AUSTRALIAN Grape & Wine

Code of Conduct for Australian Winegrape Purchases

Version 2.2
23 September 2021

FOR INDUSTRY, BY INDUSTRY

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REVISION HISTORY

Version	Date Issued	Section	Changes
2.0	3 September 2020		Full review of entire document
2.1	22 December 2020	6.1 (b) 3.3 (a)	Addition of the words 'unless it is required for urgent interlocutory relief' Insertion of the words 'entered into from 1 July 2021'
2.2	22 September 2021	1.6 1.6	Insertion of the word 'alleged' Referral of a Code breach requires approval by the Board of Australian Grape & Wine prior to referral.

Preamble

Background

This Code of Conduct for Australian Winegrape Purchases (***Code***) has been developed for the Australian wine sector by Australian Grape and Wine Incorporated (***AGW***) and its Code Management Committee (***Committee***), a committee with equal representation of winemakers and grape growers.

This Code is a non-prescribed voluntary industry code. Winemakers who elect to become Signatories will be governed by this Code in their commercial dealings with Growers. Where the Code is incorporated into a contract by reference, it will have contractual force.

Principles

In developing this Code, the Committee reached mutual agreement on several important principles, including that the Code should:

- be practical and user-friendly;
- be written in plain English, avoiding ambiguity and vagueness;
- allow for appropriate levels of flexibility, whilst providing parties to a grape supply agreement (***Agreement***) with confidence and certainty regarding purchasing and pricing arrangements;
- require Signatories to deal with Growers in good faith, and with due regard to each party's legitimate business interests;
- require that, where pricing is not fixed, the mechanism for determining price be clearly stated in the Agreement;
- be supported by the provision of accessible, relevant and timely analysis of market trends, particularly in warm climates, to assist Grower decision-making and adaptation to changing market conditions;
- prevent Growers from suffering detriment for reasons other than those based on a failure to meet agreed specifications or other terms clearly outlined in their Agreement;
- prohibit unfair contract terms, including those involving unilateral variations;
- discourage lengthy payment terms; and
- introduce a dispute resolution process for parties to Agreements.

The Committee identified a number of considerations that every party to a transaction involving the sale and purchase of Grapes should have had regard to, in advance of entering into an Agreement. The Code highlights these considerations, but does not preclude parties from reaching their own arrangements in relation to these issues.

Purpose and Aim

The purpose of the Code is to:

- provide a framework to support fair and equitable dealings between buyers and sellers of Grapes;
- provide an effective, practical and equitable dispute resolution process for raising complaints and resolving disputes arising between Winemakers and Growers; and
- improve Grower–Winemaker relations in a manner consistent with commentary of the ACCC in its Final Report dated September 2019 resulting from its Wine Grape Market Study.

The Code aims to provide a foundation for building relationships between Growers and Winemakers that are equitable and mutually beneficial. Successful partnerships promote successful and sustainable winegrape growing and winemaking businesses, underpinning the prosperity and longer-term viability of the entire wine sector. Successful partnerships rely on respect and trust on the part of both parties. As a supplement to the Code terms, the green boxes outline additional considerations for creating successful partnerships that industry has endorsed as 'best practice'.

AGW encourages all Winemakers to sign up to the Code. Signing the Code indicates a commitment to fair dealing with Growers, which should gain the respect of the Grower community and support the sustainability of the Australian wine sector as a whole. That is very much in the interests of individual Winemakers.

The Code Management Committee will have the responsibility of assessing the performance of the Code and making recommendations to improve its operation. This is just one step in the journey of ensuring better commercial relationships through the supply chain.

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Tony Battaglene
Chief Executive Officer
Australian Grape and Wine Incorporated
21 August 2020

Operative Part

1. Preliminary

1.1 Becoming a Signatory to the Code

A Winemaker may become a Signatory by providing written notice to the Committee.

1.2 Effect of becoming a Signatory

(a) Signatories agree to adopt and be bound by the provisions of the Code in their dealings with Growers.

(b) Signatories acknowledge that the Committee may publish their names as Signatories.

(c) Signatories shall provide the Grower with a copy of the Code (in either hardcopy or electronic form) prior to entering into a new Agreement (except a verbal Agreement referred to in section 3.2).

1.3 Transitional Provisions

The transitional provisions contained in Appendix 3 govern the transitional period from the 2008 Code to this Code, until 31 December 2021, and apply to:

(a) signatories to the 2008 Code; and

(b) winemakers who were not signatories to the 2008 Code, but become a Signatory to this Code on or before 1 July 2021.

