

# Chapter 5

## Industry representative organisations

5.1 This chapter considers grape and wine industry representation at regional, state and national level, including the code of conduct that operates between winemakers and winegrape growers.

5.2 Wine Federation of Australia (WFA) and Wine Grape Growers Australia (WGGA) are the two national organisations currently declared under the *Australian Grape and Wine Authority Act 2013*, representing winemakers and growers respectively.<sup>1</sup> The Act requires that at least one representative organisation be declared from the two industries. Representative organisations are funded largely through the collection of voluntary membership levies and project funding.<sup>2</sup>

5.3 WFA submitted that it has more than 370 winemaker members of the total of approximately 2 500 in Australia,<sup>3</sup> representing approximately 80 per cent of the national crush. Small, medium and large winemakers are represented through membership committees with an equal voice on the WFA Board, with an 80 per cent majority required for Board decisions in order to maximise consensus.<sup>4</sup>

5.4 Representing Australian winegrape growers, WGGA provided an estimate that 3 700 of the total 6 200 growers have 'direct involvement in the organisation.'<sup>5</sup> Its executive committee is comprised of a non-voting executive director and independent chair, and eight voting members with representation across the Australian states and the Riverland, Riverina and Murray Valley regions.<sup>6</sup>

5.5 Beneath WFA and WGGA, various state and regional representative organisations operate independently based on voluntary contributions from their winemaker and grower members.<sup>7</sup> An illustration of the layered approach to industry

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1 AGWA, *Submission 8*, p. 8; *Australian Grape and Wine Authority Act 2013* (Commonwealth), sections 5A–5BA.

2 Accolade Wines, *Submission 26*, p. 16.

3 Professor Kym Anderson AC and Nanda R. Aryal, *Growth and cycles in Australia's wine industry: A statistical compendium, 1843 to 2013*, Wine Economics Research Centre, University of Adelaide, February 2015, p. 295.

4 WFA, *Submission 41*, p. 7; Mr Tony D'Aloisio AM, President, WFA, *Committee Hansard*, 27 October 2015, p. 13.

5 WGGA, *Submission 30*, p. 3.

6 WGGA, Constitution of Wine Grape Growers Australia Incorporated, November 2014, <http://wgga.com.au/wp-content/uploads/2015/02/WGGA-Constitution-NOV-2014.pdf> (accessed 25 November 2015), p. 6.

7 Accolade Wines, *Submission 26*, p. 17.

representation is at figure 1, representing South Australia.<sup>8</sup> Larger winemakers can be members of several organisations across states and regions.<sup>9</sup>

5.6 Some submitters commented that the number of industry representation bodies leads to confusion and waste.<sup>10</sup> Wine Tasmania submitted that the two national bodies 'have extremely limited resources and are struggling to galvanise the industry and be relevant across all segments.'<sup>11</sup> Accolade Wines expressed concern that while 'the industry organisations generally function well':

...the multitude of representational levels is not an effective use of industry resources... We strongly support WFA and the state and regional organisations, but encourage them to avoid duplication of effort.<sup>12</sup>

5.7 The committee heard only limited evidence of a lack of support for the work of individual representative organisations. Riverland Wine submitted that the efficacy of WGGA was challenged by a lack of resources:

WGGA currently does not have enough human or financial resource to effectively cope with the challenges and tasks that confront the organisation and wine grape growers nationally. This is despite the application and ability of the Executive Officer. There is no point in an organisation merely existing; if it is unable to achieve core goals then it has no reason to exist.<sup>13</sup>

5.8 Further, the South Australian Government submitted that because WGGA is primarily funded by South Australian growers, 'mechanisms are needed' to increase its representation of growers in other jurisdictions.<sup>14</sup>

5.9 Mr Warren Randall from Seppelstfield Wine told the committee that 'WFA is not supported by the majority of Australian winemakers.'<sup>15</sup> WineFoodTechMedia Group reported that WFA membership is 'skewed towards those producing higher volumes', but noted that 'smaller producers have representation via their State bodies' or through the small producers subcommittee.<sup>16</sup>

5.10 The committee heard evidence that witnesses and submitters are actively considering ways to streamline industry representation. South Australian Wine

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8 Wine Grape Council of South Australia, *Submission 37*, Appendix 3.

