

Constitution

Australian Grape and Wine Incorporated

Adopted 1 February 2019

Table of contents

1	Name	3
2	Definitions and interpretation.....	3
3	Objects	5
4	Powers	6
5	Income and property	7
6	Membership categories.....	7
7	Membership	8
8	Entrance fees and levies.....	9
9	Members' rights.....	10
10	Member Committees	10
11	Appointment of the Board	11
12	Alternate directors.....	13
13	Chairperson	13
14	Role of the Board.....	14
15	Meetings of the board	14
16	Board committees	16
17	General meetings	16
18	Representatives and proxies.....	18
19	Minutes.....	19
20	Chief executive officer	20
21	Secretary	20
22	Indemnification of officers.....	20
23	Life members	20
24	Financial reporting	21
25	Seal.....	21
26	Power of attorney	21
27	Amalgamation.....	21
28	Winding up.....	21
29	Application of surplus assets.....	22
30	Notices	22
31	Alteration of Constitution	22
32	By-laws.....	22
33	Review.....	23

Australian Grape and Wine Incorporated**CONSTITUTION****1 Name**

The name of the Association is Australian Grape and Wine Incorporated.

2 Definitions and interpretation

2.1 In this Constitution:

Act means the *Associations Incorporation Act 1985 (SA)*;

Affiliates has the meaning given to that term in rule 6.1(e);

AGM means the annual general meeting of Members of the Association;

Association means the association governed by this Constitution;

Auditor means the auditor appointed under rule 24.3;

Board means, as the case requires, all or some of the Directors acting together in accordance with their powers and authority under this Constitution;

Board Committee means a committee of the Board appointed under rule 16.1;

CEO means the natural person appointed as chief executive officer of the Association under rule 20.1;

Chair means, in the context of a Board meeting, the Chairperson or the person appointed as chair of that meeting under rule 15.3 and, in the context of a General Meeting, the Chairperson or the person appointed as chair of that meeting under rule 17.10;

Chairperson means the person appointed as chairperson of the Association under rule 13.1;

Committee Chair means, in respect of a Member Committee, the person appointed as chairperson of that Member Committee under rule 10.6(a);

Constitution means this constitution as amended from time to time;

Corporations Act means the *Corporations Act 2001 (Cth)*.

Director means a director of this Association;

Emergency Plant Pest Response Deed means the Government and Plant Industry Cost Sharing Deed in respect of Emergency Plant Pest Responses between Plant Health Australia, the Australian Government, all state and territory governments and plant industry signatories (including the Association).

Financial Year means a 12 month period commencing on the 1st day of July and expiring on the 30th day of June in the next succeeding calendar year;

General Meeting means a meeting of Members, whether an AGM or a Special General Meeting;

Grape and Wine Sector includes:

- (a) the growing of grapes for use in the production of Wine;
 - (b) the production of Wine;
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- (c) the sale, distribution, promotion and marketing of Wine; and
- (d) any other activity incidental to the carrying out of any activity in paragraphs (a), (b) or (c) above;

Holding Company has the meaning given in the Corporations Act;

Individual Vignerons means:

- (a) Persons who grow grapes in Australia on a commercial basis for use in the production of Wine, either as owner or manager of a vineyard, except such a Person whose principal business is producing Wine (as determined by the Board); or
- (b) the parent company of such a Person;

Large Winemaker has the meaning given in rule 6.1(a);

Medium Winemaker has the meaning given in rule 6.1(b);

Member means any member of this Association, whether a Voting Member or not;

Member Committee means a committee, the members of which are appointed under rules 10.1, 10.2 and 10.5 representing a Membership Category;

Membership Category means a group of Members defined in rule 6.1;

Ordinary Resolution means any resolution passed at a General Meeting, other than a Special Resolution;

Person means a corporation, trust, partnership, unincorporated association or other entity, as well as a natural person;

Representative Vignerons Body means an association or other body approved by the Board:

- (a) in or relating to a region or locality identified by a 'geographical indication' as described in the *Wine Australia Act 2013* (Cth);
- (b) a principal object of which is to represent the interests of Individual Vignerons in the whole of the region or locality identified by that geographical indication; and
- (c) that contributes an annual levy to the Association on behalf of the Individual Vignerons it represents (or is otherwise approved by the Board);

Scrutineer means the Auditor or such other person or persons as the Chair appoints to scrutinize the voting on a poll at a General Meeting;

Secretary means a person appointed as secretary under rule 21.1;

Small Winemaker has the meaning given in rule 6.1(c);

Special General Meeting means a meeting of Members other than an AGM;

Special Resolution means a resolution passed at a General Meeting if:

- (a) at least 21 days' written notice, specifying the intention to propose the resolution at the meeting as a Special Resolution, has been given to all Members; and
- (b) it is passed at the General Meeting by a majority of not less than 75% of the Members voting in each Voting Category;

State Winemaker Association means an association in or relating to a state or territory of Australia, nominated by the Board, a principal object of which is to represent the interests of winemakers in the whole of that state or territory;

Vignerons has the meaning given to that term in rule 6.1(d);

Voting Category means a Membership Category, the members of which have the right to vote at General Meetings under rule 9;

Voting Member means a member of a Voting Category;

Wine means 'grape product' as defined in the *Wine Australia Act 2013* (Cth);

Winemaker means any Person who:

- (a) produces Wine in Australia, or has Wine produced for them in Australia from their own grapes by another Person, for sale to other winemakers, to wholesalers or retailers of Wine or direct to consumers; or
- (b) produces Wine in Australia for another Person from that other Person's grapes; or
- (c) purchases bulk Wine in Australia from another Person, for sale, under their own brand, to wholesalers or retailers of Wine or direct to consumers,

or the Holding Company of such a Person, but not a Person, 50% or more of whose liquor business, including that of its Related Entities, (measured by annual gross sales) involves the purchase of fully packaged liquor for sale direct to consumers; and

Winemaker Members means those Members who are Small Winemakers, Medium Winemakers or Large Winemakers.

