

Australian Wine Industry  
CODE<sup>OF</sup> CONDUCT

Code Management Committee

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**ANNUAL REPORT 2012-13**

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*September 2013*

## **CODE MANAGEMENT COMMITTEE – SECRETARIAT**

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## **FOREWORD**

I would like to thank my fellow committee members for their time and commitment to the Code of Conduct over the last 12 months.

It was a challenging year as we navigated our way through a breach of the code complaint requiring a great deal of care and time to ensure we were able to effectively assess the complaint and make the appropriate determination. The process did highlighted several required improvements to the code with recommendations being put forward that are now being pursued.

The highlight of the year was seeing the code take a significant leap forward with 25 new signatories taking us to 37% of the annual grape crush. We acknowledge this is still well short of our goals but heading in a positive direction.

Once again I would like to thank the committee for their efforts the WFA and WGGA for their continued commitment to the code and I would encourage grape growers and wineries to contact any one of us to discuss the codes purpose and benefits of participation.

**Sam Holmes**  
Chair

## **INTRODUCTION**

This is the second Annual Report of the Code Management Committee (CMC) established under the Australian Wine Industry Code of Conduct. The Code Management Committee assumed this role from the Code Administration Committee when the latter was collapsed. This report covers the period from 1 July 2012 to 30 June 2013.

### **The Australian Wine Industry Code of Conduct**

The Australian Wine Industry Code of Conduct ('the Code') was signed by representatives of the Winemakers' Federation of Australia (WFA) and Wine Grape Growers Australia (WGGA) on 19 December 2008. With the exception of Part 2 (Winegrape Purchase Agreements), the Code took effect on 1 January 2009. Part 2 took effect for all new agreements for the supply of winegrapes for the 2010 vintage onward.

The Code is voluntary, there are no joining fees or ongoing annual costs.

The purpose of the Code is two-fold:

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

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

Winegrape purchasers who are Signatories to the Code agree to be bound by the principles of the Code in their commercial dealings with winegrape growers. They also undertake to provide a grower with a copy of the Code whenever that grower signs a new Agreement.

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

- 25% of the top 100 Australian wine producers by tonnes processed, by 31 Dec 2012.
- 50% of the top 100 Australian wine producers by tonnes processed, by 31 Dec 2013.

WFA and WGGA have agreed to publicise and promote the Code and its dispute resolution procedures, and to work to maximise its adoption within the industry. A register of signatories is maintained on the Australian Wine Industry Code of Conduct website ([www.wineindustrycode.org/](http://www.wineindustrycode.org/)).

## **The Wine Industry Code Management Committee**

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

The composition of the CMC at 30 June 2013 was:

### **Members**

Sam Holmes (Chairman)	Barossa Grape & Wine Association
Hamish Franks	Treasury Wine Estates
Mark McKenzie	Murray Valley Winegrowers Inc
Vic Patrick	Wine Grape Growers Australia
Brian Simpson	Wine Grapes Marketing Board
Jeremy Stevenson	Accolade Wines
Kate Thompson	Premium Wine Brands
Jason Ryan	Treasury Wine Estates

### **Secretariat**

Tony Battaglione	Winemakers Federation of Australia
Lawrie Stanford	Wine Grape Growers Australia
Sandy Davis	Minute secretary

The Committee's responsibilities include acting as the custodian of the Code, monitoring and assessing the Code's performance, improving the Code, facilitating resolution of disputes over winegrape prices and vineyard downgrades and rejections, and determining alleged breaches of the Code. It is required to produce an annual report to be published by 30 September each year containing:

- a description of the nature and number of disputes received;
- any comments it wishes to make about conduct or trends in the industry;
- a report on the operations of the Code, including the names of any parties removed from the Code; and
- a list all current signatories to the code and new signatories since the previous annual report.

In monitoring the Code, the Committee may recommend amendments that may assist the Code's operation.

## **Secretariat to the Code**

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

The Accord Group had been appointed to provide secretariat services for the Australian Wine Industry Code of Conduct for a period of two years from 25 October 2012.

## **REPORT ON ACTIVITIES 2012 – 13**

### **Meetings of the Code Management Committee**

During 2012-13, the Australian Wine Industry Code Management Committee met on 2 occasions:

- 12 September 2012
- 22 April 2013.

At the 22 April 2013 meeting, Tony Battaglione replaced Andrew Wilshire as the WFA nominee on the CMC.

Key outcomes from the meetings were:

- Agreement on recommended structure for the CMC (subsequently endorsed by WFA and WGGGA Boards and reflected in current membership – see above)
- Agreement to retain the goal of 50 signatories from top 100 wineries by 31 December 2013.

### **Disputes reported during 2012-2013**

In 2012-13, no disputes were raised with the Code Secretariat in relation to winegrape price or rejection in the vineyard.

However, a complaint about an alleged breach of the Code by a signatory, lodged with the Secretariat in the previous period (2011-12), was still in progress at 1 July 2012. Under the Code, the Code Management Committee is required to make a determination on alleged breaches. The Committee delivered the determination in December 2012, finding there was no breach.

### **Operation of the Code in 2012 – 13**

#### *Achievement of membership targets*

All parties worked towards the signatory goals.

In particular, the WFA Board members were approached as a group and individually by the WFA Chair, and the top 100 wineries were actively encouraged to become signatories in a letter from the WFA management.

