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**HORSES FOR COURSES:  
 DESIGNING THE APPROPRIATE CONFLICT  
 RESOLUTION SYSTEM**

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# HORSES FOR COURSES: DESIGNING THE APPROPRIATE CONFLICT RESOLUTION SYSTEM

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## 1. Introduction

### 1.1 Landscape of industry dispute resolution programs in Australia

In Australia there is a range of industry DR programs. Some have been established to assist with disputes that arise between customers and business whilst others provide a mechanism for handling disputes between businesses within a specific industry. There is another key distinction between industry dispute resolution programs: whether they are mandatory or voluntary (Figure 1). Mandatory programs, such as the Financial Ombudsman Service, which handles disputes between financial and insurance companies and their customers (individuals and small business), and the Franchising Code of Conduct, which covers disputes that arise between franchisees and franchisors, have the force of law under the Trade Practices Act 1974. By contrast, voluntary programs such as the Code of Conduct for Film Distribution and Exhibition, are established, operated and funded by the industry itself. A mandatory industry DR program applies to the whole industry, whereas a voluntary industry DR program only applies to parties who are signatories to it.

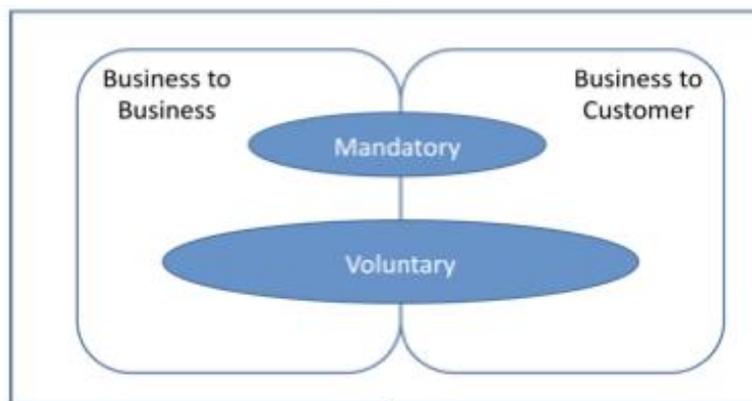


Figure 1. DR programs in industry address different relationships (business-to-business or business to customer) and either may be mandatory or voluntary.

The legal underpinnings of mandatory programs and the underlying government mandate provide infrastructure and impetus to the activities of the program. Voluntary industrial programs, on the other hand, must create this infrastructure and generate impetus for the program by engaging the key stakeholders. In developing a voluntary program the primary features will usually comprise a definition of the overarching aim of the DR program, a guideline for standard business conduct within the industry and dispute resolution mechanisms. The intention of the guideline is to act as a point of reference for the stakeholders when conducting their business in the industry and by so defining the framework, reducing the incidence of disputes. In the event that a dispute does arise, the dispute resolution mechanisms provide a system of procedures to seek resolution of the dispute.

The overarching goal of a voluntary code of conduct is to minimise the number of disputes arising and provide effective processes to resolve the dispute to the parties' satisfaction. It is important that the

program is tailored to the industry, with a code of conduct that addresses the business environment for all stakeholders and a dispute resolution system that addresses the kind of disputes that arise. An effective program is necessarily evolutionary to reflect the changes in the business environment of the industry. The DR systems that are designed should provide flexibility in the mechanism by which disputants may seek resolution whilst retaining a clear, simple structure that is comprehensible and usable by the stakeholders. The major challenge to voluntary programs is that their success lies in the participation industry stakeholders. If a perfect voluntary DR program were developed, it would be immaterial if the range of industry stakeholders were not participating. Engaging the industry may entail overcoming significant barriers between stakeholders in the existing business culture such as fear of retribution if a dispute is raised against a major stakeholder.

Mandatory dispute resolution procedures are designed by government while voluntary program procedures are designed by the stakeholders themselves, therefore allowing more control by stakeholders.

## 1.2 Scope of the paper

This paper focuses on voluntary business-to-business DR programs in industry. First, it will detail the general components and factors for consideration in a voluntary industry DR program. Next, it will highlight challenges that may need to be overcome to develop an effective, operational industry DR program by looking back at the experience of the Australian cinema industry's DR program established in 1998, then look forward to the future of the recently established DR program in the Australian wine industry.