1.4 Amendments to the Code

If there is a change to this Code, each Signatory must make a written offer to its Growers, within three months of the change taking effect, to amend its existing Agreements to reflect that change.

1.5 Ceasing to be a Signatory

(a) A Winemaker may cease to be a Signatory by providing written notice to that effect to the Committee, in which case the Winemaker will cease to be a Signatory on the date the notice is received by the Committee.

(b) A Winemaker, who ceases to be a Signatory, may remain bound by provisions of the Code incorporated into their Agreements expressly or by reference.

1.6 Breaches of the Code

(a) Signatories alleged to be in breach of the Code will be referred to the Committee for potential removal as Signatories.

(b) Where it is determined that there is a breach of the Code, the Committee may, in its discretion, and upon approval by the board of Australian Grape & Wine, remove that Signatory and/or refer the matter to the ACCC or another relevant regulatory authority.

1.7 Freedom of Association

Signatories must not intentionally:

(a) provide an inducement to a Grower to prevent the Grower from:
  (i) forming an association of Growers; or
  (ii) associating with other Growers for a lawful purpose; or

(b) discriminate against a Grower for:
  (i) forming an association of Growers; or
  (ii) associating with other Growers for a lawful purpose.

2. Interpretation

In this Code:

2008 Code means "The Australian Wine Industry Code of Conduct" as published in 2008 and updated in 2014 available on AGW's Code website. www.wineindustrycode.org/

ACCC means the Australian Competition and Consumer Commission.

AGW means Australian Grape and Wine Incorporated (ABN 45 903 873 163).

Agreement means a grape supply agreement between a Signatory and a Grower for the sale and purchase of Grapes.

AWRI means the Australian Wine Research Institute (ABN 83 007 558 296).

Base Price means the price payable for Grapes, subject to adjustment by reference to the MP&C Standards and/or by the payment of a bonus after the Grapes (or resulting wine) have been assessed (which could be a Grade Price).

Code means this Australian Code of Conduct for Winegrape Purchases (as amended from time to time).

Committee means the Code Management Committee established pursuant to AGW's constitution.

Complainant means a party to an Agreement raising a Dispute.

Conciliation Body means an accredited alternative dispute resolution body that is included on the Committee's "Register of Approved Conciliation Bodies" on AGW's code website (as amended from time to time).

Conciliator means a person included on the Committee's "Register of Approved Conciliators" on AGW's code website (as amended from time to time).

Dispute means a dispute between the parties to an Agreement, in relation to a matter arising under or relating to the Agreement or the sale and purchase of Grapes under it.

Final Report means the Final Report of the ACCC dated September 2019 resulting from its Wine Grape Market Study.

Geographical Indication means an area the subject of a geographical indication registered under the *Wine Australia Act 2013* (Cth).

Grade Price means the price payable for Grapes assessed as being of a certain quality grade (which could be subject to adjustment by reference to the MP&C Standards or by the payment of a bonus after the Grapes (or resulting wine) have been assessed).

Grading means the determination of a particular quality grade that should be ascribed to Grapes based on their inherent quality (assuming they are mature, pure and in good condition).

Grapes means winegrapes.

Grower means a Person who produces Grapes for the purpose of sale to a Winemaker.

Independent Expert means an Independent Pricing Expert or an Independent Technical Expert, as the case may be.

Independent Pricing Expert means a person included on the Committee's "Register of Independent Pricing Experts" on AGW's code website (as amended from time to time).

Independent Technical Expert means a person included on the Committee's "Register of Independent Technical Experts" on AGW's code website (as amended from time to time).

Industry Endorsed Standard Procedures means the "Industry Endorsed Standard Procedures", for the sampling and assessment of grapes, must and wine (as amended and approved by AGW from time to time).

Industry Guidelines means the industry guidelines published by the AWRI on or around the date of publication of this Code and appearing on AGW's code website (as amended from time to time).

MP&C Standards means the standards by reference to which Grapes are assessed to determine whether they are mature, pure and in good condition (which is not an assessment of their potential to deliver a certain Grade or wine style).

Person includes a natural person, partnership, joint venture or corporation.

Price Deduction means a deduction from the Base Price, as a result of the assessment of the Grapes against the MP&C Standards.

Respondent means a party to an Agreement with whom the Complainant raises a Dispute.

Secretariat means the "Code Secretariat" appointed by the Committee and published on AGW's code website at the time the relevant Dispute is raised.

Signatory means a Winemaker who is a signatory to this Code.

Time-Sensitive Dispute is a Dispute which is, by its nature (considering the imminence of harvest, the perishability of Grapes upon harvest and all other matters relevant to the Dispute), a Dispute that the parties need to resolve very quickly.

