unless otherwise agreed by the parties to the Agreement, shall be consistent with the industry standard of:
- 2.6.1.1 1/3 at the end of the month following the month of delivery;
 - 2.6.1.2 1/3 at the end of June; and
 - 2.6.1.3 balance at the end of September of the year that the first payment commenced.
- 2.6.2 The payment terms for any price adjustment or payments based on wine assessment shall be specified in the Agreement.
- 2.6.3 Any penalties for late payments shall be stipulated in the Agreement.

2.7 Tonnage and Vineyard Details

- 2.7.1 The Agreement must state whether the amount of winegrapes to be purchased is “area-based” or “specified tonnes” and must stipulate the area and/or the tonnes as the case may be.
- 2.7.2 The Agreement must clearly describe the winegrapes to be purchased.
- 2.7.3 Where relevant, the Agreement must specify the vineyard details such as patch/block number identification, identification of clones and rootstocks when required, or a vineyard map showing vineyard details for the vines to which the Agreement pertains.

2.8 Winegrape Standards, Assessment and Harvest

- 2.8.1 The Agreement must state any quality standards which apply to the winegrapes being purchased, including specifying any minimum requirements for maturity, purity and condition, relevant to the region and variety.
- 2.8.2 The Agreement must describe any assessment method for vineyard or weighbridge winegrape assessment which will apply under the terms of that Agreement if that method is directly inconsistent with the methods described in “Winegrape Assessment in the Vineyard and the Winery” (as amended from time to time and endorsed by WGGGA and WFA).
- 2.8.3 The Agreement must specify the process for determining the harvest time(s) for the winegrapes.

2.9 Delivery and Freight

- 2.9.1 The Agreement must state the delivery point for the winegrapes and identify which party bears the costs and associated risks of freight.

2.10 Title in Winegrapes

- 2.10.1 The Agreement must state when title in the winegrapes passes from the winegrape grower to the winegrape purchaser. The Agreement must also specify the point at which the winegrape purchaser accepts or rejects the winegrapes.

2.11 Force Majeure

- 2.11.1 If there is a force majeure clause in the Agreement, it must be clearly specified.

2.12 Assignment and Sale of Vineyard

- 2.12.1 The Agreement must clearly specify any restrictions imposed by the winegrape purchaser on the rights to transfer possession or ownership of the relevant vineyard.
- 2.12.2 The Agreement must clearly specify any obligations on the winegrape grower upon the sale or disposal of possession of the relevant vineyard.

2.13 Professional Advice

- 2.13.1 An Agreement must contain a prominent statement that the winegrape grower signing the Agreement should seek independent legal, financial and taxation advice. This statement must appear just above the winegrape grower's signing provisions.

2.14 Dispute Resolution Clause

- 2.14.1 The Agreement must include a Dispute resolution clause that is consistent with Part 3 of this Code.

2.15 Reasonable Time

- 2.15.1 A Signatory may only enter into an Agreement with a winegrape grower after providing the Agreement and any Associated Documents to that winegrape grower and allowing the winegrape grower a reasonable period to read and understand the document and obtain independent advice before entering into the Agreement. For an Agreement which incorporates an obligation to buy and sell winegrapes from more than one vintage, a “reasonable period” is 15 Business Days from the date of receipt by the winegrape grower. For all other Agreements other than Spot Market Purchases, a “reasonable period” is 7 Business Days from the date of receipt by the winegrape grower. For Spot Market Purchases, a “reasonable period” will depend on the circumstances and may be a relatively short period (for example, less than one Business Day if harvest is imminent).

2.16 Variations

- 2.16.1 It is recognised that variations to Agreements from time to time may need to be negotiated. Any variation to an Agreement must be:
- 2.16.1.1 clearly specified, and
 - 2.16.1.2 agreed, confirmed in writing and signed by all parties to the Agreement.

Agreements must not contain a provision which allows one party to unilaterally amend the Agreement without the other parties’ written consent to the specific amendment.

- 2.16.2 A Signatory may only vary an Agreement by providing that variation to the winegrape grower in writing and allowing the winegrape grower a reasonable period to read and understand the variation and obtain independent advice before signing their acceptance of the variation. For an Agreement which incorporates an obligation to buy and sell winegrapes from more than one vintage, a “reasonable period” is 15 Business Days from the date of receipt by the winegrape grower. For all other Agreements other than Spot Market Purchases, a “reasonable period” is 7 Business Days from the date of receipt by the winegrape grower. For Spot Market Purchases, a “reasonable period” will depend on the circumstances and may be a relatively short period (for example, less than one Business Day if harvest is imminent).