9 See, for example, Accolade Wines, *Submission 26*, p. 17.

10 South Australian Wine Industry Association, *Submission 32*, p. 6.

11 Wine Tasmania, *Submission 11*, p. 13.

12 Accolade Wines, *Submission 26*, p. 17.

13 Riverland Wine, *Submission 15*, p. 11.

14 Ibid.

15 Mr Warren Randall, Proprietor and Managing Director, Seppelstfield Wine, *Committee Hansard*, 24 September 2015, pp 11, 16.

16 WineFoodTechMedia Group, *Submission 34*, p. 4.

Industry Association submitted that work 'is underway at state and national levels' towards a 'more integrated industry representation model'.<sup>17</sup> WFA President Mr Tony D'Aloisio AM told the committee that in the longer term, WFA and WGGGA could merge, stating that 'just as we have one statutory body, we should have one industry body – but that is quite a way off'.<sup>18</sup>

## Code of Conduct

5.11 Collaboration between the national representative organisations culminated in the commencement of the Australian Wine Industry Code of Conduct (the Code) in January 2009.

5.12 The Code is voluntary and 'opt-in' for winegrape purchasers, who are then bound by its provisions in their dealings with growers.<sup>19</sup> Signatories agree to adhere to minimum standards in those dealings, including on contract, pricing methods and notification, payment terms and dispute resolution procedures.<sup>20</sup>

5.13 Governance of the Code has changed significantly since 2009. At commencement, the Code was administered by an independent committee of three, and subsequently four, appointed part-time members with commercial experience.<sup>21</sup> In 2011, the tenure of appointed members was not renewed because of 'costs associated with the Code considering the low uptake and low number of disputes'.<sup>22</sup> The Code Management Committee, on which WFA and WGGGA have equal representation, assumed responsibility for its operation.<sup>23</sup>

5.14 Reviews of the Code were to be conducted at intervals of not less than three years, a requirement that does not appear to have been strictly observed. An independent review by Mr Neill Buck reported in 2010 with recommendations on coverage targets, simplification and administration of the Code.<sup>24</sup> An internal review

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17 South Australian Wine Industry Association, *Submission 32*, p. 7.

18 Mr Tony D'Aloisio AM, President, WFA, *Committee Hansard*, 27 October 2015, p. 21. See also Riverland Wine, *Submission 15*, p. 11.

19 Australian Small Business Commissioner, *Submission 23*, p. 5.

20 Murray Valley Winegrowers, *Submission 6*, p. 4.

21 Australian Wine Industry Code of Conduct Management Committee, *Annual Report 2009*, p. 5.

22 Australian Wine Industry Code of Conduct Management Committee, *Annual Report 2010–11*, p. 6.

23 Australian Wine Industry Code of Conduct Committee, *Australian Wine Industry Code of Conduct*, [http://www.wineindustrycode.org/online\\_code.html](http://www.wineindustrycode.org/online_code.html) (accessed 13 November 2015)

24 Australian Wine Industry Code of Conduct Management Committee, *Annual Report 2010–11*, p. 6.

was reported as having concluded in December 2014, resulting in an amendment providing additional time to resolve disputes under the Code.<sup>25</sup>

5.15 Responsibility for promoting the Code is share by signatories and representative bodies. WFA explained the promotional role they share with WGGA:

The two representative bodies, WFA and WGGA, have agreed to publicize and promote the Code and its dispute resolution procedures, and to work to maximize its adoption within the industry.<sup>26</sup>

5.16 While figures are not available in all reports, the 2012–13 annual report of the Code Management Committee recorded an expense of \$42.19 by WFA on promotion of the Code.<sup>27</sup>

### *Low uptake*

5.17 Many submitters and witnesses expressed concern about low uptake of the voluntary Code.<sup>28</sup> Of the approximately 2 500 wine producers in Australia only 41 are signatories, and only around 40 per cent of wine production is covered.<sup>29</sup> In 2014–15 there was only one new signatory.

#### *Signatories to Australian Wine Industry Code of Conduct*

Financial year	Number of signatories	% Total crush
<b>2008-09</b>	3	25%
<b>2009-10</b>	6	37%
<b>2010-11</b>	7	31%
<b>2011-12</b>	8	31%
<b>2012-13</b>	33	37%
<b>2013-14</b>	40	40%
<b>2014-15</b>	41	40%

Source: Australian Wine Industry Code of Conduct annual reports 2009 to 2014–15.<sup>30</sup>

25 Australian Wine Industry Code of Conduct Management Committee, *Annual Report 2014–15*, p. 6.

26 WFA, *Submission 41*, p. 29.

27 Australian Wine Industry Code of Conduct Management Committee, *Annual Report 2012–13*, p. 10.

28 Australian Small Business Commissioner, *Submission 23*, p. 5.

29 Ms Vicki Watson, *Submission 1*, p. 1; Murray Valley Winegrowers Inc, *Submission 6*, p. 4; Department of Agriculture, *Submission 29*, p. 6; Australian Small Business Commissioner, *Submission 23*, p. 5.

