

# Wine industry Code of Conduct under review

Winemaker's Federation of Australia strategy and international affairs general manager **Tony Battaglione** and Wine Grape Growers Australia executive director **Lawrie Stanford** report on the latest news for the Australian Wine Industry Code of Conduct, which sets out minimum standards for agreements between winegrape growers, winegrape purchasers and wine companies.

THE Australian Wine Industry Code of Conduct ('the Code') was signed by representatives of the Winemakers' Federation of Australia (WFA) and Wine Grape Growers Australia (WGGA) in December 2008.

With the exception of Part 2 (Winegrape Purchase Agreements), the Code took effect on 1 January 2009. Part 2 took effect for all new agreements for the supply of winegrapes for the 2010 vintage onward.

The Code is voluntary – there are no joining fees or ongoing annual costs – and its purpose is twofold:

- To establish a common framework for Australian winegrape supply contracts.
- To provide a dispute resolution system to manage price or quality assessment disputes.

The minimum requirements set out in the Code have been agreed by the lead industry organisations of both winegrape growers and winemakers.

Winegrape purchasers who are signatories agree to be bound by the principles of the Code in their commercial dealings with winegrape growers.

They also undertake to provide a grower with a copy of the Code whenever that grower signs a new agreement.

The Code of Conduct specifies targets for the total number of signatories to the Code as follows:

- 25 per cent of the top 100 Australian wine producers by tonnes processed, by 31 December 2012.
- 50 per cent of the top 100 Australian wine producers by tonnes processed, by 31 December 2013.

WFA and WGGA have agreed to publicise and promote the Code and its dispute resolution procedures, and to work to maximise its adoption within the industry.

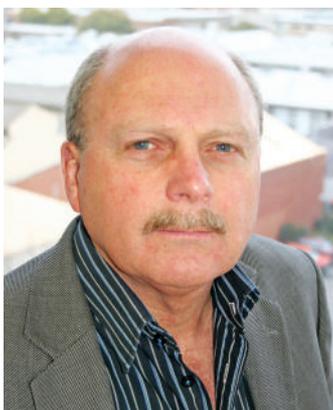
A register of signatories is maintained on the Australian Wine Industry Code of Conduct website ([www.wineindustrycode.org/](http://www.wineindustrycode.org/)).

The Code is overseen and administered by the Wine Industry Code Management Committee (CMC) jointly appointed by the boards of WFA and WGGA. It consists of eight members supported by a secretariat of three.

The committee is the custodian of the Code and monitors and assesses its performance, considers and enacts improvements, facilitates the resolution of disputes over winegrape prices and vineyard downgrades and rejections and determines alleged breaches of the Code by signatories.

It is also required to produce an annual report to be published by 30 September each year containing:

- A description of the nature and number of disputes received.
- Any comments it wishes to make about conduct or trends in the industry.



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- A report on the operations of the Code, including the names of any parties removed from the Code.
- A list of all current signatories and new signatories since the previous annual report.

The Code Management Committee appoints a secretariat to the Code (jointly funded by WGGA and WFA) to provide secretariat services, and to which the committee may delegate any of its powers or duties under the Code.

The secretariat at this time is The Accord Group, an international dispute resolution firm, which is charged with facilitating disputes so this function is 'arms-length' from the industry members of the CMC.

## CMC RESPONSES TO GROWER AND WINE COMPANY DISSATISFACTION WITH THE CODE

In 2013-14, the Code Management Committee has been active in attempting to improve the Code and correct one of its greatest deficiencies – failure to reach the agreed target of wine company signatories.

The targets set for the number of signatories were meant to result in a sign-up that represented general industry acceptance of the Code.

A number of key issues have been identified to improve the code operation:

### Improve compliance between the Code and contracts

- Develop a template contract for winegrape growers and winemakers that incorporates the code principles.
- Establish checklists to permit signatory consistency with the Code to be easily measured through a simple audit process.
- Finalise FAQs to inform the industry of the Code requirements.

