

Code Management Committee

SUBMISSION

Rural and Regional Affairs and Transport References Committee's inquiry into the adequacy of the voluntary Code of Conduct for Australian Winegrape Purchases

October 2024



Code Management Committee for the
Code of Conduct for Australian
Winegrape Purchases

The intention of this submission is not to present a policy position, but to provide relevant background on the role of the Code Management Committee, the operations of the voluntary Code of Conduct for Australian Winegrape Purchases and the history of its achievements.

The Code of Conduct for Australian Winegrape Purchases (the Code) was developed as a foundation for building relationships between growers and winemakers that are fair, equitable and mutually beneficial as well as to provide a quick and cost-effective dispute resolution process. The Code sets out minimum standards that must be included in to grape purchasing agreements including quality assessment for the purpose of affecting price, various mechanisms for determining price and minimum payment terms.

Originally signed by representatives of the former Winemakers' Federation of Australia and Wine Grape Growers Australia on 19 December 2008, the Code is now administered by Australian Grape and Wine Incorporated. The Code was subject to a comprehensive review between 2019 and 2020 and a significantly amended version was released in November 2020. In conducting that review, the Committee adopted a number of recommendations from the ACCC Winegrape Market Study released in September 2019 and made a commitment to encouraging greater uptake of the Code by winemakers. The Committee has since undertaken a targeted approach to engaging with industry to encourage new signatories. Since 2019, the number of Code signatories has nearly doubled from 44 in 2019 to 83 in 2024.

The Committee has equal representation from winemakers and growers and an Independent Chair. The Committee is elected by a sub-committee of the Australian Grape and Wine Board that also has equal representation of growers and winemakers.

The members are:

- Peter Hayes (independent Chair)
- Ben Rose, Performance Viticulture (grower, resigned September 2024)
- Fiona Anderson, Treasury Wine Estates (wine producer)
- Danielle Arnfield, Accolade Wines (wine producer)
- Stuart Andrew, Winkie Heights Pty Ltd (grower)
- Georgie Johnston, Pernod Ricard (wine producer)
- Ashley Keegan, The FABAL Group Pty Ltd (grower)
- Luke Edwards, Casella Family Wines (wine producer)
- Jim Caddy, Inland Wine Regions Alliance (grower)
- Richard Neagle, Veraise (grower, appointed September 2024)

Murray Valley Winegrowers & Riverina have observer status on the committee through Paul Derrico & Jeremy Cass. The Committee is in the process of expanding its membership to include an additional winemaker and grower member.

Where there is a breach of the Code by a signatory, the Committee may refer the matter to the ACCC or another relevant regulatory authority. The Committee also has the authority to remove a signatory who is found to be in breach of the Code.

The Committee views the Code as an effective guide for individuals, organisations, and the wine sector more broadly towards responsible behaviour, guarding against misconduct and opportunistic behaviour, while fostering long term improvements in business culture. The voluntary nature of the Code means it is cost effective and is industry led and operated. Its advantages are that it affords flexibility over a regulated code in that it is nimble and can be updated and reviewed in response to industry needs, to reflect best practice and to deal with some of the complex issues in the winegrape market. While signing up to the Code is not mandatory for winemakers, it is strongly encouraged.

Highlights since 2018-19

ACCC Follow Up Report

In 2021 The ACCC released a favourable follow up report to their Winegrape Market Study where it was recognised that the sector had made important progress in implementing a number of the recommendations and that Australian Grape & Wine “has made significant efforts to improve the coverage and strength of the voluntary industry code”. Improvements that have been made include increasing the coverage and strength of the Code, improving quality assessment processes and improving contracting processes, in particular, addressing unfair contract terms. While the ACCC did not recommend a mandatory code, they highlighted opportunities for further improvements on key issues that should be addressed in the near future, including a need to improve price transparency.¹ Significant work has been done since to improve market price transparency. The Code Committee has been informed that at the very least, the three largest winemakers have all voluntarily shortened their terms. While this was acknowledged by the ACCC as a positive development, they also stated that they did not believe the sector had made sufficient progress.