## 2. DR Programs

### 2.1 What is a dispute resolution program?

A DR program can be defined as a multi-layer initiative, designed to provide timely, cost-effective methods to handle disputes. Its overarching objectives mirror the aims of ADR: to prevent unnecessary disputes; to reduce the frequency and escalation of disputes; and to ensure the early and legitimate resolution of disputes takes place.<sup>1</sup> Central to the DR program is the dispute DR system, which in turn is centred on DR procedures, comprising one or more DR processes (Figure 2). For an effective DR program, each of these layers should be carefully considered.

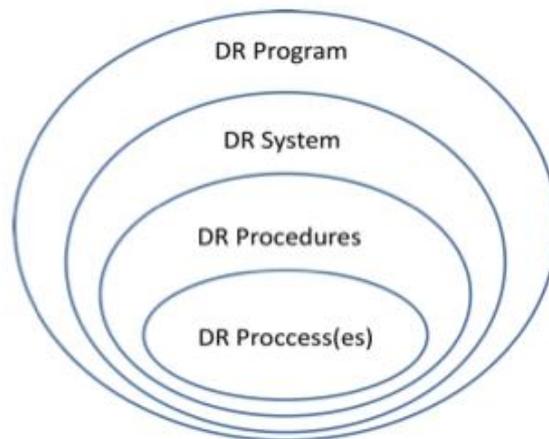


Figure 2. Layers of a DR program

### 2.3 Selecting suitable DR process(es)

Approaches for dealing with disputes can be grouped into three categories: power-based, rights-based and interest-based.<sup>2</sup> Power-based methods, such as strikes, rely on which party has the most power. Although it is unusual for disputes to be resolved through strike action it can be an effective catalyst for other methods. Rights-based methods are typically determinative processes, such as litigation or arbitration, where an independent third party imposes a settlement decision on the parties. Such rulings or

<sup>1</sup> The Law Society of NSW, *Early Dispute Resolution (EDR) Task Force Report*, (1999),

<<http://www.lawsociety.com.au/idc/groups/public/documents/internetcontent/026499.pdf>> at 3 May 2010.

<sup>2</sup> William Ury, Jeanne Brett and Stephen Goldberg, 'Three Approaches to Resolving Disputes' in Jossey-Bass (ed), *Getting Disputes Resolved* (1989) 3; Cathy Costantino and Christina Merchant (eds), *Designing Conflict Management Systems* (1996) 45.

determinations are based on rights, entitlements, merits, credibility and positions. Interest-based methods, such as negotiation and mediation, tend to be the least invasive and least onerous on the parties.

Consideration should be given to 'barriers to settlement'<sup>3</sup> when deciding on a suitable DR process. Understanding the barriers to settlement requires diagnosis of the dispute, insight into process characteristics that can suitably address the key causes of the dispute, past patterns of dispute resolution and knowledge of which DR processes are most closely described by the identified required process characteristics. The process should be appropriate for the dispute and deliver on the process needs of the parties:<sup>4</sup> for example, expert determination would generally not be suitable for a high-emotion dispute between neighbours over noise levels and garbage bins. Mediation might not be realistic where the parties require resolution within hours of the dispute arising.

Ury, Brett and Goldberg propose four interrelated criteria to identify costs and benefits of different DR processes:<sup>5</sup> (i) transaction costs such as time, money, opportunity costs and stress; (ii) satisfaction with outcomes in relation to the terms of settlement or the perceived fairness provided by the process; (iii) long-term effect on the relationship; and (iv) recurrence (in other words the longevity of the settlement outcome).

## 2.4 Factors to consider in DR procedures design

DR procedures outline the steps to take in the event of a dispute. Effective DR procedures will generally involve more than one DR process. They should be accessible, simple to use, time-efficient, adaptable and allow for early resolution at minimal cost.<sup>6</sup> DR procedures involving multiple DR processes should be graduated by starting with the least interventionist DR process, followed by increasingly interventionist processes.<sup>7</sup>

Ury, Brett and Goldberg define the goal of DR system design as 'to design a system that promotes the reconciling of interests but that also provides low-cost ways to determine rights or power for those disputes that cannot or should not be resolved by focusing on interests alone'<sup>8</sup>.