### Indicative price notifications – timing or whether or not to retain.

- Indicative pricing had been identified as a major disincentive by wineries to sign the Code. It was also identified by the winegrape grower representatives as a major problem this vintage as it encouraged lower across-the-board prices.
- It was agreed the need for indicative pricing should be assessed across the regions and if appropriate to remove or change the requirement for indicative pricing.
- It was noted a mechanism to better inform growers of supply and demand early in the season was desirable.

### Does the Code give winegrape growers sufficient confidence to dispute?

- It was acknowledged this was a universal problem to all Codes. ▶

- The establishment of compliance officers is being considered to stop potential discriminatory activity.
- It was agreed to develop better tools to inform growers of how to institute dispute settlement processes.

#### Poor uptake by wineries

- It was acknowledged this was a fundamental problem with the effectiveness of the Code as it now stands. It may improve if indicative pricing is removed.
- Mechanisms to encourage signatories require substantial resourcing.
- It was agreed it was necessary to consider alternatives to the Code, or alternative forms of codes, to address the fundamental issue of wine company uptake. These are being investigated by the committee.
- The committee is resolved the existing Code, together with the reforms being considered at this time, needs to remain in place while alternatives are being considered.

#### Adaptability of codes

- It was noted codes are generally slow to update following changing circumstances, but mandatory codes are harder to change than voluntary, as they require legislation.
- More frequent meetings of the Code Management Committee was identified as a good mechanism to ensure code amendments could occur to meet changing circumstances.

#### Code awareness

- Most farmers and many operations personnel in companies are unaware of the Code and how it relates to contracts. This requires a WFA education campaign, coupled with better tools to explain what elements are in the codes, what

elements are not in the Code (e.g. prescription of terms of trade; how to initiate dispute settlement, etc.).

In addition to the Australian Wine Industry Code of Conduct other remedies to disputes are available.

For example, under the Small Business Commissioner Act 2011 the SA Government has given the Small Business Commissioner the task of developing prescribed industry codes of conduct under the Fair Trading Act 1987. The first of these codes was the Fair Trading (Farming Industry Dispute Resolution Code) Regulations 2013 known as the Farming Industry Dispute Resolution Code.

#### CONCLUSION

The Code will continue to undergo continuous review with the idea of making dispute settlement over pricing disputes a simple option for winegrape growers and winemakers. Both WFA and WGGGA remain committed to improving the operation of the Code and attracting more signatories.

Both organisations are hopeful the Code will bring about cultural change and not only be effective for resolving disputes, but will establish clear basis for contracting practice that may act to prevent such disputes arising.

Over the coming year materials to enhance understanding and operation of the Code will be made available, refinements including the indicative pricing provisions will be made and maintenance such as updating the list of independent experts and the feasibility of alternatives to the existing Code will be considered by the peak bodies.

Consistent with the above intention to update the list of independent experts, anyone interested joining that pool is asked to contact Tony Battaglione at WFA.

Further information is available at [www.wineindustrycode.org/](http://www.wineindustrycode.org/).

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## Kahlon Estate Wines warns of the dangers of open auger

### Conviction recorded against Kahlon Estate's Wine Pty Ltd *Occupational Health Safety and Welfare Act 1986*

On 16 April 2011, while cleaning out a fermentation tank at Kahlon Estate's Wines Pty Ltd near Renmark, winery cleaner Sukwhant Virk fell from the edge of a hopper into an unguarded, moving auger. His left leg was trapped in the auger until it was amputated at the scene by a medical retrieval team.

The hopper and auger were part of a Monobloc pump setup supplied to the winery without a guard attached. Kahlon Estate's Wines Pty Ltd never fitted a guard. A simple fixed metal grid could have been welded in place, permitting the machine to be used without exposing workers to the risk that they might become trapped, cut or otherwise injured by a sharp, rotating auger.

Kahlon Estate's Wines Pty Ltd pleaded guilty to a charge under the *Occupational Health Safety and Welfare Act 1986*. It was fined \$68,000.

The Court's full decision can be found at [www.industrialcourt.sa.gov.au](http://www.industrialcourt.sa.gov.au).

Kahlon Estate's Wines Pty Ltd was ordered by the Court to publish this information.