Winemaker means a party who purchases, or who may purchase, Grapes from Growers, whether or not that party processes the Grapes.

3. Grape Supply Agreements

3.1 Agreements must be in writing

Subject to section 3.2, all Agreements must be in writing and expressed in clear terms.

3.2 Verbal Agreements and Spot Contracts

Where a Winemaker and Grower reach an Agreement in relation to the sale and purchase of Grapes, and the Agreement is not in writing, the Winemaker must:

(a) where harvest of the Grapes is not imminent — as soon as is practicable to do so, but no later than 7 days prior to the intended harvest of the Grapes;

(b) where harvest of the Grapes is imminent — as soon as is practicable to do so, but prior to the harvest of the Grapes; or

(c) where harvest has occurred at the time the Agreement was reached — as soon as is practicable to do so,

make a written record of the contents of the Agreement (including the parameters referred to in section 3.5), provide a copy of that record to the Grower (including by email) and make all reasonable efforts to obtain from the Grower, as soon as practicable, a written acknowledgement (including by return email) that the record is a complete and accurate statement of the contents of the Agreement.

EXPLANATORY NOTE

Section 3.1 states that Signatories' Agreements must be in writing. However, the nature of the wine sector is such that it is inevitable that many transactions are conducted in the "heat of vintage". These are sometimes arranged verbally, including by telephone.

Although verbal Agreements are enforceable as a matter of law, having a written record negates ambiguity, avoids the imperfection of human memory, promotes trust and fair dealing and helps ensure that Growers and Winemakers have transparency and certainty of their rights and obligations.

Accordingly, section 3.2 provides that Signatories, who reach verbal or "handshake" Agreements, must record the Agreement in writing and seek confirmation from the Grower as soon as practicable.

To make this process as simple and easy as possible, as a guide, AGW has developed a template (available on AGW's code website by clicking **here**) containing the key terms, which the Signatory can quickly complete and attach to an email to the Grower.

3.3 Incorporation by Reference

(a) Signatories' Agreements entered into from 1 July 2021 must contain a statement that the Code is incorporated into the Agreements by reference.

(b) If the Code is incorporated into an Agreement by reference, and subject to clause 3.4 of this Code, to the extent of any inconsistency between the Agreement and the Code, the provisions of the Code, in force on the date that the Agreement was entered into, will prevail.

EXPLANATORY NOTE

Where a Signatory does not incorporate the Code by reference into its Agreements with Growers, it will be in breach of the Code.

Importantly, some transactions in the winegrape sector are subject to other laws that will prevail over the Code. Examples include the *Competition and Consumer (Industry Codes—Horticulture) Regulations 2017*, the *Competition and Consumer Act 2010* (Cth) and, in South Australia, the *Wine Grapes Industry Act 1991* (SA).

3.4 Negotiated Alternative Arrangements

Where the Code mandates something, a Signatory may negotiate and agree an alternative position with a Grower, provided that position:

(a) is negotiated in good faith and by mutual agreement;

(b) leaves the Grower no worse off overall.

3.5 Elements of a Grape Supply Agreement

Signatories' Agreements must state:

(a) the names of the parties;

(b) the term of the Agreement, including any termination mechanisms;

(c) the quantity, or any formula for determining the quantity (e.g. all Grapes from certain hectares), of Grapes being purchased;

(d) a description of the Grapes being purchased (e.g. variety, Geographical Indication / region and/or vineyard sufficient to clearly identify those Grapes);

(e) the price or pricing mechanism, consistent with section 4.1;

(f) the payment terms, consistent with section 4.2,

(g) the point of transfer of title;

(h) the point of transfer of risk;

(i) the process for determining the harvest/delivery time;

(j) who bears responsibility for arranging, and paying the costs of, harvest and delivery;

(k) the assessment requirements set out in section 5.1;

(l) any additional material requirements of the Grower (e.g. relating to additives, documentation, container type, spray diaries, delivery directives, vineyard, grape, must or wine parameters, crop levels or handling of excess crop); and

(m) any restrictions on the Grower relating to the assignment, leasing or other disposal of the relevant vineyard(s) or to a change in control of the Grower.

BEST PRACTICE- HARVEST AND DELIVERY ARRANGEMENTS

Harvest and delivery of Grapes is highly time-sensitive and logistical challenges can be a common source of tension. The point at which risk in Grapes transfers from Grower to Winemaker is a key consideration of the Agreement.

Signatories must use their best endeavours to take delivery of Grapes as soon as possible after meeting agreed specifications (such as target Baumé, TA, pH or other analytical specifications). However, it should be acknowledged that, for logistical reasons or due to processing capacity constraints, they may not be able to take delivery of the Grapes immediately upon them attaining maturity.

