

Committee Secretariat

Committee Secretary

Senate Standing Committee on Rural and Regional Affairs and Transport

Senate Inquiry into the Code of Conduct for Australian Winegrape Purchases

16/10/2024

Dear Senate Inquiry Panel Members,

Following are examples which highlight the need to change from the current Voluntary Code of Conduct for Australian Winegrape Purchases to a Mandatory Code of Conduct, ideally a Prescribed Mandatory Code of Conduct which has full enforceability by a regulatory authority.

Opening statement.

In the last 10 years, our wine industry has become more corporatized, just as we have seen in the Supermarket business in Australia. We now have a few major players as winemakers. In particular, Accolade-Pernod Ricard, and Treasury Wines. With their increase in market power, so has been the resulting pressure on contracts, grape prices, a lack of supply and demand transparency, lack of varietal information for growers to take a long-term investment approach with what varieties to plant, and indeed, a common practice of approving plantings in the last 8 to 9 years of Cabernet Sauvignon and Shiraz to greatly add to the 'over supply' with the result in 2022, 2023 and 2024 vintages of horrendously low prices paid to growers.

Accolade Wines displayed a graph to about 170 grape growers from CCW in SA's Riverland in 2023, showing a trend from 2015 to 2023 where they saw a definite trend in red grape varieties Cabernet Sauvignon and Shiraz trending rapidly to over-supply. This was before the China tariffs issue, and their Chief Chain of Supply executive, Mr Derrick Nichols stated, "We made a conscious decision to retreat from our traditional markets and focus more on China, and we know how that went, so unfortunately you growers have to carry the can". He used that, as did his company, Accolade Wines to slash the price of grapes, even those in demand, but particularly the reds; yet their company rubber stamped approval to CCW growers to continue to plant Cabernet Sauvignon and Shiraz in 2022 and early 2023 for that season, and did not share this information to growers until almost the end of 2023. I was given approval with no market information, to remove a saleable variety Colombard, and plant Shiraz and Cabernet at a replanting cost to me of about \$50 000. A grower colleague was given approval in 2022 to plant 25 acres of Shiraz and remove 2 saleable varieties to an approximate development cost of \$250 000, then to be told like me, and 170 others at that meeting, the winery didn't want those varieties. They didn't want them at sustainable prices of \$300 to \$400 per tonne; but they were happy to buy them all at \$140 to \$150 per tonne and expected their supply agreement to be met.

What is worse in relation to the 'supply and demand' game playing, is Accolade Wines bought significant quantities of 'cheap' red wine from Treasury Wines after the 2024 vintage, then a significant quantity of better quality Shiraz wine from the Barossa to blend with it for their large commercial market, as opposed to the premium end of the market. This is factual, told to me by their own winemaker. If there was over-supply, and their tanks were full, why did they buy a very large quantity of red wine from a competitor, if they couldn't sell it? At that point, Treasury Wines

were on their 'premiumisation' sales to a higher end market, and as we know, their biggest market is for the 'commercial' wines in the \$10 to \$15 per bottle range.

So; as growers have said for the last 3 years in particular; " Your winery tanks are full at \$300 + a tonne for red grapes, but there is plenty of space if we sell you grapes at \$150 a tonne or less".

Therefore, a question to your panel. What is the truth then about supply and demand? And how much are grape growers being manipulated as price takers because we have a highly perishable commodity, with no protection at any level, including from our supposed 'peak' national body, Australian Grape and Wine Inc.

You need to experience the above examples which as a grape grower of 40 years, and my father before me for 60 years; it has always been the same. Advantage taken by winemakers over grape growers who grow a costly, highly perishable product, that has no shelf life like the bottle of wine end product.

Remember in your deliberations. Winemakers may cry foul at supermarket power in the retail market, and they need protection. Yes, they do. But please remember at all times in your Inquiry, that they can, and do, shift wine sales to other markets, even if this takes months. They don't have to be price takers from the retail chains, but grape growers have NO choice but take what they give us. That is one of the reasons they don't want to give an indicative price earlier than the first week of December. They say they don't know what their markets will pay until then. Yet, they have had to do their budget forecasts for finance/running costs by the end of June. An honest wine executive will tell you that.

