



# AUSTRALIAN VIGNERONS

# CONSTITUTION

**15<sup>th</sup> November 2017**

## **1 PREAMBLE**

Wine Grape Growers Australia will trade as “Australian Vignerons”. Australian Vignerons exist to represent the interests of the Australian Wine Industry at a national level.

## **2 NAME**

“Australian Vignerons” is hereinafter referred to as “the Association”.

## **3 DEFINITIONS**

“**Act**” means the Associations Incorporations Act 1985;

“**Annually**” means 12 monthly;

“**Australian Wine Industry**” means all organisations that have an interest in grape growing, wine producing and the sale, distribution and promotion of same;

“**Australian Vignerons Board**” means the Board of the Association;

“**Board Members**” means voting, non-voting or persons appointed or elected to the Board;

“**Council**” means the Australian Vignerons Council of the Association;

“**Councillor**” means the representative of a Member body that sits on the Council and whose power is referred to in section 7 herein.

“**General Meeting**” means a general meeting of the Members of the Association convened in accordance with the rules of the Association;

“**Meeting**” means the annual policy meeting of the Council;

“**Member**” means a Member of the Association;

“**Month**” means a calendar month;

“**Partner**” means a supporter of the Australian Wine Industry; and is a non-voting Member of the Association.

“**Special Meeting**” means a meeting called by the Board or a 75% majority of Council votes for any purpose and in accordance with section 9.2 herein.

**“Special resolution”** means a special resolution as defined in the Act;

**“The Industry”** means the Australian Wine Industry;

**“Industry Bodies”** means any state or regional body that operates within the wine industry;

#### **4 OBJECTS AND PURPOSES OF THE ASSOCIATION**

The objects of the Association are to:

- a) Represent and advocate for the industry at a national level by;
  - i) advocating on national issues effecting Australian wine growers;
  - ii) fulfilling biosecurity responsibilities as signatories to the Emergency Pest and Plant Response Deed (“EPPRD”).
- b) Apply the funds of the Association towards the above objects of purpose.

#### **5 POWERS**

The Association shall have all the powers conferred by the Act.

#### **6 MEMBERSHIP**

##### **6.1 Categories**

- a) Membership shall be open to Representative Grape and Wine Industry Bodies as approved by the Board from time to time.
- b) A partnership (“Partner”) or associate membership shall be open to all Australian Wine Industry supporters who agree with the objects of the Association.

##### **6.2 Eligibility and Application for Membership**

- a) Industry Bodies that represent wine growers and agree with the objects and purposes of Australian Vignerons, shall be eligible to be members. This will be determined by The Board.
- b) Application for Membership shall be made on an application form, and approved by the Board and signed by the Independent Chairman or CEO of the Association.
- c) Membership shall apply from the date of payment of the annual subscription, or on a date agreed by the Board.

##### **6.3 Subscriptions**

- a) The annual subscription will be a sum determined by the Board in consultation with Members.
- b) The annual subscription shall be paid on the 1<sup>st</sup> of July or another date as determined by the Board.
- c) Any Member whose subscription is outstanding for more than three months after the due date shall cease to be a Member of the Association unless agreed otherwise by the Board.

#### **6.4 Resignation**

A Member may resign their membership of the Association by giving 30 days written notice to the public officer of the Association. Any Member so resigning shall be liable for any outstanding subscriptions which may be recovered as a debt due to the Association.

- a) If a Member resigns within one month of the membership year commencement date, having paid the annual membership subscription, the Member will be eligible for the rebate of that year's subscription in full, less an administrative fee to be fixed at the discretion of the Board – notwithstanding the provisions of any Commonwealth, State or Territory Act or regulation.
- b) If a Member resigns within three months of the commencement of the Membership year having paid the annual Membership subscription, the Member will be eligible for a pro-rata rebate of that year's subscription, less an administrative fee to be fixed at the discretion of the Board – notwithstanding the provisions of any Commonwealth, State or Territory or regulation.

#### **6.5 Expulsion of a Member**

- a) Subject to giving a Member an opportunity to be heard or to make a submission, the Board may resolve to expel a Member upon a charge of misconduct detrimental to the good governance or to the interests of the Association.
- b) Particulars of the complaint shall be conveyed to the Member at least one month prior to the Board meeting at which the matter will be determined.
- c) The determination of the Board shall be conveyed to the Member, and in the event of any adverse determination the Member (subject to part d of this clause) shall cease to be a Member fourteen days after the determination has been communicated by the Board.
- d) It shall be open to a Member to appeal to the Association in a general meeting against the expulsion. The intention to appeal shall be communicated to the public officer within fourteen days after the determination of the Board has been communicated to the Member.
- e) In the event of an appeal (under part d of the clause) the membership of the appellant will not be terminated unless the determination of the Board to expel the Member is upheld by the

Members of the Association in a General or Special Meeting after the appellant is heard by the Members of the Association, and in such event membership will be terminated from the date of the General or Special Meeting at which the determination of the Board is upheld.

