

FINLAYSONS

**Constitution of
Winemakers' Federation of
Australia Incorporated**

Adopted 6 December 2006.

81 Flinders Street, Adelaide
South Australia 5000

Telephone +61 8 8235 7400
Facsimile +61 8 8232 2944

info@finlaysons.com.au
finlaysons.com.au

GPO Box 1244, Adelaide
South Australia 5001

DX152 Adelaide

Our Ref: 358459/6

TABLE OF CONTENTS

1.	NAME	1
2.	DEFINITIONS AND INTERPRETATION	1
3.	OBJECTS	4
4.	POWERS	5
5.	INCOME AND PROPERTY	6
6.	MEMBERSHIP CATEGORIES	7
7.	MEMBERSHIP	8
8.	ENTRANCE FEES AND LEVIES	10
9.	MEMBERS' RIGHTS	10
10.	MEMBERSHIP COMMITTEES	12
11.	APPOINTMENT OF THE BOARD	13
12.	ALTERNATE DIRECTORS	16
13.	PRESIDENT	17
14.	ROLE OF THE BOARD	18
15.	MEETINGS OF THE BOARD	18
16.	BOARD COMMITTEES	20
17.	GENERAL MEETINGS	21
18.	REPRESENTATIVES AND PROXIES	24
19.	MINUTES	27
20.	CHIEF EXECUTIVE OFFICER	27
21.	SECRETARY	27
22.	INDEMNIFICATION OF OFFICERS	28
23.	PATRONS AND LIFE MEMBERS	28
24.	FINANCIAL REPORTING	29
25.	SEAL	29
26.	POWER OF ATTORNEY	29
27.	AMALGAMATION	30
28.	WINDING UP	30
29.	APPLICATION OF SURPLUS ASSETS	30
30.	NOTICES	30
31.	ALTERATION OF CONSTITUTION	31
32.	BY-LAWS	31

1. **NAME**

The name of the Association is WINEMAKERS' FEDERATION OF AUSTRALIA INC.

2. **DEFINITIONS AND INTERPRETATION**

2.1 In these Rules:

- (a) **Act** shall mean the *Associations Incorporation Act 1985* (SA);
- (b) **AGM** shall mean the annual general meeting of Members of the Association;
- (c) **Association** or **WFA** shall mean the association governed by this Constitution;
- (d) **Auditor** shall mean the auditor appointed under rule 24.3;
- (e) **Board Committee** shall mean a committee of the Board appointed under rule 16.1;
- (f) **CEO** shall mean the natural person appointed as chief executive officer of WFA under rule 20.1;
- (g) **Chair** shall mean, in the context of a Board meeting, the person appointed as chair under rule 15.3 and, in the context of a General Meeting, the person appointed as chair under rule 17.8;
- (h) **Constitution** or **Rules** means these rules;
- (i) **Director** shall mean a director of WFA referred to in rule 11.1 and **Board** shall mean all of those directors acting collectively;
- (j) **Financial Year** shall mean 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;
- (k) **General Meeting** shall mean a meeting of Members, whether an AGM or a Special General Meeting;
- (l) **Grape Grower** shall mean any Person who grows 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 who is a Winemaker, or the parent company of such a Person;

- (m) **Member** shall mean any member of this Association, whether a Voting Member or not;
- (n) **Membership Category** shall mean a group of Members defined in rule 6.1;
- (o) **Membership Committee** shall mean a committee, the members of which are appointed under rules 10.1, 10.2 and 10.4;
- (p) **Ordinary Resolution** shall mean any resolution passed at a General Meeting, other than a Special Resolution;
- (q) **Person** shall mean a corporation, trust, partnership, unincorporated association or other entity, as well as a natural person;
- (r) **President** shall mean the person appointed as president under rule 13.1;
- (s) **Scrutineer** shall mean the Auditor or such other person or persons as the Chair shall appoint to scrutinize the voting on a poll at a General Meeting;
- (t) **Secretary** shall mean a person appointed as secretary under rule 21.1;
- (u) **Special General Meeting** means a meeting of Members other than an AGM;
- (v) **Special Resolution** shall mean a resolution passed at a General Meeting if:
 - (i) 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
 - (ii) it is passed at the General Meeting by a majority of not less than 75% of the Members voting in each Voting Category;
- (w) **State Association** shall mean 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;