So only coming out with indicative prices in early December, and then there is the Christmas break when many businesses close for the break, then a few weeks in January, and the earliest grape varieties are ready to harvest. No grower has any choice then, but to harvest grapes at whatever price, as it is too late to argue, or 'shop around'.

This is one of the reasons why the Wine Grape Supply Act of 1991 was introduced in South Australia. It introduced the compulsory indicative price with reasonable powers to the Primary Industries Ministers. So note; wineries were playing games with prices, contracts, with the full knowledge that even then, there was no protection for growers. Note also; wine makers were not corporatized as the last few years. A common thread that is still there today as a systemic issue, is playing on the perishable nature of the raw product in the market chain, and having it over the grower price -wise in the process.

Interesting how the wine companies have cried injustice at retailers screwing them on price. Yet, they have no conscience in doing this to growers. It has been presented to the ACCC in 2019, again in 2021 and then in 2023 late October by the Inland Wine Regions Alliance group (representing the Riverland, the Riverina and the Murray Valley) that there has to be a Mandatory Code with penalties because the winemakers pass on every aspect of their market, consumer and company woes to the grape growers at the very bottom of the ladder. A wine company needs to improve its bottom line; slash the price of grapes again. It is the only link in their economic chain that they can manipulate pretty well unhindered, with no regulatory body to be accountable to.

That is just some of the picture of what I and my fellow growers see, live and breathe every year if we can still afford to stay in business. No KPI's for a grape grower, and the corresponding bonuses.

Here is a summary of some specific issues;

* a voluntary 'gentleman's agreement' Code as useless, except to Australian Grape and Wine Inc, because of their Wine maker dominance on their Board (82% winemakers to 18% grape growers ;11 to 2)

* The ACCC recommended the Voluntary Code committee should have 50/50 winemaker/grape grower representation. It was noted in 2021 by the ACCC that this was done.

Question. Why then didn't they recommend the 'peak' national body of Australian Grape and Wine Inc have the same democratic change to truly represent over 6000 grape growers, and 2000 wine makers? One should possibly look at their Constitution, perhaps Section 10:11 where a sub-committee; possibly a sub -committee of vigneron, can't make any public announcement without the approval of the Board. Maybe not an issue; but it depends on what a sub -committee wanted to say. If they wanted to speak out about grape grower issues, prices, contracts, payment terms, or even grape quality parameters, it would have to seek Board approval. And if 11 winemakers didn't see it as being in their interests, could the 2 grape growers on the Board influence the vote? Hardly!

It is possibly the worst constituted agricultural peak Board in Australia. No wonder they are resisting a Mandatory Code; and no wonder the voluntary Code has been around since 2008, with the gross inaccuracy listing the ACCC as the big stick regulatory authority in the event of a breach of the code. Professionalism alone should have said over 15 years to put correct information on the website about the Code. Not mention the ACCC to give a false sense of security to grape growers!

- The voluntary Code was noted from day 1 that there were issues with compliance as hardly any winemakers signed up to it. This was an ongoing catch cry and excuse for it not working very well, and was highlighted in Report and Review by the ACCC in 2019, and 2021.
- The Expert Determination process in the current Voluntary Code needs to be kept, but in a Prescribed Mandatory Code; one where such decisions are enforceable by a regulatory authority. CCW, the largest grape grower Cooperative in Australia, and Accolade Wines went through the Expert Determination process as outlined by the Code, but did not notify the Code Secretariat officially; the CCW CEO at the time, saying to me that when he read that it was a voluntary code, he didn't read any further about it. Even if he had read it from cover to cover, it would not have given any actual support to enforce the Expert's decision, because it had no power. Nor did the ACCC, as it is a voluntary code. So CCW growers only recourse was the road of lawyers, against a company that had set aside reportedly 500 million dollars in legal budget. This situation must not happen to any grape grower again.
- Pricing. There should be a much clearer presentation of market information provided by variety, and this shared with growers. This information then to be truthfully used to determine prices in different regions, which is not an impossible task. No wine company should be so easily allowed to spout 'over supply' issues when we see convoys of semi-trailers coming to the largest winery in Australia with red grapes that we have been told are in oversupply, and have even had to pay to be harvested and dropped on the ground. Any disagreement, should be taken to an enforceable Expert Determination process. And the decision enforced or the Wine company gets a huge fine significant enough to be a behavioural change in their management. No token slap on the wrist for a powerful corporate with a head office overseas, and hundreds of millions of dollars at their disposal when it suits them.
- Contracts that are enforceable, and of a length of time to reflect the fact that a vine only comes into full bearing after maybe 4 to 5 years depending on its management. No grape grower can 'chase' popular varieties at a winery executive's or wine maker's whim. Plant,