Hamish Franks, a winemaker representative on the CMC, actively approached wineries and was primarily responsible for increasing the number of signatories to the Code in 2012-13. He was commended by the Committee for his efforts.

Reasons given by wineries for not signing in 2012-13 were:

- Concerns over indicative pricing
- Concerns over payment terms
- Seen as low priority
- Not having/wanting written contracts
- WFA Board members or other wineries in their region not being signatories
- Already doing everything in the Code
- Not comfortable with third party dispute resolution
- Griffith region having its own code, different from this code
- Not contracting fruit
- Legal advice not to sign because of existing agreements

#### *Role of CMC in making determinations on breaches of the Code*

A breach complaint was finalised during 2012-13. Such a complaint is a serious allegation and rare in most Codes of practice. If a breach of Code is found to have occurred, it can amount to a breach of contract (as the Code must be incorporated into contracts) and this can have serious legal ramifications.

The inexperience of the CMC in dealing with such complaints meant that it took great care to ensure the allegation was dealt with conscientiously and fairly. This explains the time taken to make the determination. Through the process, the CMC identified aspects of the Code that could be improved. These aspects related to:

- the guidance available to persons involved in determinations
- the degree to which the Code provides “impartial, cost effective dispute resolution” (page 4 of the Code) and
- the spirit versus the letter of the Code in practice.

The CMC's role in making determinations was considered, noting:

- the difficulties for CMC members, arising from their inevitable industry links and potential conflicts;
- the need for both legal skills and grape trading experience to be able to make a determination; and
- the cost of obtaining these skills independently.

#### *Improvements to the dispute resolution process*

The CMC noted that improving the dispute resolution procedure should minimise the risk of breach, but a procedure is also required for dealing with alleged Code breaches.

It was agreed to pursue the development of:

- a tool kit of standard documents for independent experts to provide procedural guidance in making independent determinations
- a proforma engagement letter for the expert and guidance on instructing the expert (to be prepared with reference to standard engagement letters and the Code dispute form)
- Terms of Reference for the CMC - including confidentiality provisions and a supporting protocol for handling disputes and breach allegations.

### **Signatories to the Code**

The current signatories as at 30 June 2013 were<sup>1</sup>:

- Accolade Wines Ltd
- **D'Arenberg Pty Ltd**
- **Ballast Stone Estate Wines**
- Balnaves Vineyard Services Pty Ltd t/as Balnaves of Coonawarra
- **Bleasdale Vineyards Pty Ltd**
- **Brown Brothers Milawa Vineyard Pty Ltd**
- **Cheviot Wine Group**
- **Colbinabbin Estate Vineyard Management Pty Ltd**
- **Cumulus Wines Pty Ltd**
- **Difabio Estate Wines Pty Ltd**
- **Eden Road Wine Company Pty Ltd t/ as Eden Road Wines**
- **First Creek Wines**
- **Fleurieu Vintners Pty Ltd t/as Boar's Rock**
- **Fox Gordon Pty Ltd**
- **Fowles Wine**
- **Gemtree Vineyards Pty Ltd**
- **Heartland Wines Pty Ltd**
- Henry Holmes Wines Pty Ltd
- **Limestone Coast Wines Pty Ltd**
- Orlando Wines, a division of Premium Wine Brands Pty Ltd
- **Ramco Wine Group**
- Rusden Wines Pty Ltd
- **Seppeltsfield Wines Pty Ltd**
- **Serafino Wines**
- **Shaw & Smith Pty Ltd**
- **Shingleback Wine Pty Ltd**
- **Tahbilk Pty Ltd on behalf of the Tahbilk Group**
- **Tinlins Wines Pty Ltd**
- Treasury Wine Estates
- **Trentham Estate**
- Tyrrell's Vineyards Pty Ltd
- **Wirra Wirra Vineyards**
- **Yalumba Wine Company**

These signatories represent approximately 37% of the total crush for the 2013 vintage. 25 new signatories were obtained during 2012-13.

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<sup>1</sup> New signatories in 2012-13 are indicated in bold

## FINANCIAL REPORT

The financial report for 2012-13 is provided in Table 1.

**TABLE 1: FINANCIAL REPORT FOR CODE OF CONDUCT FOR YEAR ENDED 30 JUNE 2013**

<b>WFA/WGGA Shared Expense</b>		
03/12/2012	Accord Group Fee (25/10/11 to 24/11/12)	\$3,000.00
02/08/2012	Code Management Meeting costs	\$502.50
12/09/2012	Code of Conduct Teleconference	\$234.30
26/09/2012	Legal advice	\$3,060.76
10/12/2012	Code Management Meeting costs	\$572.60
22/04/2013	Code Management Meeting costs	\$319.50
	<b>Total shared costs (WFA &amp; WGGA)</b>	<b>\$7,689.66</b>
<b>WFA Only Expense</b>		
03/04/2013	Promotion of code to Members - Australia Post	\$42.19
22/04/2013	Secretariat costs	\$442.13
	<b>Additional WFA costs only</b>	<b>\$482.32</b>
	<b>Total operating costs for Code of Conduct</b>	<b>\$8,171.98</b>

## ACKNOWLEDGEMENTS

The Code Management Committee members would like to acknowledge the support and cooperation throughout the year of:

- the Accord Group
- Winemakers' Federation of Australia
- Wine Grape Growers Australia
- Hamish Franks