30 Australian Wine Industry Code of Conduct, *Annual reports*, <http://www.wineindustrycode.org/Reports.html> (accessed 24 November 2015).

5.18 The committee heard that performance targets set for the number of signatories to the Code by 31 December 2012 and 31 December 2013 were not met, and have not been updated in the Code itself. By 2012, the Code was to sign a quarter of the top 100 wine producers by tonnes processed and half by 2013. The committee notes that annual reports produced by the Code Management Committee do not directly report against these targets, quoting a percentage of the total crush rather than a percentage of the top producers.

5.19 The committee heard evidence that low uptake is leading to inconsistency and unfairness in transactions between winemakers and growers.<sup>31</sup> The Riverina Wine Marketing Board submitted that the Code has had little effect in the region, where transactions frequently contradict its terms.<sup>32</sup> Murray Valley Winegrowers described a commercial advantage that has emerged for those who do not sign, stating:

Not only does this failing expose growers to unethical and unregulated treatment, it imposes certain standards on signatories that nonsignatories are able to ignore. For example, the requirement on signatories to publicise indicative prices leaves others able to “piggyback” on those, and to experiment with their own brand of dispute resolution.<sup>33</sup>

5.20 Further examples of inconsistency with the Code include agreements that are not in writing or are 'vague on trading terms,' that lack dispute resolution mechanisms and contain payment terms that can 'extend over eight months.'<sup>34</sup> Riverland Wine submitted that the Code had fostered an unhelpful practice whereby stipulating the latest date for price notification in the Code had created a 'default announcement date', providing less notice to growers than previously.<sup>35</sup>

5.21 Explanations for low uptake of the Code varied between sectors and regions. Wine Tasmania told the committee that there would be 'minimal' take-up of the Code in Tasmania because it is a 'sellers' market' where 'quite a lot of people are happy to pay what they need to pay.'<sup>36</sup> Differently, key proponent WGGGA described the lack of signatories to the Code as 'symptomatic of the lack of trust in the wine sector.'<sup>37</sup> WFA submitted that 'continued promotion of the code and its benefits to the sector' would improve its uptake, committing to 'increase this substantially in 2016.'<sup>38</sup>

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31 WGGGA, *Submission 30*, p. 5; South Australian Government, *Submission 36*, p. 3.

32 Riverina Grape Wine Marketing Board, *Submission 33*, p. 16.

33 Murray Valley Winegrowers, *Submission 6*, p. 4.

34 Ibid. See also Treasury Wine Estates, *Submission 35*, p. 4.

35 Riverland Wine, *Submission 15*, p. 14.

36 Mr Graeme Lynch, Chair, Wine Industry Tasmania Ltd, *Committee Hansard*, 25 September 2015, p. 24.

37 WGGGA, *Submission 30*, p. 5.

38 WFA, *Submission 41*, p. 30.

### ***Considering a mandatory code***

5.22 Development of the Code followed a 2005 recommendation of this committee to make a mandatory code of conduct prescribed under the then *Trade Practices Act 1974* (now *Competition and Consumer Act 2010*). The committee reasoned:

...it is unlikely that a voluntary code would be enough to protect growers with weak bargaining power. The more ethical winemakers would presumably follow the code; the less ethical would not. Given the strong evidence of poor business relations and exploitation of growers by some winemakers, the committee thinks that a mandatory code is justified.<sup>39</sup>

5.23 Responding in 2006, Government did not support the recommendation, instead supporting efforts of WFA and WGGA to develop a voluntary code.<sup>40</sup>

5.24 The committee heard renewed support for a mandatory code from some submitters and witnesses to this inquiry.<sup>41</sup> Mr Brian Simpson of the Riverina Wine Grape Marketing Board told the committee that a mandatory code would 'remedy the situation in which 'growers deliver fruit without even knowing what price they are going to get.'<sup>42</sup> Significantly, WGGA told the committee that:

Our constituents are saying clearly that they want a mandatory code. Mandatory codes have the positive that everyone is in them, but of course the downside is inflexibility and more basic terms.<sup>43</sup>

5.25 In place of a standalone wine industry code, some submitters and witnesses including WGGA proposed the mandatory *Horticulture Code of Conduct* be amended to cover winegrape sales.<sup>44</sup> Arguing to the contrary, WFA submitted that applying the horticultural equivalent would have unintended consequences for the wine industry.<sup>45</sup>

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39 Senate Rural and Regional Affairs and Transport References Committee, *The operation of the wine-making industry*, October 2005, p. 58.