2.17 Failure to Comply

- 2.17.1 Failure to comply with clauses 2.1 through to 2.17, where applicable, will amount to a breach of the Code and may be referred to the Committee for disciplinary action.

Part 3 - Dispute Resolution

Purpose

Disputes in the main occur over the perceived inadequacy of the winegrape price, or over an apparent failure to comply with specifications for winegrape maturity, purity or condition resulting in either price adjustments or rejection of the winegrapes.

This section is intended to help resolve Disputes between the winegrape purchaser and the winegrape grower in a timely and cost efficient manner to preserve the ongoing commercial relationship.

The Code requires both parties to participate in the Dispute resolution procedure and to assist the Independent Expert by providing any information requested. Any Disputing Party who invokes the Dispute resolution process is agreeing to be bound by the Code in relation to the conduct of the Dispute, in particular, the clauses relating to defamation and to cost recovery.

The existence of a Dispute does not relieve any party of their obligations under the Agreement.

Powers of Independent Expert

Notwithstanding clause 2.1.1, the appointed Independent Expert will determine the Dispute by applying the terms of the Agreement and, where necessary, by applying the Independent Expert's own procedures, in the resolution of the Dispute, but only to the extent that the Independent Expert's resolution procedures are not inconsistent with the terms of the Agreement.

Subject to compliance with this Code, the decision of the Independent Expert is final and binding on all parties and cannot be appealed or challenged except in the case of a manifest error or proven misconduct.

Failure by a Signatory to comply with the determination of the Independent Expert will amount to a breach of this Code and the matter may be referred to the Committee for disciplinary action.

Information provided to the Independent Expert

All communications brought into existence in relation to the Dispute and provided to the Independent Expert shall be in confidence and without prejudice.

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.

3.1 Disputes over Winegrape Price

When a Dispute arises over a price offer made by a winegrape purchaser under clause 2.4.2 or, where no price offer is required to be made under clause 2.4.2, in relation to the calculation of the price in accordance with the Agreement, the parties agree to follow these resolution procedures:

- 3.1.1 Within 7 Business Days of:
 - 3.1.1.1 the determination of the price in accordance with the Agreement being notified to the winegrape grower (but only where no price offer is required to be made under clause 2.4.2); or
 - 3.1.1.2 the date of the price offer being made by the applicable party under clause 2.4.2;

the Disputing Party will inform the other party in writing of the background to the Dispute, the issue(s) in dispute and the outcome desired. This notice will be known as the **Notice of Dispute**. A summary of the Dispute (notifying the parties, the category of Dispute, tonnage and region) is to be supplied to the Committee by the Disputing Party at the same time.
- 3.1.2 Within 7 Business Days of receiving the Notice of Dispute, the other party will respond in writing, indicating whether the desired outcome is agreed, and, if it is not, whether that party wishes to offer another outcome, and inform the Committee in writing that a response has been provided.
- 3.1.3 The Disputing Party and the winegrape purchaser have 14 Business Days from the issue of the Notice of Dispute to negotiate a mutually agreed outcome. If these parties have not resolved the Dispute within this 14 Business Day period, they must jointly appoint an Independent Expert to make a determination of price. The Disputing Party and the winegrape purchaser must be satisfied that the Independent Expert is impartial and qualified to rule on the matter(s) under dispute.
- 3.1.4 If the Disputing Party and the winegrape purchaser cannot agree on the selection of an Independent Expert within 21 Business Days of the issue of the Notice of Dispute, the Presiding Member of the Committee (or other Committee Member appointed to preside in the event that the Presiding Member is unavailable) will appoint an appropriate Independent Expert from the panel of experts endorsed by the Committee upon application from either party, such application to be made within 28 Business Days of the issue of the Notice of Dispute.
- 3.1.5 The appointed Independent Expert will deliver a determination within 14 Business Days of the date of his or her appointment or, if the matter requires extensive research, submissions from the parties and/or investigation, will provide a reasonable timeframe in which to complete the task.
- 3.1.6 The Disputing Party and the winegrape purchaser agree to be bound by the determination of the Independent Expert in the absence of manifest error or misconduct and to share costs equally.
- 3.1.7 The Independent Expert will be engaged under their normal terms of engagement and in any event will be indemnified by the parties as to their costs and expenses.

3.2 Disputes over Downgrades and Rejections in the Vineyard

A Dispute may arise if a winegrape grower disagrees with an assessment by the winegrape purchaser that the winegrapes have failed to meet agreed specifications contained in the Agreement and a financial penalty is imposed or some or all of the winegrapes are rejected.