- (x) **Voting Category** shall mean a Membership Category, the members of which have the right to vote at General Meetings under rule 9;
- (y) **Voting Member** shall mean a member of a Voting Category;
- (z) **Wine** shall mean a “grape product” as defined in the *Australian Wine and Brandy Corporation Act 1980 (Cth)*;
- (aa) **Winemaker** shall mean any Person who:
 - (i) 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
 - (ii) produces Wine in Australia for another Person from that other Person’s grapes; or
 - (iii) purchases bulk Wine in Australia from another Person, for sale, under their own brand, to wholesalers or retailers of Wine or direct to consumers; but not
 - (iv) 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, or the parent company of such a Person; and
- (bb) **Wine Sector** shall include:
 - (i) the growing of grapes for use in the production of Wine;
 - (ii) the production of Wine;
 - (iii) the sale, distribution, promotion and marketing of Wine; and
 - (iv) any other activity incidental to the carrying out of any activity in paragraphs (i), (ii) or (iii) above.

2.2 In this Constitution, unless the context otherwise requires:

- (a) words and expressions defined in the Act, but not otherwise defined in these Rules, (including, but not limited to, **accounts, associate, the Commission, insolvent under administration, officer** and **surplus assets**) shall have the same meanings in these Rules;
- (b) words importing the singular number shall include the plural number and vice versa;
- (c) words importing a gender include the other genders;
- (d) the 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, shall 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 shall be:

- (a) to represent the interests of Australian Winemakers and Grape Growers of all sizes on national and international issues affecting the Australian Wine Sector, through a single organisation;
- (b) to actively promote and protect the reputation and success of Australian Wine and the Australian Wine Sector;
- (c) to encourage unanimity of opinion and action amongst Members in all national and international matters pertaining to the Australian 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 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 Wine Sector;
- (h) to encourage good practice and standards of winemaking and Wine business management within the Australian Wine Sector;
- (i) to administer funds collected from Members in support of the activities and objects of the Association;
- (j) to protect and enhance community and Government support for the Australian Wine Sector;
- (k) to promote economic, environmental and social responsibility in the production and consumption of Wine in Australia; and
- (l) 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 shall be:

- (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 shall be applied solely towards the promotion of the objects of the Association and no portion thereof shall be paid or distributed, directly or indirectly, by way of bonus or otherwise, by way of profit to Members.
- 5.2 The Association shall 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 There shall be the following categories of membership of the Association:

- (a) Large Winemakers, members of which category shall be 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 category shall be 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 category shall be 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) Grape Growers, of which category Grape Growers shall be members;
- (e) Affiliates, of which category Persons approved by the Board, who are Wine Sector bodies, marketers, distributors or retailers of Wine, suppliers of goods or services to Winemakers or Grape Growers, Wine journalists or educators or Persons otherwise closely associated with the Wine Sector, shall be members; and
- (f) any other categories established by the Board.

6.2 Each Member may only be a member of one Membership Category, which shall be, subject to rule 6.3, the category for which the Member qualifies relating to the highest number of litres of Wine sold or wine grapes crushed.

6.3 By notice to the Secretary, a Member, who qualifies as a member of:

(a) the Large Winemakers, may elect to, instead, become a member of the Medium Winemakers (with the approval of the Medium Winemakers' Membership Committee); or

(b) the Medium Winemakers, may elect to, instead, become a member of the Small Winemakers (with the approval of the Small Winemakers' Membership Committee),

provided that they shall 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 such other information as the Board requires to establish the qualification of that Person for any particular Membership Category.

7.2 Upon receipt of a compliant application form and other information referred to in rule 7.1, the Board shall admit the applicant to membership of the Association and allocate them to a particular Membership Category.

7.3 Upon being admitted to membership, a Member shall be bound by these Rules and any by-laws made pursuant to these Rules.