As harvest delays can have serious yield and quality impacts, consideration should be given as to whether:

- viticultural risk should pass to the Winemaker after harvest is delayed for a material period of time due to a reason(s) within the control of the Winemaker; or
- the Grower should be compensated for prejudice to the crop due to a material delay in harvest outside of the control of the Grower.

3.6 Fair Dealing

(a) Signatories must deal with Growers in good faith, but they may have regard to their own legitimate business interests as well as those of the Grower.

(b) Signatories' Agreements should be clear, lawful and fair.

(c) Signatories' Agreements must not contain "unfair contract terms" (within the meaning of the *Australian Consumer Law*).

EXPLANATORY NOTE

When entering into a new Agreement, Signatories should avoid presenting any offer on a "take it or leave it" basis. The Grower should be provided the opportunity to negotiate the terms of the Agreement and the Signatory should encourage them to seek legal advice.

Unfair contract terms are void under Part 2-3 of the Australian Consumer Law.

In its Final Report, the ACCC identified a number of terms of Agreements that may be unfair contract terms. These include:

- Right to renew clauses – the terms that require Growers to enter into new Agreements with Winemakers, upon expiry of their existing Agreements, but do not require Winemakers to match competitor offers.
- Ability to unilaterally vary Agreements – terms that give Winemakers broad unilateral discretion to vary terms of Agreements.
- Termination clauses – terms that allow Winemakers to terminate Agreements merely because Grapes become surplus to their requirements, at short notice.

Such terms need to be considered in the context of the Agreement as a whole, to determine whether they are unfair.

4. Grape Prices and Payment Terms

4.1 Agreements must set out price or pricing mechanism

(a) Agreements must clearly state one or more of the following:

(i) the fixed price that the Signatory will pay for the Grapes;
(ii) the Base Price the Signatory will pay for the Grapes (subject to adjustment);
(iii) the Grade Prices the Signatory will potentially pay for the Grapes (whether or not subject to adjustment);
(iv) that the price payable for the Grapes will be the "fair market price" or the "weighted district average price" of the Grapes; or
(v) such other pricing formula that will be used to determine the price of the Grapes (which must be objective) and on what date the calculation will be made and notified to the Grower.

(b) Signatories must not purchase Grapes on the basis of a pricing formula that gives the Winemaker the opportunity to substantially influence the price payable to the Grower.

(c) If the price of the Grapes (or Base Price or Grade Price) is to be the "fair market price" of the Grapes, the Signatory must notify the Grower of that price within the relevant time period set out in the Price Offer Notification Schedule.

(d) If an Agreement has not yet been entered into within the relevant time period set out in the Price Offer Notification Schedule, but is subsequently entered into, the Signatory must notify the Grower of the price of the Grapes (or Base Price or Grade Price), at the time the Agreement is entered into.

Price Offer Notification Schedule

(a) In relation to Grapes which are the subject of a:

(i) GREATER PERTH (including SWAN VALLEY, SWAN DISTRICT, PERTH HILLS or PEEL);
(ii) HUNTER VALLEY (including HUNTER, BROKE FORDWICH, POKOLBIN or UPPER HUNTER VALLEY);
(iii) BIG RIVERS (including MURRAY DARLING, PERICOOTA, RIVERINA or SWAN HILL);
(iv) NORTH WEST VICTORIA (including MURRAY DARLING or SWAN HILL); or
(v) LOWER MURRAY (including RIVERLAND)

Geographical Indication, the Signatory must provide the Grower with the price offer under section 4.1(c) by close of business on the **second Wednesday of December** prior to vintage.

(b) In relation to Grapes to which clause (a) of this schedule does not apply (i.e. Grapes grown in any other Geographical Indication), the Signatory must provide the Grower with the price offer under section 4.1(c) by close of business on the **second Wednesday of January** prior to vintage.

EXPLANATORY NOTE

Pricing mechanisms should, to the extent practicable, be objective and remove the opportunity for a Winemaker to substantially influence the price payable to the Grower (except by assessments for Grading or bonus payments).

It is quite common for Agreements to provide for a "Base Price", which may then be supplemented by bonuses (referable to the flavour and character of the Grapes) and from which Price Deductions might be made (by reference to the maturity, purity and condition of the Grapes). This Base Price might be fixed or might be determined by reference to the "Grade" ascribed to the Grapes or might be the "fair market price" or "weighted district average price" of the Grapes.