2.2 In this Constitution, unless the context otherwise requires:

- (a) words and expressions defined in the Act, but not otherwise defined in this Constitution (including, but not limited to, accounts, associate, the Commission, insolvent under administration, officer and surplus assets) have the same meaning in this Constitution;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing a gender include the other genders;
- (d) headings are for convenience only and do not affect the interpretation of this Constitution; and
- (e) references to any legislation, or to any provision of any legislation, include any amendment, modification or re-enactment of them, or any provision substituted for them, and all regulations and statutory instruments issued under them or under any such amendment, modification, re-enactment or substituted provision.

3 Objects

3.1 The objects of the Association are:

- (a) to represent the interests of Australian Winemakers and Vignerons of all sizes on national and international issues affecting the Australian Grape and Wine Sector, through a single organisation;
- (b) to actively promote and protect the reputation and success of Australian Wine and the Australian Grape and Wine Sector;
- (c) to encourage unanimity of opinion and action amongst Members in all national and international matters pertaining to the Australian Grape and Wine Sector;
- (d) to initiate legislative or other regulatory activity, or government response or action, or otherwise facilitate any outcomes, deemed desirable by the Association for the benefit of the Grape and Wine Sector in Australia;

- (e) to provide a medium through which opinions of Members may be ascertained or expressed;
- (f) to provide relevant information to Members;
- (g) to foster co-operation and goodwill between viticultural and oenological research and education bodies and all other bodies relevant to the Australian Grape and Wine Sector;
- (h) to encourage biosecurity in the Australian Grape and Wine Sector, including to fulfil biosecurity responsibilities as a signatory to the Emergency Plant Pest Response Deed (or any variation or replacement of that deed);
- (i) to facilitate access of Australian Winemakers to foreign markets for Australian Wine;
- (j) to encourage good practice and standards of grape growing, winemaking and Wine business management within the Australian Grape and Wine Sector;
- (k) to administer funds collected from Members in support of the activities and objects of the Association;
- (l) to protect and enhance community and Government support for the Australian Grape and Wine Sector;
- (m) to promote economic, environmental and social responsibility in the production and consumption of Wine in Australia; and
- (n) to promote the interests of the Association and to do all such other lawful things as the Association may consider incidental or conducive to the attainment or advancement of the objects of the Association.

4 Powers

4.1 The powers of the Association are:

- (a) to grant, purchase, sell, convey, assign, transfer, exchange, mortgage, lease or grant licences in respect of, let, hire or dispose of, in any manner whatsoever, and either absolutely or for any term, the undertaking and all or any part of the real or personal property of the Association or any estate or interest therein, for such consideration and upon and subject to such terms, conditions, stipulations and restrictions (if any) as the Board may see fit;
- (b) to hire or employ a Secretary, CEO or other employees and to pay to them or to other Persons, in return for services rendered to the Association, salaries, wages, gratuities or pensions or such other benefits or remuneration as the Board may see fit;
- (c) to enter into any contracts or arrangements for union of interest, co-operation, joint venture, reciprocal concession or otherwise with any Person carrying on or engaged in, or about to carry on or engage in, any business transaction or venture which the Association is authorised to carry on or engage in;
- (d) to establish, levy, collect and administer monies received for the carrying out of the objects of the Association, including the collection and administration of monies for such special purposes as the Association may determine, and to appropriate therefrom such amounts as may be required from time to time for the payment of all expenses of the Association;
- (e) to invest and deal with monies of the Association and to borrow or raise money, whether on security over the assets of the Association or otherwise;
- (f) to support and represent the interests of any association, society, institution, statutory body, organisation or other body having similar objects to the Association;

- (g) to do all or any of the above things, either alone or in conjunction with others and either as principal, agent, trustee or otherwise and either by or through agents, sub-contractors, trustees or otherwise;
- (h) to do all such other things as the Members or the Board may deem to be incidental or conducive to the attaining of the above objects and powers or any of them; and
- (i) without limiting the above powers, to exercise all powers conferred on incorporated associations by the Act.

5 Income and property

- 5.1 The income and property of the Association must be applied solely towards the promotion of the objects of the Association and no portion thereof may be paid or distributed, directly or indirectly, by way of bonus or otherwise, by way of profit to Members.
- 5.2 The Association must not make any payment from its income or capital, or dispose of any of its assets in specie, to the Members or any of them, or to associates of the Members or any of them, except as allowed under the Act.