If a Dispute in relation to a field assessment occurs, the matter needs to be resolved quickly, ideally before the expected date of harvest, and may in some cases need to be resolved within a few days to avoid deterioration of the winegrapes.

A winegrape grower will advise the winegrape purchaser within a reasonable time prior to harvest, of any change in the condition of the fruit that could result in a downgrade or rejection of the winegrapes under the terms of the relevant Agreement. The winegrape purchaser will notify the winegrape grower of any decision by the winegrape purchaser to impose a financial penalty and/or reject the winegrapes in accordance with the terms of the Agreement.

When a Dispute arises in relation to the imposition of a financial penalty and/or rejection of the winegrapes as a result of a failure to meet agreed specifications contained in the Agreement, the parties agree to follow these resolution procedures:

- 3.2.1 The Disputing Party will, as soon as practicable, notify the winegrape purchaser in writing of the issue(s) in dispute and the outcome desired. This notice will be known as the **Notice of Dispute**. A summary of the Dispute (notifying the parties, the category of Dispute, tonnage and region) is to be supplied to the Committee by the winegrape grower at the same time.
- 3.2.2 The winegrape purchaser will respond in writing to the Disputing Party within 48 hours from the time of issue of the Notice of Dispute, indicating whether the desired outcome is agreed, and, if it is not, whether the winegrape purchaser wishes to offer another outcome, and inform the Committee in writing that a response has been provided.
- 3.2.3 If after 72 hours from the time of issue of the Notice of Dispute the Disputing Party and the winegrape purchaser have been unable to resolve the Dispute, the matter will be settled by an Independent Expert jointly appointed by them. They must be satisfied that the Independent Expert is impartial and qualified to rule on the matter(s) under dispute.
- 3.2.4 If the Disputing Party and the winegrape purchaser cannot agree on the selection of an Independent Expert within 96 hours from the time of issue of the Notice of Dispute, the Presiding Member of the Committee (or other Committee Member appointed to preside in the event that the Presiding Member is unavailable) will appoint an Independent Expert from the panel of experts endorsed by the Committee upon application from either party, such application to be made within 120 hours of the time of issue of the Notice of Dispute.
- 3.2.5 The appointed Independent Expert will deliver a determination within 48 hours of being appointed or, if the matter requires extensive research, submissions from the parties and/or investigation, will set a reasonable timeframe in which to complete the task.
- 3.2.6 The Disputing Party and the winegrape purchaser agree to be bound by the determination of the Independent Expert in the absence of manifest error or misconduct and to share costs equally.
- 3.2.7 The Independent Expert will be engaged by Disputing Party and the winegrape purchaser under their normal terms of engagement and in any event will be indemnified by the parties as to their costs and expenses.

3.3 Disputes over Downgrades and Rejections at the Weighbridge

Winegrape purchasers (or their agents/representatives) are encouraged to inspect the condition of winegrapes in the vineyard prior to harvest as a means of minimizing Disputes at the weighbridge.

A Dispute can arise at the weighbridge if winegrapes are downgraded (resulting in a financial penalty) or rejected if, in the opinion of the winegrape purchaser, they have failed to meet stipulated specifications. The matter needs to be resolved quickly, ideally within 12 hours of delivery of the winegrapes. The winegrape grower will be notified as soon as practicable of a downgrade or rejection of their winegrapes. The winegrape grower or the winegrape grower's agent/representative (in the event of winegrapes processed at a distance from the vineyard) should be given the opportunity where practical to inspect the rejected or downgraded winegrapes (within a reasonable time of delivery) and to try and reach agreement with the winegrape purchaser on the nature and extent of the downgrade and any resulting price adjustment to allow the continued processing of the winegrapes or the rejection of the winegrapes.

For the avoidance of any doubt but without limiting the other obligations set out in this clause, the Code does not require an Independent Expert to resolve disputes over downgrades and rejections at the weighbridge.

3.4 Legal Proceedings

The parties agree not to institute legal proceedings (except to obtain urgent interlocutory relief) or make any complaint to a regulatory authority in relation to a Dispute covered by Part 3 of the Code until all avenues open to them under Part 3 of the Code have been implemented and, where relevant, a determination made. The parties may institute legal proceedings (or take any other action that they consider appropriate) in relation to any other type of Dispute. Nothing in this clause affects or limits the operation of clause 3 relating to the powers of the Independent Expert.