If, in a particular region, there are:

- a substantial number of Growers using "district weighted average prices", "fair market prices" or some similar mechanism as the pricing formula under their Agreements; and/or
- only a small number of Winemakers purchasing Grapes,

then it is possible that a particular Winemaker's Grape purchase transaction may disproportionately skew the market price for Grapes in the district.

Pricing formulae, which use the current vintage's prices (including average prices for a region) as a means for determining the price a particular Grower is paid for their Grapes in that same vintage, will not generally be capable of calculation until well after vintage because the relevant price data will not be reported until then (e.g., Wine Australia's *National Vintage Report* is not typically published until around July).

4.2 Payment Terms

(a) Subject to the law, the following payment terms must be adopted as a *minimum* by all Signatories:

(i) one third by the end of the month following the month during which the Grapes were delivered;
(ii) one third by the end of June; and
(iii) the balance by the end of September.

(b) Signatories should pay interest to Growers at commercial rates where Signatories fail to meet the agreed payment terms.

EXPLANATORY NOTE

Payment terms are a matter for commercial decision-making between the parties to an Agreement, paying heed to the general principle that money is worth more the sooner it is received.

Signatories may negotiate different payment terms to those set out in section 4.2(a), provided that that alternative position is at least as attractive to the Grower.

According to the ACCC, lengthy payment periods in standard form Agreements may be considered "unfair" under the *Australian Consumer Law*. In its Final Report, the ACCC recommended that long term payment periods be phased out of standard form contracts. It considers best practice to be 30 days and that flexibility should not extend beyond 60 day payment terms.

Note that, in South Australia, the Ministerial order made under the *Wine Grapes Industry Act 1991 (SA)* mandates payment terms under South Australian Agreements.

5. Grape Assessment

5.1 Content of Agreements

All Agreements must clearly outline:

(a) any MP&C Standards the Grapes will be assessed against;

(b) any parameters / benchmarks against which Grading will be undertaken;

(c) the methods the Signatory will use to assess the Grapes against the MP&C Standards;

(d) any methods agreed between the parties for the Signatory to Grade the Grapes; and

(e) at what point any assessments or Grading will be:
(i) made; and
(ii) the results notified to the Grower,

for the purpose of potentially:

(f) determining the price of the Grapes;

(g) applying Price Deductions to the Grapes;

(h) making bonus payments in relation to the Grapes; and/or

(i) rejecting the Grapes.

EXPLANATORY NOTE

Grapes are generally assessed, in the vineyard or at the winery, against MP&C Standards to determine whether they are mature, pure and in good condition.

They are also often assessed (although sometimes the resulting wine is assessed) to determine their inherent quality (assuming they are mature, pure and in good condition) in order to ascribe a particular "Grade" to them.

MP&C Standards, Grading parameters / benchmarks or other specifications or terms affecting price should be clearly communicated in Agreements. This extends to how Price Deductions or bonuses are to be applied. The timing and methodology of these assessments should be specified and, where an adverse assessment decision is made, evidence to justify the decision should be documented and be accessible to each party in the event of a dispute.

Objective measurements are impartial and credible and can be clearly described and accurately and consistently reproduced. They do not rely on subjective judgement by an assessor and they are able to be reliably carried out in the same way, with the same result, by different parties.

In contrast, subjective assessment techniques rely partly or fully on personal judgement may be considered ambiguous when they are not consistently and reliably reproducible by different assessors.

Signatories should clearly outline their methodology for subjective assessments (such as the Grading of Grapes or wine), and include it in their Agreements. If they do so, and Part 5 is complied with, the assessment of Grapes or wine by reference to purely subjective analysis is acceptable.

5.2 Grape Assessment Procedures

BEST PRACTICE – GRAPE ASSESSMENT PROCEDURES

Signatories should involve their Growers as much as possible when it comes to vineyard assessments. They should encourage Growers to inform the Signatory as soon as they become aware of any change in the maturity, purity or condition of the Grapes that may result in a Price Deduction being applied to the Grapes or rejection of the Grapes.

Where practicable, Grapes should be assessed against the MP&C Standards and/or Graded prior to harvest, subject to final assessment post-harvest at the farmgate or the winery.

A Grower should always have the right to be present during a vineyard inspection and this should be encouraged. This is not just for the benefit of the relationship, but a reasonable requirement for managing biosecurity and relevant work health & safety risks.

It is essential that Signatories entering a Grower's property abide by relevant laws, including those relating to biosecurity and work health & safety. Growers' standards and protocols for managing risk may exceed the relevant legislative requirements and must be adhered to.

When assessing Grapes against MP&C Standards or grading them or otherwise making assessments of Grapes, Signatories must:

(a) 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;

(b) where available, use Industry Endorsed Standard Procedures; and

(c) clearly document their methodology and results, and retain that documentation.