6 Membership categories

- 6.1 The Association has the following categories of membership:
 - (a) Large Winemakers, members of which are Winemakers which have (together with their associates) in the last Financial Year:
 - (i) sold more than 72,500,000 litres of Wine or such other volume as the Board may determine; or
 - (ii) crushed more than 100,000 tonnes of wine grapes or such other volume as the Board may determine;
 - (b) Medium Winemakers, members of which are Winemakers which have (together with their associates) in the last Financial Year:
 - (i) sold more than 1,450,000 but no more than 72,500,000 litres of Wine or such other volume as the Board may determine; or
 - (ii) crushed more than 2,000 but no more than 100,000 tonnes of wine grapes or such other volume as the Board may determine;
 - (c) Small Winemakers, members of which are Winemakers which have (together with their associates) in the last Financial Year:
 - (i) sold more than 0 but no more than 1,450,000 litres of Wine or such other volume as the Board may determine; or
 - (ii) crushed more than 0 but no more than 2,000 tonnes of their own wine grapes or such other volume as the Board may determine;
 - (d) Vignerons, members of which are:
 - (i) Representative Vignerons Bodies; or
 - (ii) Individual Vignerons;
 - (e) Affiliates, members of which are Persons approved by the Board who are Grape and Wine Sector bodies, marketers, distributors or retailers of Wine, suppliers of goods or services to Winemakers or Vignerons, Wine journalists or educators or Persons otherwise closely associated with the Grape and Wine Sector; and

- (f) any other categories established by the Board.
- 6.2 Each Member may only be a member of one Membership Category.
- 6.3 The Membership Category for a Winemaker will be, subject to rule 6.4, the category for which the Member qualifies relating to the highest number of litres of Wine sold or wine grapes crushed as determined by the Board.
- 6.4 By notice to the Secretary, a Member, who qualifies as a member of the Membership Category:
- (a) the Large Winemakers, may elect to, instead, become a member of the Medium Winemakers (with the approval of the Medium Winemakers' Member Committee); or
 - (b) the Medium Winemakers, may elect to, instead, become a member of the Small Winemakers (with the approval of the Small Winemakers' Member Committee),
- provided that they will still be bound to pay any fees and levies charged, pursuant to rule 8, to members of the Membership Category of which they would be a member had they not made the election (unless the Board otherwise approves).

7 Membership

- 7.1 Any Person, who wishes to be a Member, may submit a written application to the Secretary, in a form prescribed by the Board from time to time, together with:
- (a) such other information as the Board requires to establish the qualification of that Person for any particular Membership Category; and
 - (b) in the case of a Representative Vigneron Body applying for membership of the Vignerons' Membership Category, a list of the names of the Individual Vignerons represented by the Representative Vigneron Body as at the date of the application (and any further information or documentation relating to those Individual Vignerons as requested by the Board).
- The Board may waive or alter any of these requirements in its absolute discretion.
- 7.2 Upon receipt of a compliant application form and other information referred to in rule 7.1 (if required), the Board may, in its absolute discretion, admit the applicant to membership of the Association and allocate them to a particular Membership Category. The Board may not admit the applicant to membership if it considers that, in the past, they have prejudiced the interests of, or brought into disrepute, the Association or the Australian Grape and Wine Sector by their act or omission.
- 7.3 Upon being admitted to membership, a Member is bound by this Constitution and any by-laws made pursuant to this Constitution (including any by-laws specific to the Member's Membership Category).
- 7.4 A Person may not, without the approval of the Board, become a Member if the Person is an Individual Vigneron who the Board determines is represented by a Representative Vigneron Body who is a Member.
- 7.5 A Member may resign as a Member of the Association at any time, by submitting notice of resignation to the Secretary, provided that they will remain liable for:
- (a) any monies payable to the Association, notice of which was given to the Member; and
 - (b) any other liabilities, relating to their membership, which accrued, prior to the Secretary receiving the notice of resignation.

- 7.6 Subject to rule 7.7, the Board may suspend or cancel a Member's membership of the Association for any of the following reasons:
- (a) the Member has failed to pay any monies due to the Association on the date they fell due and has failed to rectify the default after being given 30 days' notice of it;
 - (b) the Member has 'become insolvent' as defined in regulation 7.5.02 of the *Corporations Regulations 2001* (Cth) or section 95A of the Corporations Act;
 - (c) the Member has failed to provide any information required by the Board pursuant to this Constitution on the due date and has failed to rectify the default after being given 30 days' notice of it;
 - (d) the Member has breached the law, this Constitution, any by-laws made pursuant to this Constitution or any resolution of the Board; or
 - (e) the Member has prejudiced the interests of, or brought into disrepute, the Association or the Australian Wine Sector by their act or omission.
- 7.7 The Board will not suspend or cancel the membership of a Member, without first:
- (a) giving the Member details of the reason for suspension or cancellation; and
 - (b) giving the Member the opportunity to make a written or verbal submission to the Board within the 30 day period after the provision of the details referred to in rule 7.7(a).
- 7.8 The suspension or cancellation of the membership of any Member is without prejudice to the rights of the Association to recover any monies due to the Association by the Member or any other accrued rights of the Association.
- 7.9 The suspension or cancellation of the Members membership takes effect upon the Member being given notice of the Board's decision to that effect.
- 7.10 The Secretary must keep a register of Members, which comprises:
- (a) the name and address and Membership Category of each Member; and
 - (b) the date on which each Member was admitted to, and ceased to be a member of, each Membership Category.

8 Entrance fees and levies

- 8.1 Each Member must pay such:
- (a) entrance fee; and
 - (b) annual or other levy,
- as determined by the Board for that Member's Membership Category in accordance with rule 8.2 or as otherwise determined by the Board for that Member.
- 8.2 The annual levy payable by a Member will be:
- (a) for a Member who is a Large Winemaker, Medium Winemaker or Small Winemaker, based on litres of Wine sold or tonnes of grapes crushed by that Member or their associate;
 - (b) for a Member who is an Individual Vigneron, based on tonnes of wine grapes sold by that Individual Vigneron or their associate; or
 - (c) for a Member who is a Representative Vigneron Body, based on tonnes of wine grapes sold by the Individual Vignerons represented by that Representative Vigneron Body,

or any other criteria that the Board may choose to apply from time to time.