Part 4 — Breaches of the Code

4.1 Complaints

- 4.1.1 A complaint of a breach of the Code by a Signatory must be referred to the Committee in writing.
- 4.1.2 Either a winegrape grower or a winegrape grower's association may lodge a complaint with the Committee.
- 4.1.3 A Signatory cannot lodge a complaint against another Signatory, unless the complaint relates to conduct that will bring the wine industry into disrepute.
- 4.1.4 The complaint must:
 - 4.1.4.1 State the name of the Signatory and the party bringing the complaint.
 - 4.1.4.2 Provide details as to the nature of the complaint by reference to this Code.
 - 4.1.4.3 Specify what outcome the Complainant believes will resolve the issue.
- 4.1.5 If a complaint alleging a breach of the Code is reported to the Committee, the Committee must take the following action prior to making a determination:
 - 4.1.5.1 notify the Signatory within 7 Business Days that a complaint has been lodged with the Committee;
 - 4.1.5.2 provide to the Signatory the details of the complaint and Complainant and the outcome the Complainant requires to resolve the complaint;
 - 4.1.5.3 allow the Signatory 21 Business Days to respond to the complaint in writing;
 - 4.1.5.4 provide the Signatory's written response to the Complainant; and
 - 4.1.5.5 in the event that the Complainant is not satisfied with the Signatory's response, allow the Complainant 14 Business Days to respond to the Committee.
- 4.1.6 If the matter has not been resolved in accordance with the procedure set out in clause 4.1.5, the Committee must sit and make a determination on the complaint.
- 4.1.7 A meeting of the Committee to rule on a complaint must occur within 30 Business Days from the date of the Complainant's final response.
- 4.1.8 If the Committee determines that no breach of the Code has occurred, the Committee is to write to the Complainant and the Signatory and provide its determination and reasons within 7 Business Days.
- 4.1.9 If the Committee determines that a breach of the Code has occurred then the Committee must write within 7 Business Days to the Signatory and provide the determination, reasons and remedy or penalty, if applicable.

- 4.1.10 If the Committee determines that a breach has occurred, the Committee may do any or all of the following:
- 4.1.10.1 notify the Signatory what steps it would be required to take to remedy the breach.
 - 4.1.10.2 warn the Signatory that they may be removed as a Signatory to the Code if they do not remedy the breach within a reasonable period (which must be specified in the notice) and/or if they commit future breaches of the Code; and/or
 - 4.1.10.3 subject to clause 4.2, remove the Signatory from the list of Signatories to the Code.
- 4.1.11 If, subsequent to a finding that a Signatory has breached the Code, that Signatory rectifies the breach in accordance with the Committee's instructions, then the Committee must write to the Complainant within 7 Business Days and advise the Complainant that the Committee considers that the Signatory is no longer in breach of the Code.
- 4.1.12 In all cases, the Committee's determination may only be challenged in the case of manifest error or proven misconduct.

4.2 Removing a Signatory from the Code

- 4.2.1 In determining whether to remove a Signatory from the Code, the Committee must take into consideration the following:
- 4.2.1.1 the nature of the complaint;
 - 4.2.1.2 the conduct of the Signatory and the Complainant;
 - 4.2.1.3 the conduct of the Signatory in responding to the Committee;
 - 4.2.1.4 the systemic nature (if any) of the complaint;
 - 4.2.1.5 the number of complaints referred to the Committee against the Signatory;
 - 4.2.1.6 whether the complaints made against the Signatory are the same or otherwise;
 - 4.2.1.7 any previous breaches of the Code by the Signatory;
 - 4.2.1.8 whether the conduct brings the wine industry into disrepute; and
 - 4.2.1.9 any other matter that the Committee considers relevant.

4.3 Cost Recovery

- 4.3.1 If the Committee determines a breach of the Code has occurred, the Committee may recover from the party in breach reasonable costs incurred by the Committee in determining the complaint.
- 4.3.2 Should a grapegrower or grapegrower association make a complaint alleging a breach that is subsequently found to be invalid then the Committee may recover from the grapegrower or grapegrower association reasonable costs incurred by the Committee in determining the complaint.