Adaptable DR procedures allow the parties to revert back to an earlier DR process in the procedures if they so wish. It also allows them to jump forward to a later part of the procedures rather than be obliged to follow them in a linear way.<sup>9</sup> This is beneficial when speed of settlement is sought for a time-critical dispute and where the DR procedures include multiple DR processes.

## 2.5 Elements of a DR System

A DR system consists of various elements.<sup>10</sup> Firstly, the dispute, which can be considered the system input. The output being transactional costs, satisfaction level with the process and outcomes, the resulting impact on the relationship and the likelihood and frequency with which dispute recur. Central to the DR system are the DR procedures implemented by the parties. These are directly influenced by factors such as the available DR procedures, available resources and the parties' motivations and skills regarding dispute resolution. The DR system serves an organisation or relationship, which is embedded in an external environment with influences such as social, economic, cultural and political factors, which also impact on the procedures used (albeit indirectly).

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<sup>3</sup> Karl Mackie et al, *The ADR Practice Guide* (2<sup>nd</sup> ed, 2000) 38-41.

<sup>4</sup> Costantino, above n2, 45.

<sup>5</sup> Ury, above n2, 11.

<sup>6</sup> Costantino, above n2, 45.

<sup>7</sup> Ibid.

<sup>8</sup> Ury, above n2, 15.

<sup>9</sup> Costantino, above n2, 46.

<sup>10</sup> Ury, above n2, 22.



Figure 3. Model of a DR System<sup>11</sup>

## 2.6 Elements of an industry DR program

The core element of a DR program is the DR system. The function of additional elements in the program is to enable the successful operation of the DR system. If the system were a stage show (and it can be!), the other elements would be the promotions, management and backstage activities.

The DR program should include promotional activities to raise awareness of the system amongst its potential users. This is particularly important in the period following the introduction of the DR program. Over time, an effective DR program will permeate the industry through word of mouth.

Education is key, particularly in relation to DR procedures and the DR processes involved. Firstly, disputants need to know how to raise a dispute under the DR procedures, and secondly, they should understand what the DR processes entail. With the increase in ADR usage in Australia, the general public may be more familiar with terms like mediation or conciliation, but interpretation of their contextual meaning may vary.<sup>12</sup>

In order to be responsive to trends and developments within the industry, a periodic review of the DR program should be conducted, ideally by an independent reviewer. Ongoing monitoring should also be conducted by the committee charged with managing the DR program.

User feedback initiatives may also be implemented to assess the level of satisfaction of disputants with the process, procedures and dispute resolution practitioner. The Office of the Franchising Mediation Adviser (OFMA), for example, whose role is to appoint mediators to franchise disputes requests that mediation participants complete and return a feedback form with their comments on the process.<sup>13</sup>

Finally, the support system needs to be established. This includes administration, management and funding. The Australian Competition and Consumer Commission (ACCC) recommends that a committee whose members are representatives of stakeholder groups in the industry be responsible for these activities for reasons of transparency.<sup>14</sup>

<sup>11</sup> Ibid.

<sup>12</sup> National Alternative Dispute Resolution Advisory Council, *Dispute Resolution Terms* (2003), <[http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/Publications\\_PublicationsbyDate\\_DisputeResolutionTerms](http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/Publications_PublicationsbyDate_DisputeResolutionTerms)> at 12 May 2010.

<sup>13</sup> Office of the Franchising Mediation Adviser, <<http://www.franchisingmediationadviser.com.au/>> at 16 May 2010.

<sup>14</sup> Australian Competition and Consumer Commission, *Guidelines for Developing Effective Voluntary Industry Codes of Conduct* (2005), <<http://www.accc.gov.au/content/item.phtml?itemId=658186&nodeId=c84e7c9517b774a9d75a2dc613174209&fn=Guidelines%20for%20developing%20effective%20voluntary%20industry%20codes%20of%20conduct.pdf>> at 29 April 2010.