- 8.3 Each Member must provide the Secretary with such information as the Board requires, to determine the amount of any entrance fee or annual or other levy to be payable by that Member, at such time or times as the Board may require.
- 8.4 Any entrance fee or annual or other levy must be paid at such time and in such manner as determined by the Board.

9 Members' rights

- 9.1 A Member who is a Large Winemaker, Medium Winemaker, Small Winemaker or Vigneron is entitled to:
- (a) appoint a Member Committee for their Membership Category in accordance with rule 10;
 - (b) attend General Meetings;
 - (c) speak at General Meetings;
 - (d) vote at General Meetings in accordance with rule 17; and
 - (e) have matters included on the Board's agenda, by giving notice of those matters, with reasonable particulars, to the Secretary.
- 9.2 A Member who is an Affiliate is:
- (a) not entitled to appoint a person to a Member Committee;
 - (b) entitled to attend General Meetings;
 - (c) entitled, if the Chair consents, to speak at General Meetings;
 - (d) not entitled to vote at General Meetings; and
 - (e) entitled, if the Chair consents, to have matters included on the Board's agenda, by giving notice of those matters, with reasonable particulars, to the Secretary.
- 9.3 The rights of the Members in any other Membership Categories established by the Board pursuant to rule 6.1(f) will be as determined by the Board, provided that they will be no greater, in any respect, than those of the Affiliates.

10 Member Committees

- 10.1 Each Voting Category may appoint a number of natural persons to comprise a Member Committee for that Voting Category, in accordance with this rule 10 and the by-laws for that Voting Category.
- 10.2 Each State Winemaker Association will be entitled to appoint a natural person to be a member of the Small Winemakers' Member Committee.
- 10.3 For the Vignerons' Member Committee, the Board will determine on an annual basis:
- (a) the number of natural persons to be appointed to the Vignerons' Member Committee by the Representative Vigneron Bodies and which of the Representative Vigneron Bodies will be entitled to appoint those persons (up to a maximum of 10 natural persons appointed by all such Representative Vigneron Bodies); and
 - (b) the number of natural persons to be appointed to the Vignerons' Member Committee by the Individual Vignerons in accordance with the by-laws for the Vignerons' Voting

Category (up to a maximum of 6 natural persons appointed by the Individual Vignerons).

- 10.4 A natural person is only eligible to be appointed to a Member Committee for a Voting Category under rule 10.1, 10.2 or 10.3 if:
- (a) that person is himself or herself a Voting Member of that Voting Category or an associate, employee or authorised representative of a Voting Member of that Voting Category; and
 - (b) that Voting Member is not already themselves a member of the relevant Member Committee or does not already have an associate, employee or authorised representative on the relevant Member Committee,
- unless the Board approves otherwise.
- 10.5 A Member Committee may:
- (a) with the approval of the Board, co-opt other natural persons to join the Committee; or
 - (b) invite observers or advisers to its meetings.
- 10.6 Each Member Committee may appoint, from its number:
- (a) the chairperson of that Member Committee, who will, in consequence of that appointment, become a Director and a deputy chairperson of the Association; and
 - (b) such other number of Directors to the Board as that Member Committee is entitled to appoint by virtue of rule 11.1(b).
- 10.7 A Member Committee may make by-laws to govern the processes for its constitution and operation, which by-laws take effect upon their approval by the Board.
- 10.8 A Member Committee may determine its own work program, which work program may be implemented by the Member Committee upon its approval by the Board.
- 10.9 The Board may:
- (a) delegate any of its authority; or
 - (b) allocate financial, human or other resources,
- to any Member Committee.
- 10.10 Each Member Committee must report to the Board at the times and in the manner required by the Board.
- 10.11 A Member Committee must not:
- (a) release the results of any of its work; or
 - (b) make any other public announcement,
- without the approval of the Board.

11 Appointment of the Board

- 11.1 The Board will comprise the following natural persons:
- (a) the Chairperson; and
 - (b) a number of other Directors determined by the Board, an equal number of whom (subject to rule 11.2) will be appointed by each Member Committee under rule 10.6(b).

- 11.2 (a) If, on 1 July in a Financial Year, a Voting Category neither:
- (i) contributed at least \$200 000 of levies paid to the Association in the previous Financial Year; or
 - (ii) comprises at least 50% of the total number of Winemaker Members,
- that Voting Category is deemed to be 'Under-Contributing' until the next 1 July for the purposes of this rule 11.2.
- (b) If, on 1 July in a Financial Year, a Voting Category is 'Under-Contributing', the Directors, other than those appointed by the Member Committee appointed by that Voting Category, may, prior to 30 September in that Financial Year, resolve that that Member Committee may only appoint either 1 or 2 (in their discretion) less Directors, than it would otherwise be entitled to appoint, for the period from the end of the next AGM until the end of the first subsequent AGM when that Voting Category has ceased to be Under-Contributing.
- (c) For the purposes of this rule 11.2, a Member, who makes an election under rule 6.4, is deemed to be a member of the Membership Category of which they would have been a member had they not made the election.
- 11.3 Each Large Winemaker, which has paid an annual levy under rule 8 of at least \$250,000 in the last Financial Year, will be entitled to appoint a natural person as a Director, who will, for the purposes of this Constitution (except rules 11.7(a) and 11.9(a)), be deemed to be one of the Directors appointed by the Large Winemakers' Member Committee under rule 10.6(b).
- 11.4 A person, other than the Chairperson, is not eligible to be appointed as a Director, without the approval of the Board, if that person is a Voting Member, or an associate, employee or authorised representative of a Voting Member, and that Voting Member is already a Director or already has an associate, employee or authorised representative who is a Director.
- 11.5 Each Committee Chair must advise the Secretary of the Directors appointed by that Member Committee under rule 10.6, prior to the AGM following their appointment.
- 11.6 A Director will take office at the conclusion of the AGM following their appointment under rule 10.6, subject to them signing the corporate governance protocols prescribed by the Board.
- 11.7 Each Director will:
- (a) if appointed under rule 10.6:
 - (i) hold office for an initial term of approximately 2 years, or such shorter period determined by the Member Committee appointing that Director, expiring at the conclusion of an AGM; and
 - (ii) be eligible for re-appointment under rule 10.6(b), for further terms of a length prescribed by rule 11.7(a), subject to any relevant by-laws governing the appointment of that Director; or
 - (b) if appointed under rule 11.3:
 - (i) hold office for an initial term of approximately 1 year, expiring at the conclusion of an AGM; and
 - (ii) be eligible for re-appointment, for further terms of a length prescribed by rule 11.7(b)(i), subject to the Large Winemaker who appointed that Director remaining eligible to appoint a Director under rule 11.3.
- 11.8 The office of a Director becomes vacant if the Director:
- (a) resigns from office by notice to the Secretary;