Code Review Processes

Under the Code, the Code must be subject to a formal review every three years or as otherwise considered appropriate by the Committee. The Committee reviewed the Code more regularly in its first year of operation and made several minor amendments, primarily to improve clarity of wording. These are documented on page 3 of the Code. In 2023 the Code Committee conducted a more formal review considering a range of clauses in terms of how they were operating. Specifically, the Committee reviewed the dispute resolution process and made some amendments aimed at simplifying the

¹ <https://www.accc.gov.au/system/files/wine%20grapes.pdf> p23

steps required for a grower to lodge a dispute and improving the efficiency of the process. During this review, the Committee also discussed shortening payment terms. It was decided that while the focus remained on increasing coverage of the Code, no significant changes would be made. A key consideration was to maintain an optimal balance between gaining uptake strengthening the Code to the extent that signing it would put signatories at a competitive disadvantage to non-signatories. The Committee also held a view that recent prohibition of UCTs in standard form contracts could potentially address lengthy payment terms. That option would be preferable to a broad-brush approach because under certain circumstances, such as where bargaining power imbalances do not exist, both parties are amicable to an arrangement and where the price on offer is compensatory for longer terms, setting out terms may not be beneficial to either party.

Although the Committee acknowledged the advantage of a mandatory code given that it would capture non-signatories and offer a more robust compliance mechanism, there was a general sentiment that there remained further work to be done engaging non-signatories before any discussions relating to regulation of the market be progressed. Furthermore, it was recorded that a mandatory Code should not be contemplated in isolation to the impact of certain retailer behaviours on wine producers. Concerns were voiced that regulatory intervention could simply lead wine producers to avoid transacting in parts of the supply chain that are covered under the Code.

By all accounts, the dispute resolution procedures when used, have been effective. The Committee has at various times discussed whether there is a reluctance from growers to lodge disputes under the Code for fear of retribution (for example, winemakers potentially not extending contracts after their expiry). The Committee raised a suggestion that growers should be encouraged to discuss their concerns and seek the advice of an independent party prior to lodging a formal dispute to assist with their confidence in engaging in the process. The Committee has also actively promoted that growers make use of the dispute processes by requesting that Australian Grape & Wine extend information (a) through its membership base and (b) through provision of advice to growers through the Chair of the Australian Grape & Wine Vignerons Committee and regional grower groups. This has since occurred, including when Committee member and Chair of the Australian Grape & Wine Vignerons Committee, Ashley Keegan provided a presentation about the Code for growers at a recent Forum held in Adelaide.

Growing the Number of Signatories

The Committee recommended another targeted approach to engaging with the top 20 non-signatory companies by linking signing the Code to managing corporates' environmental social governance (ESG) credentials. In 2023, the Committee resolved to express a firm view to the Board of Australian Grape & Wine and the Australian Wine Research Institute that becoming a Code signatory be a new requirement on producers wishing to gain certification under the industry sustainability Standard, the

two organisations being co-owners of the Sustainable Winegrowing Australia logo (a marketing and market access tool for wine producers who display the logo on certified wines). This means that to carry a Sustainable Winegrowing Australia logo on their wine label, a wine producer who purchases grapes must become a signatory. This is in the process of taking effect. It will mean that non-signatories could potentially be excluded from certain wine tenders on offer by major international retailers demanding evidence of sustainability. Another recent move to increase signatories that was recommended by this committee is that Australian Grape and Wine has a new policy that its Board and Board membership committees must be signatories as of the next election cycle in November 2024.

Despite its progress, the Committee does not believe that the membership of the Code is sufficient and remains concerned about reported behaviours of non-signatories. However it notes that the significant measures outlined above are yet to take effect and that, accordingly, there remains strong growth potential.

Improvement in the number of signatories over time:



*excluded from the graph are signatories of wineries are known to no longer exist or that have been acquired by others.

Although the number may seem small given that Wine Australia estimates that there are slightly over 2000 wine producers in Australia, the vast majority of these businesses are extremely small, approximately 1688 crushing under 100 tonnes. It is not clear how many of these producers actually purchase grapes in any meaningful quantities, if at all, so the Code committee is more interested in coverage by tonnage than by the number of signatories.

The top five producers by grape intake (intake as reported by Winetitles ²) are all signatories and the top twenty producers' intake collectively accounted for approximately 56% of grapes grown in Australia in 2022. The Committee does not have access to tonnes purchased by signatories versus non-signatories as the Wine Australia data that is available is not only aggregated, but does not separate purchased grapes from winery owned grapes. As approximately 35% of grapes are winery owned, calculating coverage based on total intake is not accurate. However, based on the information that is available and given that the very large producers all purchase grapes, the percentage of tonnage covered by the Code is almost certainly well above half the industry intake, and importantly, coverage amongst the largest winemakers is strong.