### **3. Evolution of a DR program in the cinema industry**

#### **3.1 Background**

In 1998 the ACCC 'commissioned an extensive inquiry into the structure and conduct of the cinema industry in response to complaints of unfair behaviour from cinema exhibition interests, particularly in relation to the policies of film distributors'<sup>15</sup>. Although the report found no evidence of breaches of the Trade Practices Act, subsequent to the findings of the report the ACCC was 'concerned to improve the relationship between distributors and exhibitors' and urged the 'development of a code of conduct and industry-supported dispute resolution mechanism to assist exhibitors and distributors to negotiate'<sup>16</sup>. The result was the collaboration by over 50 distributor and exhibitor representatives to develop a DR program for the cinema industry. The Code of Conduct for Film Distribution and Exhibition (Cinema Code) was established later that year.

The Cinema Code is a voluntary program that defines specific standards of conduct for the industry in relation to the manner in which cinema operators and film distributors deal with each other. Two of its three objectives reflect The Law Society of NSW Early Dispute Resolution (EDR) Task Force Report's definition of the aims of ADR: (i) to decrease the volume and severity of disputes that arise, and (ii) to provide early and legitimate resolution of disputes that do arise. The third objective points to dispute prevention through a framework for fair and equitable dealing between distributors and exhibitors.<sup>17</sup>

The cinema industry can be grouped into four stakeholder categories: major distributor, independent distributor, major exhibitor and independent exhibitor. The code administration committee (the Committee) is responsible for the management and funding of the code operation. It is headed by an independent chairman (the Chairman) and receives administrative support by the code secretariat (the Secretariat).

#### **3.2 Initiatives undertaken to improve the effectiveness of the Cinema Code**

##### **3.2.1 Increase in choice of DR processes and effectiveness of DR procedures**

In the first draft of the code, the DR procedures required that the complainant send written notification to the respondent outlining the background and issues in dispute, the basis on which they believed the code had been breached, and the outcome they considered would settle the dispute.<sup>18</sup> The respondent was required to provide a written response within seven days and both parties were required to make every effort to resolve the issues within a fortnight from when the complainant first raised the dispute. If at this stage the dispute was ongoing, either party could refer the matter for conciliation. The Conciliator<sup>19</sup> would arrange a conciliation meeting with both parties to try to facilitate a negotiated agreement between them. In the event that the parties were unsuccessful in reaching agreement on how the dispute should be settled, the Conciliator had the power to make a non-binding recommendation. If a recommendation was made, the parties were required to report back to the Conciliator within fourteen days on action taken on the recommendation. Any non-compliance with a recommendation would be reported by the Conciliator to the Committee, who would then go on to publish the fact in the upcoming information bulletin and the annual report. According to the Chairman's Report for the 2008-2009 Financial Year, these DR procedures were revised as they did not allow the expedient resolution of disputes that was sometimes needed.<sup>20</sup> The difficulty was that 'by the time all of these requirements had been complied with, the cause of the dispute had been overtaken by events and the resolution of it became academic.'<sup>21</sup>

To address the issue of time-critical disputes, the Committee agreed on amending the DR procedures to include 'informal' methods of dispute resolution prior to the use of conciliation. The complainant is first encouraged to attempt direct negotiation with the appropriate representative of the other party. If that proves unsuccessful, the complainant should then discuss the dispute with the respondent managing director or equivalent officer with the aim of negotiating a settlement. If the dispute is not resolved at this

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<sup>15</sup> Australian Competition and Consumer Commission, 'ACCC Urges Cinema Industry Self-regulation' (Media Release, 3 April 1998).

<sup>16</sup> Ibid.

<sup>17</sup> John Dickie, *ACCC Congratulates Film Industry of Code's Success* (1999), Film Exhibition and Distribution Code Administration Committee <[http://www.filmcode.info/IB\\_2\\_99.doc](http://www.filmcode.info/IB_2_99.doc)> at 25 April 2010.

<sup>18</sup> Dickie, above n18.

<sup>19</sup> The Code Conciliator is an independent DR practitioner appointed by the Committee for a three-year renewable term.

<sup>20</sup> John Dickie, *Chairman's Report: Financial Year 2008-2009* (2009) <<http://www.filmcode.info/Chairman%27s%20Report%2008-09.doc>> at 25 April 2010.