## **6.6 Register of Members**

A register of Members must be kept and contain:

- a) The name and registered address of the Members.
- b) The date on which the Member's last subscription was received by the Association, and
- c) If applicable, the date and reason(s) for termination of Membership.

## **7 AUSTRALIAN VIGNERONS COUNCIL ("THE COUNCIL")**

- a) The Council consists of one representative ("The Councillor") from each Member Industry Body.
- b) The Council meets annually ("the meeting") to determine:
  - i) The national issues and policy framework for the Board to implement;
  - ii) To nominate and elect independent skills based directors for the Board of Australian Vignerons. ("The Board").
- c) The Independent Chairman of the Board is to chair the Meeting.
- d) Each Councillor on the Council has a proportional vote, which is determined by the Board, from time to time in consultation with the Members.
- e) In deciding on 7.d, the Board is required to take into account financial contribution and size of membership of the Member's association.
- f) Each decision reached by the Council pursuant to 7(b) requires a 75% majority of available votes.
- g) If the Council is unable to reach a 75% majority vote, then the matter is referred to the Board for action.

### **Subcommittees and Advisory Committees:**

- h) The Council may create subcommittees and advisory committees from time to time under specific terms of reference.

- i) The Board is to ratify the subcommittees and advisory committees that are recommended by the Council.
- j) These subcommittees and advisory committees are to report to the Board.

### **Observers**

- k) Each Councillor may have an observer attend the meeting with them at the meeting if they so wish.
- l) The observer is to be from the same association as the Councillor and notice of such attendance is to be given to the Independent Chairman no less than 24 hours in advance of the meeting.
- m) The Observer does not have voting rights.

### **Proxies**

- n) A Councillor shall be entitled to appoint a natural person to be their proxy and attend the meeting and vote.
- o) The proxy must be in writing and notice given to the Independent Chairman no less than 24 hours before the comment or the meeting.

## **8 BOARD**

### **8.1 Powers and Duties**

- a) The Board shall have all the powers conferred by Section 25 of the Act.
- b) The Board shall have the authority to interpret these rules and any other matter relating to the affairs of the Association on which these rules are silent.
- c) The Board shall appoint a public officer as required by the Act. The public officer shall be the Chief Executive Officer of the Association unless otherwise specified by the Board.

### **8.2 Board Membership**

- a) The Board shall comprise 7 to 9 independent skill - based Board Members including an Independent Chairman.
- b) The Chief Executive Officer shall not be a Board Member but shall report to the Board.
- c) The Board, other than the Independent Chairman shall be appointed by the Councillors at The Meeting.

- d) The Board will be made up as follows:
  - i) Independent Chairman;
  - ii) At least 2 but no more than 3 Members with Viticultural/Growing Skills;
  - iii) At least 1 but no more than 2 Members with Winemaker Skills;
  - iv) Members with Wine Industry Skills;
  - v) Members with Independent skills as determined by the Board from time to time.
- e) Board Members except the Independent Chairman shall be appointed to a two year term and may serve a maximum of two consecutive terms. The Independent Chairman may serve three two- year terms.
- f) Ideally the election of new Board Members will take into account the benefit of providing continuity of experience for the upcoming term.

### **8.3 Proceedings of the Board**

- a) The Board shall meet together as often as necessary for effective governance of the Association.
- b) The Independent Chairman shall have a casting vote only.
- c) A quorum of a meeting of the Board shall be one half of the Members of the Board.
- d) Each voting Member of the Board shall be entitled to one (1) vote, unless exercising a proxy vote.
- e) Proxy voting shall be allowed on items arising from the agenda providing the proxy conforms with the following provisions:
  - i) proxies must be written, signed by the Member of the Board, delivered to the office of the Association and marked for the attention the Independent Chairman, no less than 24 hours prior to the notified commencement time of the meeting;
  - ii) a proxy notification by either specify a formal decision or direction to vote on the motion or grant the holder the right to vote on the motion;
  - iii) unless another Member of the Board is specified as the proxy, proxy votes will be vested with and exercised by the Independent Chairman.

- f) Questions arising at the meeting of the Board shall be decided by a majority of votes.
- g) If the Independent Chairman is absent, the Board may elect a chairman from those Members present.
- h) A Member of the Board having a direct or indirect pecuniary interest in a contract or a proposed contract with the Association must disclose the nature and extent of that interest to the Board as required by the Act, and shall not vote with respect to that contract or proposed contract. The Board Member must disclose the nature and extent of his or her interest in the contract at the next annual general meeting of the Association. The CEO will maintain a register of interests of Board Members for this purpose.