7.4 A Person may not, without the approval of the Board, become a Member if their associate 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 shall 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 Secretary receiving the notice of resignation.

7.6 (a) The Board may suspend or cancel a Member's membership of the Association for any of the following reasons:

- (i) 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;
- (ii) 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 2001 (Cth)*;
- (iii) the Member has failed to provide any information required by the Board pursuant to these Rules on the due date and has failed to rectify the default after being given 30 days' notice of it;
- (iv) the Member has breached the law, these Rules or any by-laws made pursuant to these Rules; or
- (v) the Member has prejudiced the interests of, or brought into disrepute, the Association or the Australian Wine Sector by their act or omission.

(b) The Board shall not suspend or cancel the WFA membership of a Member, without first:

- (i) giving the Member details of the reason for suspension or cancellation; and
- (ii) 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 7.6(b)(i).

(c) The suspension or cancellation of the WFA membership of any Member shall be 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.

- (d) The suspension or cancellation of the Members WFA membership shall take effect upon the Member being given notice of the Board's decision to that effect.

7.7 The Secretary shall 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 shall pay such:

- (a) entrance fee; and
- (b) annual or other levy,

as shall be determined by the Board for that Member's Membership Category, which shall be based on litres of Wine sold or tonnes of grapes crushed by the Member or any other criteria that the Board may choose to apply from time to time.

8.2 Each Member shall provide the Secretary with such information as the Board requires, to determine the amount of any entrance fee or levy to be payable by that Member, at such time or times as the Board may require.

8.3 Any entrance fee and levy shall be paid at such time and in such manner as shall be determined by the Board.

8.4 The minimum annual levy payable by a Large Winemaker shall be \$100,000 or such other amount as is determined by the Board.

9. **MEMBERS' RIGHTS**

9.1 The Large Winemakers shall be entitled to:

- (a) appoint a Membership Committee under rule 10.1;

- (b) attend General Meetings;
- (c) speak at General Meetings;
- (d) vote at General Meetings under rules 17.11 and 17.15; and
- (e) have matters included on the Board's agenda, by giving notice of those matters, with reasonable particulars, to the Secretary.

9.2 The Medium Winemakers shall be entitled to:

- (a) appoint a Membership Committee under rule 10.1;
- (b) attend General Meetings;
- (c) speak at General Meetings;
- (d) vote at General Meetings under rules 17.11 and 17.15; and
- (e) have matters included on the Board's agenda, by giving notice of those matters, with reasonable particulars, to the Secretary.

9.3 The Small Winemakers shall be entitled to:

- (a) appoint a Membership Committee under rule 10.1;
- (b) attend General Meetings;
- (c) speak at General Meetings;
- (d) vote at General Meetings under rules 17.11 and 17.15; and
- (e) have matters included on the Board's agenda, by giving notice of those matters, with reasonable particulars, to the Secretary.

9.4 The Grape Growers shall:

- (a) not be entitled to appoint a Membership Committee;
- (b) be entitled to attend General Meetings;
- (c) be entitled, if the Chair consents, to speak at General Meetings;
- (d) not be entitled to vote at General Meetings; and
- (e) be 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.

- 9.5 The Affiliates shall:
- (a) not be entitled to appoint a Membership Committee;
 - (b) be entitled to attend General Meetings;
 - (c) be entitled, if the Chair consents, to speak at General Meetings;
 - (d) not be entitled to vote at General Meetings; and
 - (e) be 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.
- 9.6 The rights of the Members in any other Membership Categories established by the Board shall be as determined by the Board, provided that they shall be no greater, in any respect, than those of the Affiliates.
- 9.7 The Board may vary the rights of the Members in any Membership Category.
10. **MEMBERSHIP COMMITTEES**
- 10.1 Each Voting Category may appoint a number of natural persons to comprise a Membership Committee for that Voting Category.
- 10.2 Each State Association shall be entitled to appoint a natural person to be a member of the Small Winemakers' Membership Committee.
- 10.3 A person is not eligible to be appointed to a Membership Committee under rule 10.1 or 10.2 unless that person is a Voting Member or an associate, employee or authorized representative of a Voting Member.
- 10.4 A Membership 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.
- 10.5 Each Membership Committee may appoint, from its number:

