



International Wine Law Association

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Codes of Conduct

The Australian example:
Australian Wine Industry Code of
Conduct
Horticulture Code of Conduct

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Summary



- The Horticulture Code of Conduct
 - › Key elements
- The Australian Wine Industry Code of Conduct
 - › The parties and signatories
 - › Key elements
 - › Initial operation
 - › Independent review
 - › Recommendations and follow up

The Horticulture Code of Conduct

- Mandatory Code
- Part of the Trade Practices Regulations
- Introduced in 2007
- Applies to all fresh fruit and vegetables
- Applies to agents and merchants (who buy and on-sell)
- Does not apply to purchasers who export or retail so is not applicable generally to winery/ grapegrower agreements



Horticulture Code - Key elements

- Must publish terms of trade publicly
- Must have a signed, written agreement
- Grower must get independent legal advice
- Must specify:
 - › Delivery requirements
 - › Basis for rejection
 - › Insurance
 - › Term and variations
 - › Quantity/quality requirements
 - › Contact person
 - › Termination process
- Cooling off period
- Dispute resolution procedures – produce assessment



The Wine Industry Code of Conduct

- Voluntary code of minimum standards
- Between growers and purchasers of winegrapes
- Talks began in 2003, Senate Inquiry in 2005 pushed for it and recommended it be mandatory under the TPA – the Australian Government did not agree
- Developed by a joint committee of WFA and WGGA
- Took effect on 1 January 2009/ 2010 vintage forward
- For new agreements only
- However, for existing agreements, purchasers agree to offer to growers to apply the Code or bring agreements into line at the next material variation (defined)

The wine industry parties

- Joint WFA and WGGA committee
- Winemakers' Federation and Wine Grape Growers
- WFA is voluntarily funded by wineries
- WGGA is voluntarily funded by grapegrowers
- Neither receives government levies
- Supported by the federal Department of Agriculture
- Code Administration Committee (triennial reviews)
- Performance targets (85% of crush in 2nd vintage)



The signatories

- Grape purchasers are the signatories to the agreement
- They can withdraw at any time but remain bound for agreements entered into before withdrawal
- As at 1 April 2011, signatories are
 - › Constellation Australia Limited (Accolade)
 - › Treasury Wine Estates
 - › Orlando Wines
 - › Tyrrell's Vineyards Pty Ltd
 - › Balnaves Vineyard Services Pty Ltd
 - › Henry Holmes Wines Pty Ltd
 - › Rusden Wines



Key elements

- Must be in writing
- Contain minimum conditions
- Highlight important elements
- Plain English



Minimum conditions

- 2.1: Statement that governed by Code (provide copy)
- 2.2: All parties (including landowner/lessee if applicable)
- 2.3: How final price is determined
- 2.4: Price notification – including indicative regional prices
- 2.5: Price adjustment
- 2.6: Payment terms – including industry standard terms
- 2.7: Tonnage and vineyard details
- 2.8: Standards, assessment and harvest
- 2.9: Delivery and freight
- 2.10: Passage of title
- 2.11: Force majeure
- 2.12: Assignment and vineyard sale
- 2.13: Professional advice
- 2.14: Dispute resolution clause
- 2.15: Reasonable time (7/15 days)



Dispute resolution

- Generally inadequacy of price or failure to comply with prescribed standards
- Appointment of an Independent Expert
- Price disputes
- Vineyard rejections (72 hours from notice)
- Weighbridge rejections (12 hours of delivery)
- Procedures
 - › dispute notice
 - › written response
 - › negotiations
 - › joint appointment of expert (shared costs)
 - › determination
- Agreement not to pursue legal proceedings



Breach of the Code

- Agreements under the Code may only be varied in certain manners and may not be unilaterally terminated
- Breaches are referred to the Committee for disciplinary action to be imposed
- Complaints in writing against signatories
- Cannot be from other signatories unless industry disrepute
- Opportunity to respond
- If breach assessed, remedy steps or removal from Code, costs recovery



Initial operation

- The signatories during the 2010 vintage represented around 37% of total crush (75% target) (especially low in the large Riverina production area – 15%)



- No disputes notified in 2010
- One complaint of breach
 - › price notification requirements
 - › complaint withdrawn by negotiation
- Issues of promotion of importance by WFA/WGGA and blockages stopping more industry use
- Concerns over issues where there are inconsistencies between the Code and purchase agreements

Independent review

- Education issues
- Unreasonable targets
- Adoption/performance issues



- › recommendation for resignation and advise government of unlikely success if not significant increase in 12 months
- › unreasonable to create expectations of effective management without stronger participation
- › information gap among parties
- › few disputes referred

Recommendations

- Disclosure of signatory status
- Simplified dispute resolution procedures
- Added multi-party dispute process
- Reduced complexity generally
- Reduced fees
- Issue of cost penalty
- Obligations on both parties
- Opt-out for members
- Downstream pressures
- Senior industry involvement
- Fair and equitable obligations
- Issue of retaliation
- ROT clauses



Follow up to recommendations

- General consensus on adoption of recommendations
- Promotion and education presently delayed
- Committee active in development and adoption of Code
- Statement to NSW Parliamentary Committee and subsequent report issued - strong concurrence for the Code to be mandatory and recommendation to NSW government to pursue that goal or appoint independent body
- WGGA has said that if the Code is not successful soon, they will promote a mandatory code
- Re-invigoration in progress



Questions?

- Thanks for listening!
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