#### **8.4 Board Elections**

- a) Elections are to be conducted at the Meeting to determine the Members of the Board other than the Independent Chairman.
- b) Councillors will be entitled to one vote or a number of votes as determined by the Board to elect Board Members according to a clear and transparent process.
- c) Nominees for election to the Board must be nominated by a Councillor of the Council of the Association.
- d) Notice shall be given by the Association to the Members no later than three (3) months before the completion of a Board Member's terms, requesting that the Councillors tender a Board nomination for election by the council at the Meeting.
- e) Councillors only shall be entitled to vote.

#### **8.5 Office Bearers**

- a) The Board shall appoint an Independent Chairman.
- b) The Board shall appoint a public officer if he or she is to be other than the executive director of the Association.

##### **8.5.1 Independent Chairman**

In determining the appointment of Independent Chairman:

- a) Public expressions of interest for the position of Independent Chairman shall be called by the Association.
- b) Candidates shall be reviewed by the Board or a selection sub-committee appointed by the Board.
- c) Appointment of an Independent Chairman is to occur on the affirmative vote of 75% of the voting Members of the Board, and
- d) An Independent Chairman shall not be selected from
  - i) An existing Board Member;
  - ii) The Chairman or Board Member of an industry body.

## **8.6 Disqualification of Board Members**

The office of a Board Member shall become vacant of that Board Member is:

- a) Disqualified from being a Board Member by the Act;
- b) Expelled as a Board Member under this Constitution;
- c) Permanently incapacitated by ill health, or
- d) Absent without agreement for more than three meetings in a financial year.

## **8.7 Committees and Advisory Committees of Board**

The Board may direct the Council to create committees and advisory committees of the Board from time to time under specific terms of reference.

- a) The committees and advisory committees shall consist of Members as the Council and or the Board sees fit.
- b) The Board may delegate any of its powers or functions to a committee.

## **9 GENERAL MEETINGS**

### **9.1 Annual General Meetings**

- a) The Board shall call an annual general meeting of Members in accordance with the Act and these rules.

- b) The annual general meeting shall be held within five (5) months after the end of each financial year.
- c) The order of business at the meeting shall be:
  - i) The confirmation of the minutes of the previous annual general meeting and any Special Meeting held since that meeting.
  - ii) The consideration of the minutes of the previous annual general meeting and any Special Meeting held since that meeting.
  - iii) The consideration of the accounts, reports of the Board, and auditor's report.
  - iv) Ratification of Board Members,
  - v) The appointment of an auditor, and
  - vi) Any other business requiring consideration by the Association in general meeting.

## **9.2 Special Meetings**

- a) The Board, or a 75% majority of the Council may call a Special Meeting of the Association at any time for specified purpose.
- b) The Board shall within one month of calling, convene a Special Meeting for the purpose specified.
- c) The notice shall set out where and when the meeting will be held, and particulars of the nature and orders of the business to be transacted at the meeting. A notice may be given by the Association to any Member with the notice personally, or by sending it by e-mail to the e-mail address of the Member without bounce back notification.
- d) Where notice is sent by post to registered Members
  - i) The service is effected by properly addressing, prepaying and posting a letter or packet containing the notice, and
  - ii) Unless the contrary is proved, service is taken to be effected at the time at which the letter or packet would be delivered in the ordinary course of post.

## **9.3 Proceedings at Annual General Meetings and Special Meetings**

- a) Five (5) Councillors and a quorum of the Board present personally or by proxy shall constitute a quorum for the transaction of business at any General or Special Meeting.

- b) If within 30 minutes after the time appointed for the meeting a quorum of Councillors and Board Members is not present, a meeting convened upon requisition of Councillors and Board Members shall lapse. In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place and if at such an adjourned meeting a quorum is not present within 30 minutes of the time appointed for the meeting, the Councillors and Board Members present shall form a quorum.
- c) Subject to 9:3 (d), the Independent Chairman shall preside as chairman at a General or Special Meeting.
- d) If the Independent Chairman is not present within 5 minutes after the time appointed for holding the meeting, or he or she declines to take or retires from the chair, the quorum may choose a Board Member to chair that meeting.

#### **9.4 Voting at Annual General Meetings and Special Meetings**

- a) Subject to these rules, every Councillor of the Association is given a vote or a number of votes at a General or Special Meeting of the Association. The amount of votes per Councillor is determined by the Board in a clear and transparent process and is reflected in the proportionate voting at the Council.
- b) Subject to these rules, a question for decision at a General or Special Meeting, other than a special resolution, must be determined by a majority of Councillors who vote in person, or where proxies are allowed, by proxy at that meeting.
- c) Unless a poll is determined by at least three (3) Councillors, a question for decision at a General or Special Meeting shall be determined by a show of hands.

#### **9.5 Poll at Annual General Meetings and Special Meetings**

- a) If a poll is demanded by at least three (3) Councillors, it must be conducted in a manner specified by the Independent Chairman and the result of the poll is the resolution of the meeting on that question.

