

Dispute resolution options in the wine sector

As vintage approaches it is inevitable that in some transactions between winemakers and grape growers disagreements will arise. It is in neither party's interest for these disputes to escalate into costly and time consuming legal action. That is why the Winemakers Federation of Australia (WFA) and Wine Grape Growers Australia (WGGA) have developed a Wine Industry Code of Conduct. This Code aims to resolve disputes quickly and as amicably as possible and for this reason, WFA urges all Winemakers to sign on to the Code.

Disputes in the main occur over a perceived inadequacy of the wine grape price or an apparent failure to comply with specifications for wine grape maturity, purity or condition. This results in either a price adjustments or a rejection of the wine grapes leading to sometimes lengthy and expensive disputes.

If there is a disagreement over the sale or purchase of wine grapes, it is important for a grape grower to raise the complaint directly with the grape purchaser to try and negotiate a suitable outcome. In the event that the parties cannot resolve the dispute independently, the main forms of alternative dispute resolution that apply to the wine industry include mediation, expert determination, and arbitration.

Arbitration is a formal dispute resolution process governed by the Commercial Arbitration Act (in each state) in which two or more parties refer their dispute to an independent third person (the arbitrator) for determination. Providing that the arbitration is conducted according to the principles of natural justice, its procedures may be varied by the parties to suit the size and complexity of their dispute.

The result of the arbitration, known as the Award, is enforceable in the same manner as a court judgment. Commercial arbitration in Australia has become the preferred procedure for parties seeking a binding determination of their dispute and as an alternative to court based litigation.

If alternative dispute resolution procedures fail and all other options of dispute resolution have been exhausted, litigation may be the only way to settle the dispute or to seek final recourse.

Other options to resolve disputes are:

- The Australian Wine Industry Code of Conduct
- the Farming Industry Dispute Resolution Code (if one of the businesses is in South Australia)
- Legal Action

Australian Wine Industry Code of Conduct

The Australian Wine Industry Code of Conduct was launched in December 2008. It was developed by Wine Grape Growers Australia (WGGA) and the Winemakers' Federation of Australia (WFA) in the interests of a sustainable Australian wine industry following a recommendation by a Federal Senate enquiry in 2005. The research and development of the Code was supported by the Federal Governments Department of Agriculture, Fisheries and Forestry.

The Australian Wine Industry Code of Conduct advocates an early informal dispute resolution process which seeks to educate parties in the dispute about their rights under 'the Code', and to

encourage resolution without progressing to formal dispute resolution procedures. However, this option is only available if the grape purchaser is a signatory to the Code.

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 minimum requirements set out in the Code have been agreed to by the lead industry organisations for both grapegrowers and winemakers.

It is important to emphasize that the Code is only in place to provide a dispute resolution system for price and quality assessments. Other issue relating to contracts must be resolved thorough other avenues.

The Australian Wine Industry Code of Conduct provides a guide to help resolve disputes between the wine grape purchaser and the wine grape grower in a timely and cost efficient manner which it is hoped, will preserve ongoing commercial relationships.

The Code requires both parties to participate in the dispute resolution procedure and outlines a systemised way to manage the communication around the dispute. It also allows for the appointment of a mediator or Independent Expert who has final binding say over the outcome.

The Code Management Committee (CMC) was established to oversee and administer the Australian Wine Industry Code of Conduct. In December 2014, an important amendment was made to the Code to make it easier for participants to institute a dispute during vintage. The Code was amended so that:

The Disputing Party and the winegrape purchaser have:

If a Notice of Dispute is issued before 30 April, 60 Business Days from the issue of the Notice of Dispute; or If a Notice of Dispute is issued after 30 April, 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 the relevant 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.

For further information please visit the [Australian Wine Industry Code of Conduct](#) website.

Farming Industry Dispute Resolution Code

Under the *Small Business Commissioner Act 2011* the South Australian 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 prepared by the Small Business Commissioner and Deputy Small Business Commissioner was the *Fair Trading (Farming Industry Dispute Resolution Code)Regulations 2013* known as the Farming Industry Dispute Resolution Code.

The Code is a national first, and it gives South Australian farming participants the ability to access an enforceable mandatory dispute resolution framework to assist in dealing with a wide range of business to business disputes, as well as business to Local or State Government.

This code only applies to businesses where one or both of the parties are in South Australia.

Please click on the link below to download the Farming Industry Dispute Resolution Code and additional information :

[Fair Trading \(Farming Industry Dispute Resolution Code\) Regulations 2013](#)

[An Overview of the Farming Code](#) (763 kb, PDF)

Where a farming participant seeks to have a dispute resolved under the *Fair Trading (Farming Industry Dispute Resolution Code) Regulation 2013*, a written application *must* first be submitted to the Office of the Small Business Commissioner.

The written application may be sent electronically via the **Lodge a Farming Dispute Form [here](#)**, or print the following **Application to Lodge a Dispute form** -

[Application to Lodge a Dispute form](#) (54 kb, PDF)

Send the completed form and *copies* of supporting documentation to the Office via -

Email: sasbc@sa.gov.au

Fax: 08 8303 0943, or

Post to -

Office of the Small Business Commissioner

GPO Box 1264

ADELAIDE SA 5001

For further enquiries, please contact the Office of the Small Business Commissioner on toll free 1800 072 722 or 08 8303 2026.

Legal Action

In the case of a dispute of pricing or contracts all parties have recourse to legal action.

In South Australia the Wine Grapes Industry Act regulates grape payments:

- it fixes terms and conditions for the payment of wine grapes by way of a Ministerial order and sets out penalties if payments are not made by the due date; and
- a criminal penalty can arise if a wine grape purchaser accepts delivery of wine grapes if the previous season's payments have not been paid in full.

Some grape contracts have different terms; these are in breach of the Act if they are less advantageous to a grapegrower than provided by the Wine Grapes Industry Act.

For example, Section 9 of the Act states that a processor must not accept delivery of wine grapes for processing unless 'all amounts that have previously fallen due for payment by the processor for wine grapes received by the processor, or any person acting on the processor's behalf, in a previous season have been paid in full'.

A breach of this section of the Act is an offence and can incur a fine of up to \$8,000 and/or prison for up to two years (as well of course as orders to make good the outstanding money). Being an offence means that the Minister has the power to authorise an investigation and subsequent prosecution.

The Act and Regulations can be downloaded from <http://www.pir.sa.gov.au/wine/legislation> .