- (b) is disqualified from being a Director by the Act;
- (c) dies;
- (d) has become of unsound mind or had their estate liable to be dealt with in any way under the law relating to mental health;
- (e) has missed 4 Board meetings in a 12 month period, or 3 consecutive Board meetings, (whether or not they appoint a proxy) without being granted leave of absence, and the Board has resolved to remove the Director;
- (f) is found by the Board to have breached the corporate governance protocols prescribed by the Board and the Board has resolved to remove the Director;
- (g) is found by the Board to have brought the Association or the Australian Wine Sector into disrepute by their act or omission and the Board has resolved to remove the Director;
- (h) is found by the Board to have failed to declare a material conflict of interest as required by the Act and the Board has resolved to remove the Director; or
- (i) is removed without cause by Board resolution.

11.9 If the office of a Director is vacated:

- (a) the Member Committee which appointed that Director under rule 10.6; or
- (b) the Large Winemaker which appointed that Director under rule 11.3,

may, by notice to the Secretary, appoint a Director to fill that casual vacancy until the conclusion of the next AGM.

12 Alternate directors

- 12.1 The Large Winemakers may appoint one alternate director for each Director that category appoints under rule 10.6.
- 12.2 The Member Committee of a Voting Category, other than the Large Winemakers, may appoint one of its number, who is not a Director, to be the alternate director for each Director appointed by that Member Committee (so that there will be only one alternate director in total for that Voting Category).
- 12.3 An alternate director appointed under this rule 12 is entitled to:
- (a) receive notices of all meetings of the Board and all other Board papers;
 - (b) attend, speak and vote at Board meetings, in the absence of the Director for whom they are the alternate; and
 - (c) generally perform all functions and exercise all powers of the Director, for whom they are the alternate, in their absence.

13 Chairperson

- 13.1 The Board must elect a natural person to the office of chairperson of the Association, on the unanimous recommendation of the Committee Chairs.
- 13.2 The Chairperson:
- (a) is not required to be a Member;

- (b) is not required to be a Director prior to their election to the office of Chairperson but will, in consequence of that election, become a Director on their election to that office; and
 - (c) may be an associate, employee or authorised representative of a Member who is also a Director or of whom another Director is also an associate, employee or authorised representative.
- 13.3 The Chairperson will take office at the conclusion of the AGM following their appointment under rule 13.1, subject to them signing the corporate governance protocols prescribed by the Board.
- 13.4 The Chairperson will:
- (a) hold office for an initial term of approximately 2 years, expiring at the conclusion of an AGM;
 - (b) be eligible for re-appointment under rule 13.1, for another term of length prescribed by rule 13.4(a); and
 - (c) be eligible for re-appointment under rule 13.1, for further terms of a length prescribed by rule 13.4(a), provided that they vacate office for approximately 1 year expiring at the conclusion of an AGM, before commencing each such further term.
- 13.5 The office of Chairperson becomes vacant if the Chairperson:
- (a) resigns from office by notice to the Secretary (in which case they also cease to be a Director); or
 - (b) otherwise ceases to be a Director for any reason.
- 13.6 If the office of Chairperson is vacated:
- (a) it will be filled in accordance with rule 13.1, but
 - (b) despite rules 13.3 and 13.4(a), the new Chairperson will hold office for an initial term commencing with their appointment under rule 13.1 and expiring at the conclusion of the AGM held approximately 2 years after the AGM following their appointment.

14 Role of the Board

- 14.1 The affairs of the Association are governed by the Board, which, in addition to any powers conferred by this Constitution, may exercise all such powers as are not, by the Act or this Constitution, required to be exercised by the Association in General Meeting.
- 14.2 The Board is responsible for making policy and overseeing its implementation by the Association.
- 14.3 Each Director has the following duties:
- (a) to disclose interests in contracts in accordance with the Act;
 - (b) to not take part in discussions with respect to contracts where precluded by the Act; and
 - (c) such other duties as are prescribed by the Act or otherwise by law.