#### **9.6 Special and Ordinary Resolutions**

- a) A special resolution is a resolution passed by 75% majority of those present in person or by proxy at a General or Special Meeting.
- b) An ordinary resolution is a resolution passed by a simple majority present in person or by proxy at a General or Special Meeting.

#### **9.7 Proxies**

- a) A Member shall be entitled to appoint a natural person to be their proxy and attend and vote at any Annual General Meeting or Special Meeting of the Association.
- b) A proxy will only be valid if it complies with the provisions of clause 7(n) and 7 (o).

## **10 MINUTES**

- a) Proper minutes of all proceedings of all meetings of the Board shall be recorded, and kept by the public officer of the Association.
- b) The minutes must be confirmed by Members of the Association or the Members of the Board (as relevant) at a subsequent meeting.
- c) The minutes shall be signed by the Independent Chairman of the meeting at which the proceedings took place or by the Independent Chairman of the next succeeding meeting at which the minutes are confirmed.
- d) Where minutes are recorded and signed, until the contrary is proved, they shall be evidence that the meeting was convened and held, and that the proceedings of that meeting occurred, and all appointments made at a meeting shall be deemed to be valid.

## **11 DISPUTE RESOLUTION**

- a) The dispute resolution procedure set out in this rule applies to disputes under these rules between
  - i) A Member and another Member, and
  - ii) A Member and the Association.
- b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible resolve the dispute within fourteen (14) days after the dispute comes to the attention of all parties.
- c) If the parties are unable to resolve the dispute at the meeting the parties may choose to meet and discuss the dispute before an independent third person agreed to by the parties.

## **12 FINANCIAL REPORTING AND MANAGEMENT OF FUNDS**

## **12.1 Financial year**

The financial year of the Association shall be a period of twelve (12) months commencing on 1 July and ending on 30 June of each year.

## **12.2 Records of Accounts**

The Association shall keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the Association in accordance with the Act.

## **12.3 Accounts to be Tabled for Review by Members**

The accounts, including a balance sheet and profit and loss statement for the year, together with the auditor's report on the accounts, the Board's statement on the accounts and the Independent Chairman's report, shall be tabled for review by Members at the annual general meeting.

## **12.4 Annual Return**

The annual return shall be lodged with the Office of Consumer and Business Affairs of the State of South Australia within six (6) months after the end of the financial year. It must be accompanied by a copy of the accounts, the auditor's report, the Board's statement on the accounts, and the Independent Chairman's report.

## **12.5 Appointment of Auditor**

- a) At each annual general meeting, the Members shall appoint a person to be auditor of the Association, who shall be a registered auditor under Corporations Law.
- b) The auditor shall hold office until the next annual general meeting and shall be eligible for re-appointment.
- c) If an appointment is not made at an annual general meeting, the Board shall appoint an auditor for the current financial year.

## **12.6 Banking and Investment of Funds**

- a) All funds of the Association shall be banked in the name of the Association, in such bank as the Board may determine.
- b) All funds available for investment shall be invested with a bank which is registered and supervised by the Australian Prudential Regulation Authority ("APRA").

### **13 PROHIBITION AGAINST SECURING PROFITS FOR MEMBERS**

The income and capital of the Association shall be applied exclusively to the promotion of its objects and no portion shall be paid or distributed directly or indirectly to Members or their associates except as bona fide remuneration of a Member for services rendered or expenses incurred on behalf of the Association.

### **14 WINDING UP**

The Association must be wound up in the manner provided for in the Act.

### **15 APPLICATION OF SURPLUS ASSETS**

- a) If, after the winding up of the Association there remain “surplus assets” as defined in the Act, such surplus assets shall be distributed to any organisation which has similar objects and has rules which prohibit the distribution of its assets and income to its Members, or else be given or transferred to a recognised non-denominational charity in the Commonwealth of Australia.
- b) Such organisation or organisations shall be identified and determined by a resolution of Councillors in general meeting.

### **16 RULES**

- a) These rules (including the Association’s name) may be altered by special resolution of the Members of the Association. This includes rescission or replacement by subsequent rules.
- b) The alteration shall be registered with the Office of Consumer and Business Affairs and Compliance Branch (SA), as required by the Act.
- c) The registered rules shall bind the Association and every Member to the same extent as if they have respectively signed and sealed them, and agreed to be bound to all of the provisions thereof.

### **17 TRANSITION**

The provisions of this constitution will become effective on the date the constitution is adopted by special resolution of the Members of Wine Grape Growers Australia. For the purposes of this transition, at this date the Executive Committee of Wine Grape Growers Australia becomes the Board. All office bearers with the exception of the Independent Chairman cease at that time. The Board then moves expeditiously to give effect to the Constitution herein.