Related work

The Code Committee has encouraged development of, and been a keen observer during development of, a significant number of resources to assist with quality assessments and improving market price transparency. Through the Australian Government's Improving Market Transparency in Perishable Agricultural Good Industries initiative, Australian Grape & Wine, the Inland Wine Regions Alliance and Wine Australia worked together in a consortium to undertake a project that has seen the release of an online wine grape price indicator platform and a suite of price indicators, to help inform business decision-making. Under that same project ABARES now issues independent winegrape price forecasts and commodity analysis for commercial grapes are now released each quarter.

The Australian Wine Research Institute (AWRI) in consultation with Australian Grape & Wine, has worked on the development of Industry Endorsed Standard Procedures for sugar, colour and titratable acidity. These procedures are complimented by guidelines for objective measurements of sensory characteristics, foreign material in grape loads (MOG) and sampling methods. All are available on the Australian Grape & Wine website. ³ Under the Code, signatories must clearly document their quality assessment methodology and results and retain that documentation. When assessing grapes against maturity, purity and condition standards, signatories must avoid the use of subjective measures to determine price, in circumstances where there are credible objective measures readily available to measure the same or similar characteristics.

² <https://winetitles.com.au/statistics-2/wine-companies/australias-largest-wine-companies-by-winegrape-intake/>

³ <https://www.agw.org.au/industry-resources/winegrape-quality-assessment/>

About the Code Management Committee

The Code Committee meets three times a year with additional meetings being called when necessary such as during the 2019-2020 review of the Code. According to its Charter the Code Committee undertakes the following roles:

1. administer the Code, including the setting or approval of reasonable fees to support the dispute resolution system;
2. manage the business operations of the Code including ensuring that suitable insurance arrangements are in place for the committee and its membership;
3. produce an annual report to be published by 30 September each year, containing:
 - a. the names and total number of current Signatories to the Code;
 - b. the number of Disputes notified to the Secretariat and/or resolved under the provisions of the Code;
 - c. the number of Signatories who have breached the Code disclosed in aggregate form without identifying the parties;
 - d. the nature of Disputes received and any other comments it wishes to make about conduct or trends in the industry; and
 - e. 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.
4. monitor the operation of the Code and, as appropriate, recommend any amendments to the Code that may assist in its operation, and provide recommendations to Australian Grape and Wine Incorporated (Australian Grape & Wine) on any proposed amendments to the Code.
5. endorse the following appointments:
 - a. Independent Technical Experts;
 - b. Independent Pricing Experts; and
 - c. Conciliator(s) and Conciliation Bodies;
6. maintain a list of these appointments and publicise this list from time to time;
7. conduct a formal review of The Code every three years, or as appropriate.

The Committee is supported by the Secretariat and the Committee may, in its sole discretion, delegate any of its powers or duties under the Code to the Secretariat. The Committee may appoint and remove the Secretariat by notice in writing.

Membership

The Committee comprises an equal number of winegrape grower and winemaker members appointed by the board of Australian Grape & Wine's Code Sub-Committee and an independent Chair.

Standing observers and guests may attend with Chair approval and understanding that discussions and papers are confidential.

The Chair, with the approval of the Board of Australian Grape & Wine, may co-opt individuals to provide expertise as required. These individuals will not have voting rights.

Operations

All decisions of the Committee must be made by way of simple majority.

For a recommendation to amend the Code to take effect, it must be agreed and minuted by the Australian Grape & Wine Board sub-committee. Any change to the Code which is endorsed will take effect on a date agreed taking into account a reasonable time period for Signatories to amend their Agreements, if applicable.

The Chair or his/her delegated proxy will be the designated spokesperson on significant policy positions established by the Committee.

The committee will ensure that the nominated contact of the Code Signatory will be made aware in writing of any amendments to the Code.

Powers of the Committee

The Committee shall have the authority to discharge any independent experts and/or a Conciliator without giving reasons.

Where there is a breach of the Code, the Committee may at its discretion resolve to refer the matter to the ACCC or another relevant regulatory authority.

The Committee shall have the authority to remove as Signatories any Signatories found to be in breach of the Code.

Details of any confidential information relating to any dispute between a Signatory and a Grower(s) which are notified to the Committee in accordance with Clause 6 of the Code must remain confidential but may be disclosed by the Committee in aggregate form (without the parties being named or specific details of the dispute being disclosed).