40 Government response to the Senate Rural and Regional Affairs and Transport References Committee, *The operation of the wine-making industry*, 22 June 2006.

41 Riverina Grape Wine Marketing Board, *Submission 33*, p. 6; Ms Vicki Watson, *Submission 1*, p. 1.

42 Mr Brian Simpson, Chief Executive Officer, Riverina Wine Grape Marketing Board, *Committee Hansard*, 24 September 2015, p. 52.

43 Mr Lawrence Stanford, Executive Director, WGGA, *Committee Hansard*, 24 September 2015, p. 35.

44 South Australian Government, *Submission 36*, p. 3; Mr Michael Stone, Executive Officer, Murray Valley Winegrowers, *Committee Hansard*, 24 September 2015, p. 30; Mr Lawrence Stanford, Executive Director, WGGA, *Committee Hansard*, 24 September 2015, p. 35.

45 WFA, *Submission 41*, p. 29.

5.26 More submitters and witnesses argued for the voluntary code to be maintained, provided it is more broadly adopted.<sup>46</sup> Accolade Wines submitted that:

We strongly hold that a voluntary code, regularly reviewed and agreed by winemaker and grapegrower organisations and broadly adopted by industry is the most effective mechanism to ensure good conduct within the industry.<sup>47</sup>

5.27 The Australian Small Business Commissioner submitted that 'if the whole industry abided by the Code, there would be significant improvements in relationships between growers and purchasers.'<sup>48</sup>

5.28 Consistent with views heard by this committee, and in particular the different positions taken by WFA and WGGA, the Australian Small Business Commissioner reported 'no consensus' on a mandatory code. After convening an industry roundtable in March 2015, the Commissioner noted there were 'significant issues to resolve' among participants. Their submission recognised a mandatory code as 'an appropriate action' only in the absence of increased support for the Code.<sup>49</sup>

5.29 The committee heard that there is some scope for amendment of the existing, voluntary Code to improve its operation and uptake. Based on roundtable outcomes, the Australian Small Business Commissioner called for review of the Code and the 'indicative pricing provisions' which are considered too prescriptive by some producers.<sup>50</sup> These recommendations were supported by Treasury Wine Estates.<sup>51</sup>

#### *Committee view*

5.30 At this stage, the committee is persuaded of the value of a voluntary and industry-owned code of conduct. The committee does not consider that the Code has yet achieved its potential as a fair dealing framework that is truly responsive to industry. This is illustrated by evidence that inconsistent application of the Code can lead to perverse outcomes for growers. The committee is disappointed with the low levels of uptake of the Code and the perceived lack of cooperation between the two national representative organisations.

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46 Accolade Wines, *Submission 26*, p. 13; Pernod Ricard Winemakers, *Submission 28*, p. 4; Mr Michael Stone, Executive Officer, Murray Valley Winegrowers, *Committee Hansard*, 24 September 2015, p. 30; Mr Chris Byrne, Executive Officer, Riverland Wine, *Committee Hansard*, 24 September 2015, p. 42.

47 Accolade Wines, *Submission 26*, p. 13.

48 Australian Small Business Commissioner, *Submission 23*, p. 5.

49 Ibid.

50 Ibid.

51 Treasury Wine Estates, *Submission 35*, p. 4.

5.31 The committee noted with concern the move away from an independent administration committee and the recent delay in meeting the requirement that the Code be reviewed triennially by 30 June of the relevant year.

5.32 The committee encourages careful review of the Code and renewed commitment to boosting its industry coverage. If newly agreed targets are not met after two years, the committee considers that a mandatory code should be reconsidered by Government.

#### **Recommendation 11**

**5.33 The committee recommends an independent review of the Australian Wine Industry Code of Conduct, to report to Government before 30 June 2016.**

#### **Recommendation 12**

**5.34 The committee recommends that if targets for increase uptake of the Australian Wine Industry Code of Conduct are not met, the Government, in consultation with representative organisations for growers and winemakers, reconsider the development of a mandatory code before the end of 2017.**

**Senator Glenn Sterle**

**Chair**