- (a) the chair of that Membership Committee, who shall, in consequence of that appointment, become a Director and a Vice-President of the Association; and
 - (b) such other number of Directors as that Membership Committee is entitled to appoint by virtue of rule 11.1(b).
- 10.6 A Membership Committee may make by-laws to govern the processes for its constitution and operation, which by-laws shall take effect upon their approval by the Board.
- 10.7 A Membership Committee may determine its own work program, which work program may be implemented by the Membership Committee upon its approval by the Board.
- 10.8 The Board may:
- (a) delegate any of its authority; or
 - (b) allocate financial, human or other resources, to any Membership Committee.
- 10.9 Each Membership Committee shall report to the Board, at the times and in the manner required by the Board.
- 10.10 A Membership Committee shall 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 shall comprise the following natural persons:
- (a) the President; and
 - (b) a number of other Directors, determined by the Board (subject to rule 11.3), an equal number of whom (subject to rule 11.2) shall be appointed by each Membership Committee under rule 10.5(b).

- 11.2 (a) If, on 1 July in a Financial Year, a Voting Category neither:
- (i) contributed at least 20% of levies paid to WFA in the previous Financial Year; or
 - (ii) comprises at least 50% of the total number of Members,
- that Voting Category shall be 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 Membership Committee appointed by that Voting Category, may, prior to 30 September in that Financial Year, resolve that that Membership 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 6.3, shall be 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, shall be entitled to appoint a natural person as a Director, who shall, for the purposes of these Rules (except rules 11.7(a), 11.9(a) and 12.1), be deemed to be 1 of the Directors appointed by the Large Winemakers’ Membership Committee under rule 10.5(b).
- 11.4 A person, other than the President, 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 authorized representative of a Voting Member, and that Voting Member is already a Director or already has an associate, employee or authorized representative who is a Director.
- 11.5 The chair of each Membership Committee shall advise the Secretary of the Directors appointed by that Membership Committee, under rule 10.5, prior to the AGM following their appointment.

- 11.6 A Director shall take office at the conclusion of the AGM following their appointment under rule 10.5 or 11.3, subject to them signing the WFA corporate governance protocols prescribed by the Board.
- 11.7 Each Director shall:
- (a) if appointed under rule 10.5:
 - (i) hold office for an initial term of approximately 2 years, or such shorter period determined by the Membership Committee appointing that Director, expiring at the conclusion of an AGM; and
 - (ii) be eligible for re-appointment under rule 10.5, for further terms of a length prescribed by rule 11.7(a)(i), 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 appointing that Director remaining eligible to appoint a Director under rule 11.3.
- 11.8 The office of a Director shall become 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 WFA 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 Membership Committee which appointed that Director under rule 10.5; 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 1 alternate director for each Director that category appoints under rule 10.5.

12.2 A Large Winemaker may appoint 1 alternate director for the Director it appoints under rule 11.3.

12.3 The Membership Committee of a Voting Category, other than the Large Winemakers, may appoint 1 of its number, who is not a Director, to be the alternate director for each Director appointed by that Membership Committee (so that there shall be only 1 alternate director in total for that Voting Category).

12.4 An alternate director appointed under this rule 12 shall be 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. PRESIDENT

13.1 The Board shall elect a natural person to the office of president of the Association, on the unanimous recommendation of the chair of each Membership Committee.

13.2 The President:

- (a) need not be a Member; and
- (b) may be an associate, employee or authorized representative of a Member, who is a Director or of whom another Director is an associate, employee or authorized representative.

13.3 The President shall take office at the conclusion of the AGM following their appointment under rule 13.1, subject to them signing the WFA corporate governance protocols prescribed by the Board.

13.4 The President shall:

- (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 President shall become vacant, if the President:

- (a) resigns from office by notice to the Secretary (in which case they shall also cease to be a Director); or

- (b) otherwise ceases to be a Director for any reason.