<sup>21</sup> Ibid.

stage, the assistance of the Secretariat and/or its industry organisation can be sought to attempt to facilitate an amicable resolution of the dispute via telephone and email.

The revised DR procedures allow for early, cost-effective resolution firstly by encouraging direct negotiation, then offering telephone or email facilitation by the Secretariat or industry association, then conciliation in which the Conciliator may make a non-binding recommendation if the parties are unable to come to an agreement themselves.

Adaptability is also a feature of the revised procedures as disputants are not obligated to follow them in a linear manner, but may adapt them to their needs by initiating conciliation without first seeking the assistance of a third party to attempt facilitation of the dispute. Conversely, they may 'loop back'<sup>22</sup> to an early stage in the DR procedures, for example, by reverting to direct negotiation after initiating conciliation.

### **3.2.2 Increasing accessibility of the DR procedures**

In light of a significant drop in the number of signatories seeking to lodge disputes with the Secretariat following the introduction of a \$A50 lodgement fee, the Committee decided to abolish the charge with the aim of increasing accessibility of the DR procedures to signatories.<sup>23</sup>

### **3.2.3 Increasing motivation to use the DR procedures**

The fear of retaliatory action if a signatory initiated the DR procedures for a dispute with one of the major players was strongly held in some segments of the industry.<sup>24</sup> To address this fear, and thereby increase the motivation for signatories to use the DR procedures available, the Committee 'passed a unanimous resolution that any such retaliatory behaviour would be contrary to the provisions of the code and would be viewed as a serious breach'. In addition, a provision was inserted in the code that prohibits retaliatory action against a signatory that has raised a dispute.

### **3.2.4 Promotional and educational activity**

Much time and effort has been invested by the Committee, its Chairman, the code conciliator (the Conciliator) and the Secretariat to successfully build the industry's confidence in and adoption of the code as its own DR program.<sup>25</sup> This activity included the publication of information bulletins to keep signatories abreast of developments relating to the code. The Chairman, Conciliator and Secretariat also spoke at industry conferences and conventions and provided information sessions, inviting questions on the operation and evolution of the code.

In 2002, 'as part of a drive to increase the number of signatories to the Code', the Committee decided to develop a website which would facilitate access to information on the DR procedures, the operation and membership of the code.<sup>26</sup> The function of the website was to provide a portal through which non-signatories could review the activities and function of the code and that this would encourage them to sign up.

## **3.3 Current status of the Cinema Code**

There are currently 181 signatories to the code.<sup>27</sup> The Committee believes this represents most of the industry.

As at 30 June 2010, 191 dispute enquiries had been received by the Secretariat since the establishment of the Code in 1998.<sup>28</sup> The vast majority of these dispute enquiries were resolved through the informal early

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<sup>22</sup> Ury, above n2, 52.

<sup>23</sup> John Dickie, *Information Bulletin 1/00: Meeting Scheduled for Independents and MPDAA* (2000) <[http://www.filmcode.info/IB\\_1\\_00.doc](http://www.filmcode.info/IB_1_00.doc)> at 25 April 2010.

<sup>24</sup> John Dickie, *Chairman's Report: Financial Year 2008-2009* (2009) <<http://www.filmcode.info/Chairman%27s%20Report%2008-09.doc>> at 26 April 2010.

<sup>25</sup> John Dickie, *Conciliator Brokers First Successful Dispute Resolution Under Code* (1998), Film Exhibition and Distribution Code Administration Committee <[http://www.filmcode.info/IB\\_3\\_98.doc](http://www.filmcode.info/IB_3_98.doc)> at 25 April 2010.

<sup>26</sup> John Dickie, *Code Committee and ACCC Reach Broad Agreement* (2002), Film Exhibition and Distribution Code Administration Committee <[http://www.filmcode.info/IB\\_1\\_02.doc](http://www.filmcode.info/IB_1_02.doc)> at 25 April 2010.

<sup>27</sup> *List of Signatories* (2010) <<http://www.filmcode.info/signatorylist.doc>> at 16 December 2010.