15 Meetings of the board

- 15.1 The Board will meet at such times and places as, in the opinion of the Chairperson, may be required for the conduct of the business of the Association, but not less than 3 times in any 12 month period. The Chairperson may convene a meeting or instruct the Secretary to do so.
- 15.2 Any 3 Directors may call a meeting of the Board at any time, upon 21 days' notice to all Directors, stating the business to be dealt with at the meeting and the place, within an Australian capital city, and time of the meeting.
- 15.3 The Chairperson will be the chair of all meetings of the Board but, in the Chairperson's absence 15 minutes after the time appointed for the meeting, the Directors will elect 1 of their number to act as chair of the meeting.
- 15.4 The non-receipt by any Director of notice of a meeting of the Board does not invalidate or in any way affect the business conducted at that meeting.
- 15.5 A quorum for the conduct of meetings of the Board is not less than one half of the Directors, present in person or by alternate.
- 15.6 No business may be conducted at any meeting of the Board unless there is a quorum present.
- 15.7 All Directors are entitled to one deliberative vote each.
- 15.8 The Chairperson will not have a casting vote at any meeting of the Board, but will have a deliberative vote as a Director under rule 15.7.
- 15.9 A Director may appoint another Director to be their proxy at any meeting of the Board, by notice to the Secretary and proxy-holder prior to the commencement of the meeting. Rules 18.4 to 18.11 (inclusive) apply to such an appointment as if the references to a 'General Meeting' in those rules were to a 'Board meeting'.
- 15.10 Motions for consideration by Directors at Board meetings will be determined by:
- (a) polling all votes cast in person or by proxy; and
 - (b) a majority of at least 80% of the votes being cast in favour of the motion (subject to any other provision of this Constitution which requires a unanimous vote of the Directors).
- 15.11 (a) To the extent permitted by law, Board meetings may be held by:
- (i) video conference;
 - (ii) telephone;
 - (iii) electronic mail;
 - (iv) any other technology that allows each Director to communicate with any other Director; or
 - (v) any combination of the technologies listed in paragraphs (i) to (iv) (inclusive) above.
- (b) The Directors participating in such a meeting, whether acting for themselves or as a proxy, are deemed to be assembled together in one place during the meeting for the purposes of this Constitution.

- 15.12 To the extent permitted by law, a resolution in writing signed by all of the Directors, in any number of counterparts, a copy of which has been given to the Secretary, is as valid and effectual as if it had been passed at a Board meeting.

16 Board committees

- 16.1 The Board may from time to time appoint committees and:
- (a) delegate any of its authority; or
 - (b) allocate financial, human or other resources,
- to any such committee.
- 16.2 A Board Committee may be comprised of natural persons who are not Members, provided that:
- (a) at least 1 member of the committee is a Director (unless otherwise determined by the Board); and
 - (b) the chair of the committee is appointed by the Board.
- 16.3 A Board Committee may:
- (a) with the approval of the Board, co-opt other natural persons to join the committee; or
 - (b) invite observers or advisers to its meetings.

17 General meetings

- 17.1 An AGM must be held within 5 months of the close of each Financial Year (or by such later time as the Commission may allow under section 39 of the Act) and will be convened by:
- (a) the Secretary; or
 - (b) the Chairperson.
- 17.2 The business of the AGM will include:
- (a) to receive and consider the audited accounts for the last Financial Year;
 - (b) to receive and consider the Auditor's report on those accounts;
 - (c) to receive and consider a report from the Board on the activities of the Association and that contains such information as is prescribed by the Act;
 - (d) to announce the appointment of the Chairperson and Directors under rules 10.6 and 13.1;
 - (e) to appoint the Auditor of the Association; and
 - (f) to conduct such other business, notice of which has been duly given to Members.
- 17.3 A Special General Meeting may be convened at any time by:
- (a) the Secretary;
 - (b) the Chairperson;
 - (c) the Board;
 - (d) any Member Committee; or

- (e) at least 50 Voting Members.
- 17.4 All General Meetings must be convened by notice to all Members, which:
- (a) is given at least 21 days before the meeting is due to be held;
 - (b) specifies the time and place of the meeting;
 - (c) describes generally the business to be transacted at the meeting; and
 - (d) if a motion for a Special Resolution is proposed to be put at the meeting, specifies the intention to propose the resolution as a Special Resolution.
- 17.5 The business transacted at a General Meeting will be only that business of which notice has been given in accordance with this Constitution, except that the Chair may, but will not be obliged to, allow other discussion at the meeting.
- 17.6 The accidental omission to give notice of a General Meeting to any Member, or the non-receipt of any such notice, will not invalidate the business transacted at the meeting.
- 17.7 A quorum for a General Meeting will be 20 Voting Members, including 3 Members from each Voting Category (or if there are less than 3 Members in a Voting Category, at least half the Members in the Voting Category), present in person or by proxy.
- 17.8 If, within 30 minutes of the time appointed for a General Meeting, a quorum is not present, the meeting will stand adjourned to a time and place determined by the Chair.
- 17.9 If, within 30 minutes of the time appointed for the adjourned meeting, a quorum is not present, those Voting Members present will form a quorum.
- 17.10 The Chairperson will be chair of all General Meetings but, in the Chairperson's absence, 15 minutes after the time appointed for the meeting, the Voting Members will elect 1 of their number to act as chair of the meeting.
- 17.11 The Chair has a deliberative vote if they are a Voting Member, but has no casting vote at a General Meeting.
- 17.12 The business of the Association will be transacted by Ordinary Resolution, except where specified otherwise by this Constitution or the Act.
- 17.13 Subject to rule 17.19, each Voting Member is entitled to cast 1 vote, in person or by proxy, on any motion put at a General Meeting, on a show of hands or on a poll, subject to rules 17.16 and 17.18.
- 17.14 A motion for an Ordinary Resolution will be carried on a show of hands, if a simple majority of votes cast are cast in favour of the motion, unless a poll is demanded on the motion.
- 17.15 A poll may be demanded on a motion for an Ordinary Resolution by:
- (a) the Chair;
 - (b) a Committee Chair; or
 - (c) at least 5 Voting Members.
- 17.16 On a poll taken on a motion for an Ordinary Resolution, a majority of not less than 50% of the Members voting in each Voting Category will be required.
- 17.17 A poll must always be taken on a motion for a Special Resolution.
- 17.18 On a poll taken on a motion for a Special Resolution, a majority of not less than 75% of the Members voting in each Voting Category will be required.
- 17.19 On a poll, a Representative Vigneron Body will be entitled to cast 1 vote for each Individual Vigneron who is represented by that Representative Vigneron Body as at the date of the