13.6 If the office of President is vacated:

- (a) it shall be filled in accordance with rule 13.1, but
- (b) despite rules 13.3 and 13.4(a), the new President shall 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 shall be governed by the Board, which, in addition to any powers conferred by these Rules, may exercise all such powers as are not, by the Act or these Rules, required to be exercised by the Association in General Meeting.

14.2 The Board shall be responsible for making WFA policy and overseeing its implementation by WFA.

14.3 Each Director shall have 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 shall meet at such times and places as, in the opinion of the President, may be required for the conduct of the business of the Association, but not less than 3 times in any 12 month period. The President 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 President shall be the chair of all meetings of the Board but, in the President's absence 15 minutes after the time appointed for the meeting, the Directors shall 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 shall not invalidate or in any way affect the business conducted thereat.
- 15.5 (a) A quorum for the conduct of meetings of the Board shall not be less than one half of the Directors, present in person or by alternate.
- (b) No business shall be conducted at any meeting of the Board unless there is a quorum present.
- 15.6 (a) The President shall not have a vote at any meeting of the Board.
- (b) All other Directors shall be entitled to one deliberative vote each, but no casting vote when they are acting as Chair.
- 15.7 (a) 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.
- (b) Rules 18.4 to 18.11 (inclusive) shall apply to such an appointment as if the references to a "General Meeting" in those rules were to a "Board meeting".
- 15.8 Motions for consideration by Directors at Board meetings shall be determined by:
- (a) polling all votes cast in person or by proxy; and
- (b) a majority of votes, being cast in favour of the motion, of at least 80% of votes cast or such other percentage as is specified in these Rules for a motion of that nature.
- 15.9 (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, shall be deemed to be assembled together in one place during the meeting for the purposes of these Rules.
- 15.10 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, shall be 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 shall be 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 shall 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 shall be convened by:

- (a) the Secretary; or
- (b) the President.

17.2 The business of the AGM shall 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 WFA and that contains such information as is prescribed by the Act;
- (d) to announce the appointment of the President and Directors under rules 10.5, 11.3 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 President;
- (c) the Board;
- (d) any Membership Committee; or
- (e) at least 50 Voting Members.

17.4 All General Meetings shall 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 shall be only that, notice of which has been given in accordance with these Rules, except that the Chair may, but shall 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, shall not invalidate the business transacted at the meeting.
- 17.7 (a) A quorum for a General Meeting shall be 20 Voting Members, including 3 Members from each Voting Category, present in person or by proxy.
- (b) If, within 30 minutes of the time appointed for a General Meeting, a quorum is not present, the meeting shall stand adjourned to a time and place determined by the Chair.
- (c) If, within 30 minutes of the time appointed for the adjourned meeting, a quorum is not present, those Voting Members present shall form a quorum.
- 17.8 The President shall be chair of all General Meetings but, in the President's absence, 15 minutes after the time appointed for the meeting, the Voting Members shall elect 1 of their number to act as chair of the meeting.
- 17.9 The Chair shall have a deliberative vote if they are a Member, but shall have no casting vote.
- 17.10 The business of the Association shall be transacted by Ordinary Resolution, except where specified otherwise by these Rules or the Act.
- 17.11 Each Voting Member shall be 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 rule 17.15.
- 17.12 (a) A motion for an Ordinary Resolution put at a General Meeting shall be determined on a show of hands, if declared so determined by the Chair, unless a poll is demanded on the motion.

- (b) A motion for a Special Resolution may only be determined on a poll.
- 17.13 A motion for an Ordinary Resolution shall be carried on a show of hands, if a simple majority of votes cast are cast in favour of the motion.
- 17.14 (a) A poll may be demanded on a motion for an Ordinary Resolution by:
- (i) the Chair;
 - (ii) the chair of any Membership Committee; or
 - (iii) at least 5 Voting Members.
- (b) A poll shall always be taken on a motion for a Special Resolution.
- 17.15 On a poll taken on a motion for an Ordinary Resolution:
- (a) each Voting Category shall have a total voting allotment, expressed as a percentage, which is the same proportion of the total votes eligible to be cast (**voting percentage**);
 - (b) the Scrutineer shall record the number of votes cast for and against the motion in each Voting Category and shall express the votes in favour of the motion as a percentage of the total votes cast for and against the motion in that Voting Category (**percentage in favour**);
 - (c) the Scrutineer shall multiply the percentage in favour by the voting percentage to ascertain a voting result, expressed as a percentage, for each Voting Category (**voting result**);
 - (d) the Scrutineer shall add together the voting result of each Voting Category; and
 - (e) the motion shall be carried if the sum of the voting results is greater than 50%.
- 17.16 On a poll taken on a motion for a Special Resolution, the Voting Categories shall not have particular voting allotments (as they do for Ordinary Resolutions under rule 17.15), but a majority of not less than 75% of the Members voting in each Voting Category shall be required.
- 17.17 A poll shall 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 shall 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.