<sup>28</sup> David Newton, *Code Conciliator's Annual Report: 1 July 2009-30 June 2010* <[http://www.filmcode.info/cr\\_09\\_10.pdf](http://www.filmcode.info/cr_09_10.pdf)> at 16 December 2010.

intervention procedures. Only 9 proceeded to conciliation, 8 of which resulted in an agreement. 'Disputes are now at a record low and the code appears to be reaching the aims of its founders.'<sup>29</sup>

The cinema industry's DR system as defined by Ury, Brett and Goldberg's DR system model<sup>30</sup> is currently proving effective. When disputes arise, complainants are motivated to use the procedures available under the code and have the necessary skills to do so. There are adequate resources available to support the DR procedures and the output of the system is the efficient, expedient and effective resolution of disputes, thus avoiding unnecessary dispute escalation and associated transactional costs. Relationships between exhibitors and distributors have improved and there has been an increase in awareness and understanding of the DR system across the industry. The external environment has also been positively affected by these developments with increased dialogue and collaboration between the key industry organisations.

## **4. Evolution of a DR program in the wine industry**

### **4.1 Background**

The Australian Wine Industry Code of Conduct (Wine Code) was developed by a joint committee of the two key industry organisations: Winemakers' Federation of Australia (WFA) and the Wine Grape Growers Australia (WGGA), following a recommendation by a Federal Senate enquiry in 2005.<sup>31</sup> The Wine Code was launched in December 2008 and came into effect on 1 January 2009.

Winegrape purchasers who choose to sign up to the code, agree to be governed by its provisions in their commercial dealings with winegrape growers. Interestingly, the invitation to become a signatory to the code does not extend to winegrape growers. The Wine Code has two main objectives: (i) to establish a common industry framework for Australian wine grape supply contracts; and (ii) to provide a DR mechanism to handle disputes that arise in relation to price or quality assessments.

The code administration committee (the Committee) comprises three independent members – a presiding member and two ordinary members – and an alternate independent member, each of whom is jointly appointed by the WGGA and WFA. The role of the Committee is to manage the code. It is funded by the WGGA and WFA in equal proportions, as is the Secretariat, which provides it with administrative support.

To date, little information on the effectiveness of the Wine Code is publicly available. The Committee's second annual report, published on 30 September 2010, states that as at 30 June 2010, six winegrape purchasers had become signatories and that together they represented approximately 37% of total crush for the 2010 vintage.<sup>32</sup> The code defines its performance target as 75% of purchased crush in the first vintage after implementation and 85% in the second vintage.

As at 30 June 2010, the Committee had received one dispute notification and this was in relation to prices offered to a South Australian grower by a signatory to the code. The parties appointed an independent expert of their choice and the matter was subsequently successfully resolved.<sup>33</sup> The 2009-2010 Annual Report also states that the one complaint was received by the Committee for alleged breach of the code by a signatory. In this matter, the Code Secretariat liaised with both parties to facilitate resolution of the complaint which related to price notification. 'This matter demonstrates the clear benefit of incorporating informal early dispute resolution mechanisms into a Code such as the wine industry one.'<sup>34</sup>

### **4.2 Possible areas for consideration to improve the effectiveness of the Wine Code**

There have not been any revisions to the Wine Code since its inception, although a formal independent review was conducted and published on 30 June 2010. The code specifies that the Committee will appoint an independent reviewer whose task it will be to assess four main areas: (i) the effectiveness of the code in reducing the number of disputes within the industry; (ii) the effectiveness of the DR system provided under the code; (iii) the performance of the industry against those defined in the code and whether new targets

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<sup>29</sup> Dickie, above n24, 2.

<sup>30</sup> Ury, above n2, 22.

<sup>31</sup> *Australian Wine Industry Code of Conduct Introduction* <<http://www.wineindustrycode.org/Pamphlet.pdf>> at 28 April 2010.

<sup>32</sup> Graham A Mowbray, *Annual Report 2009-2010*, Australian Wine Industry Code of Conduct Administration Committee <<http://www.wineindustrycode.org/AWICAC%20Annual%20Report%2009-10.pdf>> at 1 December 2010.

<sup>33</sup> Graham A Mowbray, *Annual Report – 2009*, Australian Wine Industry Code of Conduct Administration Committee <<http://www.wineindustrycode.org/AWICAC%20Annual%20Report%2008-09.pdf>> at 1 December 2010.