INDUSTRY ENDORSED STANDARD PROCEDURES

Agreements must clearly outline the sampling and testing methods that Signatories will use to assess Grapes.

Inconsistent or unexpected results can occur when testing methods are not objective or when testing is not carried out using accurate equipment and rigorous sampling and assessment procedures.

Industry Endorsed Standard Procedures (IESPs) have been developed by the AWRI, in consultation with AGW, to assist Winemakers and Growers to sample and make assessments as accurately as is practicable in the circumstances. The IESPs are available on AGW's code website. They include methods for sampling and assessment of grapes, must and wine (accepted reference methods for a range of analytical measurements (e.g. total dissolved solids, colour and titratable acidity), criteria for validation of secondary methods, protocols for sampling, assessment of Grape purity and MOG, margins of error and retention of evidence).

The Industry Guidelines serve as an explanatory document to the IESPs as well as providing guidance on how to successfully apply them.

5.3 Price Deductions and Rejection

(a) Unless the Grapes have failed to meet the MP&C Standards or other agreed specifications or terms contained in the Agreement:

(i) Price Deductions must not be imposed; and
(ii) Grapes must not be rejected.

(b) A Signatory must notify the Grower of any decision to impose a Price Deduction or reject Grapes as soon as practicable following assessment, using its best endeavours to do so:

(i) within 72 hours of any pre-harvest assessment in the vineyard; or
(ii) within 4 hours of any post-harvest assessment at the farmgate or winery.

(c) Notification under section 5.3(b):

(i) should be by email, SMS or other technology that gives the Grower an immediate alert (e.g. sound signal on their phone); or
(ii) may be verbal, but, if so, must be confirmed in writing in the manner set out in section 5.3(c)(i) within the relevant time period set out in section 5.3(b) where practicable.

EXPLANATORY NOTE

Where a Signatory seeks to apply a Price Deduction to Grapes, or reject the Grapes, evidence will generally be required to be produced in the event that the deduction or rejection is disputed by the Grower (including in accordance with Part 6). Such evidence might include retention samples, documentation evidencing compliance with sampling or assessment procedures, digital images, diary records or documentation to support analytical procedures.

6. Dispute Resolution

6.1 Alternative Dispute Resolution Procedures

(a) The parties to an Agreement must incorporate into their Agreement (by reference) the dispute resolution procedures set out in Appendices 1 and 2, unless they choose an alternative procedure (other than Court proceedings) that is at least as rigorous as the procedures set out in Appendices 1 and 2.

(b) The parties to an Agreement may not commence Court proceedings in relation to a Dispute until they have exhausted the dispute resolution procedures in the Agreement unless it is required for urgent interlocutory relief.

6.2 Negotiation

(a) Before commencing a formal dispute resolution process under section 6.3 or 6.4 below, senior representatives of the parties shall use their best endeavours to resolve the dispute by discussion and negotiation.

(b) Upon the request of either party, the Secretariat may liaise with the parties, either individually or together, in order to facilitate an early resolution of the Dispute.

6.3 Expert Determination

(a) A Dispute relating to a Grape price or rejection (other than a Dispute the subject of section 6.4) will be resolved in accordance with the procedures in Appendix 1, by either an:

(i) Independent Technical Expert, if the Dispute relates to whether Grapes have been correctly assessed in accordance with the requirements set out in the Agreement; or
(ii) Independent Pricing Expert, if the Dispute relates to whether the price for the Grapes has been properly determined (other than a dispute the subject of section 6.3 (a)(i)).

EXPLANATORY NOTE

Disputes over Price Deductions or rejections are often Time-Sensitive Disputes. In many cases, these Disputes need to be resolved within a few hours to avoid deterioration of the Grapes. It is important that the time-sensitive nature of the dispute is considered when determining the appropriate time frame for dispute resolution process as outlined in Appendix 1.

(b) The parties shall be bound by an Independent Expert's determination, in the absence of manifest error or misconduct.

(c) In making their determination, an Independent Expert shall be acting as an expert and not as an arbitrator.

(d) Failure by a Signatory to comply with a determination made by an Independent Expert will amount to a breach of the Code (as well as a breach of the Agreement).

6.4 Conciliation

(a) The parties will attempt to resolve a Dispute, in relation to whether an Agreement has been breached, by conciliation in accordance with the procedures in Appendix 2.

(b) At a conciliation referred to in section 6.4(a), the parties may not have lawyers present in the room with the Conciliator, but they may take legal advice outside of the room during the conciliation.