17.18 At a General Meeting:

- (a) any dispute regarding the validity of any vote cast, the entitlement of a Person to vote or procedural matters shall 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, shall 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 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 2001 (Cth)*.
- 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 2001(Cth)*;
 - (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 Chair 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 facsimile) 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 Chair 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 shall arrange for minutes of all General Meetings and Board meetings to be kept in accordance with the Act.

19.2 (a) The secretary (if any) or chair of each Membership Committee and Board Committee shall arrange for minutes of all meetings of those committees to be kept, as if those meetings were Board meetings governed by the Act.

(b) The provisions of the Act governing minutes of Board meetings shall be deemed to apply to Membership Committee and Board Committee meetings.

20. CHIEF EXECUTIVE OFFICER

20.1 The Board shall appoint a chief executive officer of WFA 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 WFA on a daily basis.

20.3 The CEO shall report to the Board.

21. SECRETARY

21.1 The Board shall appoint a secretary of WFA 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 shall be the “public officer” of WFA 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 shall indemnify, and keep 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 Membership Committee or Board Committee or any sub-committee of either of those committees.

23. PATRONS AND LIFE MEMBERS

23.1 The Board may, by unanimous vote, appoint natural persons to the honorary position of “Patron” or “Life Member” of WFA.

23.2 The Board shall establish the criteria for appointment of a Patron or Life Member, but those criteria shall include the fact that they have made an outstanding contribution to the Australian Wine Sector.

23.3 Patrons and Life Members shall have no legal rights or obligations as a result of their appointment to that position.

24. FINANCIAL REPORTING

- 24.1 The Board shall arrange for accounts of WFA to be prepared in accordance with the Act.
- 24.2 The Board shall arrange for the accounts of WFA to be audited in accordance with the Act.
- 24.3 (a) An auditor of WFA shall be appointed at each AGM and shall hold office until the conclusion of the next AGM, at which time they shall be eligible for re-appointment.
- (b) 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.
- (c) The terms of engagement of the Auditor, including their remuneration, shall be fixed by the Board.
- 24.4 The Secretary shall 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 shall have a common seal, with its name inscribed on it in legible writing.
- 25.2 The Secretary shall keep the seal in safe custody.
- 25.3 The seal shall only be used with the express authorisation of the Board, which shall be noted in the Board minutes.
- 25.4 The affixing of the seal shall be witnessed by any 2 Directors or any 1 Director and either the CEO or the Secretary, who shall 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 WFA, 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 shall not be paid or distributed to any Members, but shall be given or transferred to:

- (a) any organisation or organisations having objects similar to those of WFA 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;
- (c) transmitting it to the facsimile number supplied by the Member to the Association for the giving of notices; or
- (d) 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 shall be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected:
 - (i) in the case of a notice of meeting, on the business day following the day of its posting; and
 - (ii) in any other case, at the time when the letter would be delivered in the ordinary course of post; and
- (b) facsimile transmission or electronic transmission, service of the notice shall be effected by properly addressing and transmitting the notice and shall be deemed to have been effected on the day it is sent, if a business day, or otherwise on the following business day.

31. ALTERATION OF CONSTITUTION

- 31.1 An alteration to these Rules, including an alteration to the name of the Association, may only be made by Special Resolution.
- 31.2 The alteration shall 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 Membership Committee or Board Committee,provided that they are not inconsistent with these Rules.