then pull out 6 or 7 years later because the wine maker got the trend wrong. Or a market changed to another country. Not in the growers' ability or finances to keep turning over varieties, so 1, 2, or 3 year contracts offer no security with wine grapes at all. Vines are not categorized as 'permanent plantings' for no reason, and wine executives need to understand this, or be made to.

- Quality parameters. Wineries change quality standards to suit themselves. I have seen a neighbour's variety Colombard rejected 3 times for a higher percentage of bunch rot above their acceptable limit. Then 2 weeks later, when the winery found itself short of that variety due to lower crops and weather conditions, suddenly the grapes were acceptable, the 'flag' indicating total rejection was removed, and the 130 tonnes was harvested without penalty. The grower who had his own harvester was ready to harvest it and drop it on the ground 2 days before, but his wife insisted he ring the winery the fourth time, because of rumours of lower crops of that variety. He saved approximately \$30 000 with that phone call.
- A bunch of grapes is deemed rotten one day, but then when they find they have miscalculated on their actual intake tonnages, that rotten bunch is ok to join its friends in a \$10 to \$15 bottle of wine, the grower getting about 30 cents a bottle equivalent for a 'sought after' variety.
- Baumes. The ripeness and harvest date are determined by the sugar level, or 'Baume'. Accolade Wines, and Constellation before them set Baume ranges from minimum acceptable level to maximum. A number of years ago, when things were fairer for this, penalties for dollar deductions per decimal point below a minimum range matched generally 'bonuses' paid for dollars per decimal point above a maximum rate. This was to compensate the grower for deterioration of fruit past their optimal ripeness and sugar level. Once most varieties get to a certain sugar level, they don't sit at that for any length of time. They deteriorate, and shrivel, losing a lot of weight. This is a big issue in hot weather when the grapes have hit their peak baume. In the last few years, Accolade Wines has paid a token only per decimal increment above the desired maximum, and frequently, grapes have been left to shrivel on vines, and almost be sent in to the winery as dried fruit, losing anything up to 40 to 50% of their weight. The winery then adds water to this leaving the winemaker in charge with a processing headache. But the winery gets cheap grapes by volume, but more costly to process. The winery changes the quality parameters and baume standards at their whim, with growers in the last few years being the financial loser. This situation adds up to a lot of dollars per tonne. So, we growers are financially penalized for poor market performance, weather effects on grape quality, incompetence in the winery intake procedures for any number of reasons, and even during 2024 vintage, games about oversupply, but our trucks were banked up outside their delivery times while the winery gave priority to semi-trailers with 25 to 27 tonne loads from across the border filled with cheaper purchased grapes from the 'spot market' (from growers with no contracts selling for less money), and the winery paid the high delivery costs into the bargain. While we are dumping grapes on the ground in a 40 kilometre radius of the winery.
- This shows it is in the wineries' interests to have a perceived 'over supply' as they are the major beneficiaries. The more grapes on the 'spot market' the cheaper the grapes become. Say a variety is in oversupply, and 'our tanks are full' and the prices are driven down.
- With the planting 'frenzy' since about 2000, with managed investment funds etc getting in and developing what was previously farm land, and piping water to it, why didn't any of the big wineries, or any 'peak' body, state or federal, raise warning flags of over planting, and the possibility of over-supply? This was raised by a Mr Clancy, a chair of a peak body in SA in the early 2000's. But his call fell on conveniently deaf ears. He wrote in an article early this

year in a wine magazine, that the only people who benefited from an over- supply was the winemakers; because they could get the 'raw material' dirt cheap to boost their competitiveness in the market place, and lift their profit opportunity, especially through spot market purchases. And 2024, still the same nonsense. A voluntary Code does nothing.