6.5 Miscellaneous

(a) If an Independent Expert or Conciliator is appointed to resolve, or assist to resolve, a Dispute, unless the parties agree otherwise, the parties shall:

(i) pay half of the Independent Expert or Conciliator's costs set by the Committee; and
(ii) otherwise each bear their own costs associated with the Dispute.

(b) Any confidential information of parties to a Dispute, obtained by the Secretariat or the Committee, must be kept confidential, although it may be disclosed in aggregate form without identifying the parties.

ARBITRATION

The parties should consider what will happen if a conciliation fails. If they wish to avoid court proceedings, they could provide in the Agreement that the Dispute will be resolved by final and binding arbitration.

7. Review

(a) Code performance will be reported annually on a regional basis, along with the number of Signatories, the number of Disputes notified to the Secretariat and/or resolved under the provisions of the Code and the number of Signatories who have breached the Code.

(b) A formal review of the Code will be conducted every three years or as otherwise considered appropriate by the Committee.

Appendix 1: Independent Expert Determination

Step	Action	Time-frame	
		Time-Sensitive	***Non-Time Sensitive***
1	(a) The Complainant must give notice in writing (including by email) to the Respondent (with a copy to the Secretariat) of the Dispute, specifying that the parties shall use the procedures contained in this Appendix 1 to resolve the Dispute (**Notice of Dispute**). (b) The Notice of Dispute must specify: (i) the nature of the Dispute with reasonable particulars; (ii) whether or not the Dispute is a Time-Sensitive Dispute (in the Complainant's reasonable opinion); (iii) the desired outcome of the Complainant; and (iv) reasoning as to why that outcome is just. (c) The Secretariat may liaise with the parties, individually or together, in order to facilitate an early resolution of the dispute.	As soon as practicable and no later than 7 days of the determination being notified to the grower.	
2	If, following Step 1, there is no resolution of the Dispute, the Secretariat will, as soon as practicable, advise both parties whether the Dispute is Time-Sensitive and the parties will follow the following procedures within the specified time frames:	As soon as practicable	
3	(a) The Respondent must give notice in writing (including by email) to: (i) the Complainant; and (ii) the Secretariat, specifying: (iii) whether or not the Complainant's desired outcome is agreed; and (iv) if the desired outcome is not agreed: A. providing reasoning as to why the Complainant's claim is not just; and B. offering an alternative resolution (in the case where the Respondent wishes to offer another outcome). (b) The Secretariat may liaise with the parties, individually or together, in order to facilitate an early resolution of the dispute.	Within 48 hours from issue of the Notice of Dispute	Within 5 business days from date of issue of the Notice of Dispute
4	If, following Steps 1 to 3, the parties have not resolved the Dispute, the matter will be settled by an Independent Expert jointly appointed by them. They must be satisfied that the Independent Expert is impartial and qualified to rule on the matter(s) in Dispute.	Within 72 hours from issue of the Notice of Dispute	Within 10 business days from date of issue of the Notice of Dispute

Step	Action	Time-frame	
		Time-Sensitive	***Non-Time Sensitive***
5	If the parties cannot agree on the selection of an Independent Expert, the Secretariat will make the appointment, from the list of Independent Experts on AGW's code website, upon application of either party and after consulting with the parties.	Within 24 hours of receipt of an application from either party under this Step 5	Within 5 business days of receipt of an application from either party under this Step 5
6	(a) The Independent Expert will determine their own processes and the parties will comply with them. (b) The Independent Expert will deliver a determination to the parties and the Secretariat or, if the matter requires extensive consideration, submissions from the parties, investigation or other evidence, will set a reasonable time-frame within which to deliver the determination (and subsequently deliver the determination within that time-frame).	Within 48 hours of being appointed, or such other reasonable time-frame	Within 10 business days of being appointed, or such other reasonable time-frame