General Meeting (as determined by the Board). At least 5 Business Days prior to any General Meeting, the Representative Vigneron Body must provide the Secretary with a list of the names of the Individual Vignerons represented by the Representative Vigneron Body as at the date of the General Meeting (and any further information or documentation relating to those Individual Vignerons as requested by the Board). The Board will determine the number of votes to which the Representative Vigneron Body is entitled, based on the list of names and any further information or documentation provided and having regard to the purpose of this clause being to afford the Representative Vigneron Body an appropriate representative vote. The decision of the Board regarding the number of votes to which the Representative Vigneron Body is entitled will be final and binding on all Members.

17.20 A poll will be taken:

- (a) in such manner as the Chair directs;
- (b) at such time and place as the Chair directs, after an interval or adjournment or otherwise, except a poll on the election of the Chair or on a question of adjournment, which will be taken immediately;
- (c) if the Chair so directs, without interrupting the transaction of other business of the meeting, which may continue, unless the poll is to be taken immediately; and
- (d) under the scrutiny of the Scrutineer.

17.21 At a General Meeting:

- (a) any dispute regarding the validity of any vote cast, the entitlement of a Person to vote or procedural matters will be conclusively determined by the Chair; and
- (b) a declaration by the Chair that a motion has been carried, and an entry to that effect in the minutes of the meeting, will be conclusive evidence of that fact, without proof of the number or proportion of votes cast in favour of or against the motion.

18 Representatives and proxies

18.1 Subject to this Constitution, each Voting Member may vote:

- (a) in person;
- (b) by proxy;
- (c) by an attorney; or
- (d) where the Voting Member is a body corporate or partnership, by its representative.

18.2 A proxy, attorney or representative may be, but need not be, a Member.

18.3 A proxy, attorney or representative may be appointed for all General Meetings or for any number of General Meetings or for a particular General Meeting.

18.4 An instrument appointing a proxy, attorney or representative may be in any usual form or any other form the Board approves, subject to the law, including the Corporations Act.

18.5 Subject to rule 18.7, an instrument of proxy must be in writing and:

- (a) if the appointor is:
 - (i) a natural person, signed by the appointor;
 - (ii) a body corporate, either signed by a director, manager, secretary or other executive officer of the body or executed in accordance with the Corporations Act;

- (iii) a partnership, signed by a partner or any other person authorised in writing by the partnership; or
 - (b) signed by the duly authorised attorney of the appointor.
- 18.6 Subject to rule 18.7, a proxy, attorney or representative may not vote at a General Meeting, unless the instrument of appointment and a copy of the power of attorney or other authority (if any) under which the instrument is signed are deposited with the Chairperson or Secretary before the vote is taken, either at the place specified for that purpose in the notice convening the meeting or by hand-delivery at the meeting.
- 18.7 To the extent permitted by law, the Board may waive all or any of the requirements of rules 18.5 and 18.6 and may, upon the production of such other evidence as the Board requires to prove the validity of the appointment of a proxy or representative, accept:
 - (a) an oral appointment of a proxy or representative;
 - (b) an appointment of a proxy or representative which is not signed or executed in the manner required by rule 18.5; or
 - (c) the deposit of a copy (including a copy sent by email) of an instrument appointing a proxy, attorney or representative.
- 18.8 An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular motion and, where an instrument so provides, the proxy or attorney is not entitled to vote on the motion except as directed in the instrument.
- 18.9 Unless otherwise provided for in the instrument, an instrument appointing a proxy, attorney or representative will be taken to confer authority:
 - (a) to agree to a General Meeting being convened by shorter notice than is required by this Constitution;
 - (b) even though the instrument may refer to specific motions and may direct the proxy, attorney or representative how to vote on those motions:
 - (i) to vote on any amendment moved to a motion or on any motion that the motion not be put or on any similar motion;
 - (ii) to vote on any procedural motion, including any motion to elect the chair, vacate the chair or adjourn the meeting;
 - (iii) to speak to any motion on which the proxy, attorney or representative may vote; and
 - (iv) to demand or join in demanding a poll on any motion on which the proxy, attorney or representative may vote.
- 18.10 The appointment of a proxy or attorney is not revoked by the appointor attending and taking part in the General Meeting, but, if the appointor votes on any motion, no person acting as proxy or attorney for the appointor is entitled to vote as the proxy or attorney of the appointor on that motion.
- 18.11 A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid, notwithstanding the previous death or unsoundness of mind of the appointor, or the revocation of the instrument (or the authority under which the instrument was executed) or of the power, if no notice of the death, unsoundness of mind or revocation has been received by the Chairperson or the Secretary before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

19 Minutes

- 19.1 The Secretary must arrange for minutes of all General Meetings and Board meetings to be kept in accordance with the Act.
- 19.2 The secretary (if any) or chair of each Member Committee and Board Committee will arrange for minutes of all meetings of those committees to be kept, as if those meetings were Board meetings governed by the Act.
- 19.3 The provisions of the Act governing minutes of Board meetings will be deemed to apply to Member Committee and Board Committee meetings.