Part 5 — Administration of the Code

- 5.1.1 The Code will be administered by the Committee.
- 5.1.2 The Committee will comprise 3 independent members –including a Presiding Member and 2 other Members with appropriate commercial experience. All 3 Members will be jointly agreed by the Boards of both the WGGGA and WFA.
- 5.1.3 The Committee will be supported by an independent secretariat jointly funded by WGGGA and WFA.
- 5.1.4 All 3 Members will be appointed by a joint WGGGA and WFA selection committee using selection criteria agreed by the Boards of both bodies.
- 5.1.5 A quorum shall comprise the Presiding Member and all other Members.
- 5.1.6 All decisions of the Committee must be made by way of simple majority.
- 5.1.7 Any recommendation to amend the Code must be unanimously agreed by all Members of the Committee and endorsed in writing by the Boards of WGGGA and WFA. Any change to the Code which is endorsed between 1 January and 31 July in any year will take effect on 1 November in the same year. Any change endorsed between 1 August and 31 December in any year take effect on 1 November of the following year.
- 5.1.8 The Committee shall undertake the following roles:
 - 5.1.8.1 administer the Code, including the setting of reasonable fees to support the Dispute resolution system;
 - 5.1.8.2 manage the business operations of the Code including ensuring that suitable insurance arrangements are in place;
 - 5.1.8.3 produce an annual report to be published by 30 September each year, containing:
 - (i) a description of the nature and number of Disputes received and any other comments it wishes to make about conduct or trends in the industry; and
 - (ii) a report to the industry on the operations of the Code and the Committee and any matters requiring consideration by the industry arising from the activities of the Committee including the names of any parties removed from the Code;
 - 5.1.8.4 at the discretion of the Committee, maintain and publish a list of Code Signatories found to be in breach of the Code; and
 - 5.1.8.5 monitor the operation of the Code and, as appropriate, recommend any amendments to the Code that may assist in its operation, and consult with WGGGA and WFA on any proposed amendments to the Code.

Contacts

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APPENDIX 1

Definitions

“Agreement” means an Agreement between a winegrape grower and a Signatory for the supply of winegrapes.

“Associated Documents” means all documents that are incorporated by reference in or which form part or purport to form part of an Agreement.

“Business Day” means a day other than a Saturday, Sunday, public holiday or bank holiday in the State in which the vineyard to which the Agreement applies is situated.

“Code” means this Code.

“Committee” means the Code Administration Committee established to manage the operation of this Code in accordance with Part 5 – Administration Of The Code.

“Complainant” means, as applicable, a person, corporation or other body corporate:

- raising a Dispute for determination under the Dispute resolution procedures of this Code; or
- making a complaint to the Committee in accordance with Part 4 – Breaches of the Code.

“Dispute” means any disagreement between a Disputing Party and a Signatory which:

- may be referred by the Disputing Party for resolution in accordance with Part 3 of the Code; and
- is in relation to a matter which is permitted under the terms of the relevant Agreement to be disputed by the Disputing Party.

“Disputing Party” means a winegrape grower who initiates a Dispute resolution process under clauses 3.1 or 3.2 of this Code and/or any other party who is authorized or permitted under the terms of the relevant Agreement to do so on behalf of or in association with the winegrape grower.

“Independent Expert” means an independent, qualified person/s appointed by the parties to a Dispute or by the Committee to make a determination on Disputes notified to them under the terms of this Code.

“Indicative Regional Price” means, in relation to a variety of winegrapes, an indicative fair market price for that variety of winegrapes from that region for the next vintage which:

- is not winegrape grower or vineyard specific;
- is set by the winegrape purchaser acting reasonably;
- is not an offer capable of being accepted by a winegrape grower or binding on the winegrape purchaser; and
- is not a guarantee of the final price that will be offered to the winegrape grower.

“Material Variation” means any variation to an Agreement or Associated Documents whether as a unilateral variation permitted by the Agreement or by consent between the parties, other than a variation of the price or winegrape assessment methods already provided for in the Agreement. A Material Variation includes but is not limited to any variation of:

- The term of the Agreement including extensions;
- Terms of payment;
- Price adjustment criteria;
- Winegrape assessments including winegrape standards (other than as provided for in the Agreement);
- Specification of blocks, varieties and tonnages including production caps or quotas;
- Delivery and freight arrangements; and
- Dispute resolution procedures;

“Notice Of Dispute” means a formal written notification between the parties to a Dispute.

“Presiding Member” means the Independent Chair of the Committee.

“Signatory” means a winegrape purchaser who has notified the Committee that it will be bound by the Code.

“Spot Market Purchase” means an Agreement for the sale and purchase of winegrapes which is entered into between the parties less than 10 Business Days prior to the expected harvest date for those winegrapes (or, if there are more than one expected harvest date applicable to the Agreement, 10 Business Days prior to the earliest of these dates).

“WFA” means Winemakers Federation Of Australia.

“WGGA” means Wine Grape Growers Australia.