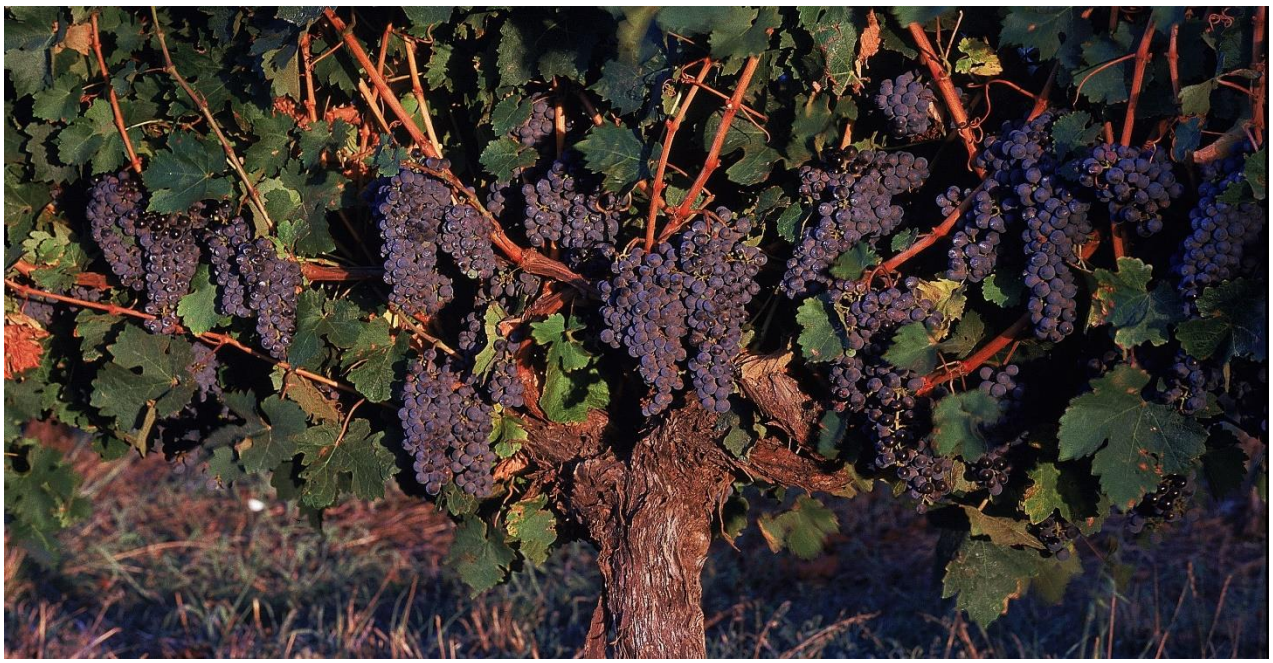
Appendix 2: Conciliation

Step	Action	Time-frame	
		Time-Sensitive	***Non-Time Sensitive***
1	(a) The Complainant must give notice in writing (including by email) to the Respondent (with a copy to the Secretariat) of the Dispute, specifying that the parties shall use the procedures contained in this Appendix 2 to resolve the Dispute (**Notice of Dispute**). (b) The Notice of Dispute must specify: (i) the nature of the Dispute with reasonable particulars; (ii) the desired outcome of the Complainant; and (iii) reasoning as to why that outcome is just. (c) The Secretariat may liaise with the parties, individually or together, in order to facilitate an early resolution of the dispute.	As soon as practicable	
2	(b) The Respondent must give notice in writing (including by email) to: (i) the Complainant; and (ii) the Secretariat, specifying: (c) whether or not the Complainant's desired outcome is agreed; and (i) if the desired outcome is not agreed: A. providing reasoning as to why the Complainant's claim is not just; and B. offering an alternative resolution (in the case where the Respondent wishes to offer another outcome). (d) The Secretariat may liaise with the parties, individually or together, in order to facilitate an early resolution of the dispute.	Within 5 business days of receiving the Notice of Dispute	
3	If the parties have not resolved the Dispute, the Secretariat will, upon application of either party (after consulting with the parties): (a) appoint an independent Conciliator from the list on AGW's code website; and (b) select a Conciliation Body to administer the conciliation from the list on AGW's code website.	Within 3 business days from application of either party	
4	(a) The Conciliator will determine the time and date for the conciliation. (b) The conciliation will be conducted under the administration of the selected Conciliation Body, in accordance with the conciliation rules of that body (as amended by the parties).	Within 3 business days of the matter being referred to conciliation under Step 3, or within such other time-frame as the parties and the Conciliator agree.	
5	The parties shall endeavour to resolve the Dispute with the assistance of the Conciliator, in accordance with the conciliation rules.	Within the time-frame determined under Step 4.	

Appendix 3: Transitional Provisions

For the purposes of section 1.3 of this Code:

(a) signatories to the 2008 Code shall automatically become Signatories to this Code, on the date one month after being notified by the Committee of the commencement of this Code, unless they notify the Committee to the contrary within that one month period;

(b) each Winemaker, who becomes a Signatory to this Code prior to 1 July 2021, must comply with the Code from 1 July 2021, subject to section (c) below; and

(c) each Signatory (including signatories to the 2008 Code) shall, within three months of becoming a Signatory, make a written offer to its Growers to amend its existing Agreements, to make them consistent with this Code, with effect no later than from 31 December 2021.