<sup>34</sup> Mowbray, above n32.

should be set; and (iv) whether any amendments should be made to the Code to improve its operation and effectiveness.

Further to his independent review of the code, Neill Buck<sup>35</sup> concludes that '[d]espite the good will of many, on the evidence represented to me the Code is not yet effective in its mission' and furthermore, 'it is too soon to tell if this Code will be effective in the longer term'. In his report, Buck makes 16 recommendations to address a number of concerns that arose during the review process.

Some points for consideration are listed below.

1. Coverage: What strategy should be developed to raise awareness of the code within the industry in order to increase coverage? Support and adoption of the code by the industry is critical if it is to be an effective DR program.
2. Coverage: Should winegrape growers have the option of becoming code signatories? Will the current arrangement have a detrimental impact on their confidence and adoption of the code? Might they be more inclined to use a DR program they have chosen to be a part of?
3. Transparency: The ACCC recommends that all stakeholders be represented on the code administration committee to increase transparency within the industry<sup>36</sup>. The administration committee is made up of individuals who are independent of the wine industry and there is no stakeholder representation on the committee. Will this have a detrimental impact on the evolution of the code and the industry's adoption of it?
4. DR process selection: Under the current procedures, beyond direct negotiation, there are no available processes to address the parties' relationship needs. For example, a dispute may arise over winegrape price. If the parties are unable to negotiate an acceptable solution they have the option of seeking the assistance of an independent expert to make a determination. This is a rights-based process and does not take into consideration other factors such as relationship issues, which could be important in situations where parties have ongoing relationships.
5. Accessibility: There is a lodgement fee of \$A250 applicable when a party lodges a notice of dispute under Part 3 of the code. Will this deter potential users from using the DR procedures under the code, as was the experience of the Film Code?
6. Education, awareness and clarity: Are winegrape growers, especially as non-signatories, aware of their responsibilities under the code? For example, what would be the consequences of a signatory discovering in the event of a dispute over downgrade at the vineyard if they were not aware of the preventative measures of clause 3.2 of the code which states that they have a 'responsibility to advise the winegrape purchaser within a reasonable time prior to harvest, of any change in the condition of the fruit that could result in a downgrade or rejection of the winegrapes under the terms of the relevant Agreement'?

## 5. Conclusion

Experience has shown that an industry DR program can have a significant, beneficial impact on the industry. An effective voluntary DR program can achieve the overarching aims of ADR in preventing the unnecessary frequency and severity of disputes and in cases where disputes do arise, the transactional costs can be kept to a minimum whilst producing a settlement outcome that is acceptable, durable and preserves the future relationship between the parties. Furthermore, the DR program can lead to the improvement of relations and increased dialogue between stakeholder groups, as has been the experience of the cinema industry.

An industry DR program is a complex initiative with multiple layers. At the very core are the DR processes, which are encompassed in the DR procedures, which themselves form part of the DR system without which a DR program would not exist. Each of these layers requires careful planning and consideration in order

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<sup>35</sup> Neill Buck, *Report of a Review of the Wine Industry Code of Conduct* (2010) <<http://www.wineindustrycode.org/Wine%20Industry%20Code%20Review%20Report%202010.pdf>> at 2 December 2010.

<sup>36</sup> Australian Competition & Consumer Commission, *Guidelines for Developing Effective Voluntary Industry Codes of Conduct* (2005), <<http://www.accc.gov.au/content/item.php?itemId=658186&nodeId=c84e7c9517b774a9d75a2dc613174209&fn=Guidelines%20for%20developing%20effective%20voluntary%20industry%20codes%20of%20conduct.pdf>> at 20 April 2010.

that they are tailored to the environment in which they ultimately sit and meet the needs of the disputants who will make use of them.

Promotional and education activity is essential to the raise awareness and understanding of the DR program. Without users the program is immaterial.

In the early stages of operation, a DR program may face seemingly overwhelming challenges. It is through perseverance, belief, continued promotional activity, collaboration, adaptability and time that these challenges can be overcome. An effective DR program will grow and develop with the industry that it was designed to serve.

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