20 Chief executive officer

- 20.1 The Board must appoint a chief executive officer of the Association on such terms as it sees fit.
- 20.2 The Board may delegate such powers and functions as it sees fit to the CEO, including the power to manage the Association on a daily basis.
- 20.3 The CEO will report to the Board.

21 Secretary

- 21.1 The Board must appoint a secretary of the Association on such terms as it sees fit.
- 21.2 The Board may delegate such powers and functions as it sees fit to the Secretary, including the duty to convene meetings, take minutes and file returns.
- 21.3 The Secretary will be the 'public officer' of the Association for the purposes of the Act, unless the Board appoints a different person to that role.
- 21.4 The CEO may also be the Secretary.

22 Indemnification of officers

- 22.1 To the extent permitted by law, the Association indemnifies, and keeps indemnified, each officer against all liabilities, costs and losses which the officer may incur, directly or indirectly, as an officer, excluding:
- (a) any liability to the Association in respect of any negligence, default, breach of duty or breach of trust of which they may be guilty in relation to the Association;
- but including:
- (b) any liability incurred by the officer in defending any proceedings, whether civil or criminal, in which judgment is given in their favour or in which they are acquitted.
- 22.2 To the extent permitted by law, the Association may procure and pay for a contract of insurance of its officers, or any of them, against liabilities, costs and losses they may incur, directly or indirectly, as an officer.
- 22.3 For the purposes of this rule, *officer* includes a member of a Member Committee or Board Committee or any sub-committee of either of those committees.

23 Life members

- 23.1 The Board may, by unanimous vote, appoint natural persons to the honorary position of 'Life Member' of the Association.

- 23.2 The Board will establish the criteria for appointment of a Life Member, but those criteria must include the fact that they have made an outstanding contribution to the Australian Wine Sector.
- 23.3 Life Members will have no legal rights or obligations as a result of their appointment to that position.

24 Financial reporting

- 24.1 The Board must arrange for accounts of the Association to be prepared in accordance with the Act.
- 24.2 The Board will arrange for the accounts of the Association to be audited in accordance with the Act.
- 24.3 An auditor must be appointed at each AGM and will hold office until the conclusion of the next AGM, at which time they will be eligible for re-appointment.
- 24.4 If the position of auditor becomes vacant, other than at the conclusion of an AGM, the Board may appoint an auditor to fill the vacancy.
- 24.5 The terms of engagement of the Auditor, including their remuneration, will be fixed by the Board.
- 24.6 The Secretary must ensure that all periodic returns and other prescribed information are lodged with the Commission as required by the Act.

25 Seal

- 25.1 The Association will have a common seal, with its name inscribed on it in legible writing.
- 25.2 The Secretary must keep the seal in safe custody.
- 25.3 The seal must only be used with the express authorisation of the Board, which must be noted in the Board minutes.
- 25.4 The affixing of the seal must be witnessed by any 2 Directors or any 1 Director and either the CEO or the Secretary, who must sign the relevant document next to the impression of the seal.

26 Power of attorney

The Board may, by power of attorney, appoint any person to be the attorney of the Association, for such purposes, with such powers (being powers vested in the Board), for such periods and subject to such conditions as the Board sees fit.

27 Amalgamation

The Association may be amalgamated with another incorporated association in accordance with the Act.

28 Winding up

The Association may be wound up in accordance with the Act.

29 Application of surplus assets

If, after the winding up of the Association, there remains surplus assets, they must not be paid or distributed to any Members, but must be given or transferred to:

- (a) any organisation or organisations having objects similar to those of the Association and having rules prohibiting the distribution of their income and property to their Members; or
- (b) a recognised, non-denominational charity or charities conducted in Australia, as determined by the Board.

30 Notices

30.1 Notice may be given to the Association in accordance with the Act.

30.2 Notice may be given by the Association to a Member by:

- (a) serving it on the Member personally;
- (b) sending it by post to the Member at the Member's address in the register of members or the address supplied by the Member to the Association for the giving of notices; or
- (c) transmitting it electronically to the electronic e-mail address given by the Member to the Association for the giving of notices.

30.3 Where a notice given by the Association is sent by:

- (a) post, service of the notice is effected by properly addressing, prepaying and posting a letter containing the notice and is deemed to have been effected on the business day that is 4 business days following the day of its posting; and
- (b) electronic transmission, service of the notice is effected by properly addressing and transmitting the notice and is deemed to have been effected on the day it is sent, if a business day, or otherwise on the following business day.

30.4 For the purposes of this clause, "notice" means any communication required or allowed to be given under this Constitution.

31 Alteration of Constitution

31.1 An alteration to this Constitution, including an alteration to the name of the Association, may only be made by Special Resolution.

31.2 The alteration does not become effective until it is registered by the Commission under the Act.

32 By-laws

32.1 The Board may:

- (a) make by-laws; or
- (b) approve by-laws made by any Member Committee or Board Committee, provided that they are not inconsistent with this Constitution.

33 Review

- 33.1 On or about the third anniversary of the incorporation of the Association, the Board will review the terms of this Constitution in consultation with the Member Committees and determine whether any alterations to the Constitution should be proposed to the Voting Members.