- Corporate power play with no 'regulator' to control them. Example. March 2023. Expert Determination process between Accolade Wines and CCW in the Riverland of SA. Both parties enter the agreement process, agreeing to abide by the Expert's decision. For the first time in 5 years of this process, the decision goes against Accolade, and they are asked to pay an extra \$69 per tonne for Shiraz and Cabernet. A few days after the Expert gives his decision on March 23rd, 2023, Accolade Wines refused. 7.5 months of lawyers and mediation, and finally in November, 2023, Accolade Wines says they will pay an extra \$61 per tonne, as long as the Board of CCW sign a Deed of Settlement locking them into agreeing to try and persuade its 530 grape grower members to accept a 'new' supply contract written by Accolade lawyers, and with absolutely not 1 term in it as a benefit to CCW company. I was one of the first growers to read this horrendous document in the CCW office a week before Christmas, 2023. No-one was allowed to take a copy of it, there were no translations offered for non- english speaking growers, nor to cater for the very large Sikh community here. I raised grower awareness of the danger of this contract and put a major full- page article in our regional paper. The editor rang Accolade Wines the day before publication to tell them about the article and give them the right to reply after they read it. The Editor received a call from an Accolade executive saying there was to be no mention of their proposed 'supply agreement' in the newspaper, nor was the paper to print anything relating to the low grape prices offered. An Accolade executive rang the then Acting General Manager of CCW and said the company did not want any mention of the proposed contract mentioned in the media, and cited 'confidentiality'. A request was made that a CCW Board member ring the Editor of the paper and say no mention was to be made of this agreement. I don't think I need to point out to you people involved in this Inquiry at the seriousness of such an action. You would no doubt know that such a 'censorship' demand was unlawful under the right of free speech and expression in the media, and protected under the jurisdiction of the Federal Attorney General. The Accolade executive managed to bluff the Editor with the powerplay, but I got around this none-the-less. Grower sentiment was stirred up over February and March, Accolade pulled out all stops to sway growers, even to trying to get the largest 100 growers to leave the CCW cooperative. This is noted in SA government Hansard as an MLC raised this in SA Parliament. From there, I brought it into the public domain, and Accolade's attempts failed.

They even resorted to saying publicly, reported in the national media, that if CCW growers did not accept their 'new supply agreement', they may have to go into Liquidation or Administration. The suggestion that unless we accepted what they were dictating, the biggest winery in Australia would be closed.

A month or so later, here they are with a 500 million dollar deal taking over Pernod Ricard's Spanish, New Zealand and Australian wine interests, making them the biggest wine making company in Australia. Like Coles taking over Aldis.

Where was Australian Grape and Wine Inc or the Voluntary Code while Australia's largest grape grower cooperative in the biggest grape producing region in Australia was being treated in what was akin to corporate blackmail? A corporate who used the words 'Liquidation' and 'Administration' freely in the press, and no-one took them to task for this.

- In security of contracts and unreasonable winery demands.

I was told directly by a grape grower and his wife about this issue early this year. He was 'contracted' to Pernod-Ricard. In 2022, the Pernod -Ricard agent said he had to complete a Sustainable Australian Wine Grape Accreditation course at a cost of approximately \$2000. He and his wife did this complex, lengthy course to ensure their grape sales. He told me they had the certificate of completion for barely 10 days and the Pernod-Ricard agent called in to tell them the winery was not buying their grapes for the coming 2023 harvest.

Is that reasonable to put growers through this, then cancel their contract? Just because they can?

I have other factual examples personally witnessed, but it is beginning to resemble "War and Peace" in length. In summary, in my 40 years as a grape grower who understands fair trading, fair contracts, market vagaries, price fluctuations etc; I have never seen such appalling corporate conduct and general price games as in the last few years. Nor such an industry 'joke' as the current voluntary code. A code should be enforceable, and an insurance policy if needed when bad contractual or business behaviour occurs. This 'voluntary' code is no better than a brochure of nice sentiments, but gives us nothing and no protection if our 'house' burns down.

Grape growers deserve better. The Australian grape industry deserves better. Neither winemaker nor grower should fear a mandatory code, if both parties have honest intent in their business dealings. But like any form of abuse, Australian states had to legislate in the 1980's to force people by law to do what for most of us, is the 'right thing'. It appears this is the only decision also for a Mandatory Code, preferably Prescribed, if that gives it extra legislative clout or regulatory protection.

Yours Faithfully

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