

Constitution

The Australian Wine Research Institute
Limited
ACN 007 558 296

- * Incorporating alteration passed 14.11.2006: substitution of clause 34
- * Incorporating alterations passed 6.5.2008: including alterations to Defined Terms, inserting subclause 4.1(e) and Schedule 1, deleting clause 5.3, substituting clauses 9.3, 25, 26 and 28.
- * Incorporating alterations passed 18.5.2010: including alterations to Defined Terms, deleting clauses 25.2(a), 26.1, and 28.3 and all cross references to the deleted clauses, renumbering of clauses to account for the above deletions, and renumbering of affected clauses.
- * Incorporating alterations passed 18 August 2014: which replaced Schedule 1 in its entirety.
- * Incorporating alterations passed 28 November 2017: including introduction of provisions dealing with ARI status.

Constitution of The Australian Wine Research Institute Limited ACN 007 558 296

Preliminary	4
1. Defined terms	4
2. Interpretation	5
3. Replaceable rules	6
4. Objects	6
5. Income & property of Company	7
6. Membership	8
7. Ceasing to be a Member	8
8. Powers of attorney of Members	8
General meetings	8
9. Calling general meeting	8
10. Notice of general meeting	9
Proceedings at general meetings	9
11. Member	9
12. Quorum	9
13. Chairperson	10
14. Adjournment	10
15. Decision on questions	10
16. Taking a poll	11
17. Casting vote of chairperson	11
Votes of Members	11
18. Entitlement to vote	11
19. Objections	11
20. Votes by proxy	12
21. Document appointing proxy	12
22. Lodgement of proxy	12
23. Validity	13
24. Written resolutions of Members	13
Appointment & removal of Directors	13
25. Number of Directors	13
26. Appointment & removal of Directors	14
27. Additional & casual Directors	15
28. Retirement	15
29. Vacation of office	16
Powers & duties of Directors	16
30. Powers and duties of Directors	16
Proceedings of Directors	16
31. Directors' meetings	16
32. Regulations	17
33. Decision on questions	17

Payments to Directors	18
34. Payments to Directors	18
35. Directors' interests	19
36. Remaining Directors	19
37. Chairperson	19
38. Delegation	20
39. Written resolutions of Directors	20
40. Validity of acts of Directors	20
41. Minutes & Registers	21
Local management	21
42. Local management	21
43. Appointment of attorneys & agents	21
Secretary	22
44. Secretary	22
Seal	
45. Common Seal	22
Inspection of records	22
46. Inspection of records	22
Notices	23
47. Service of notices	23
48. Persons entitled to notice	23
Audit & accounts	24
49. Audit & accounts	24
ARI Provisions	24
50. Establishment and operation of Research Fund	24
51. Research Committee	24
52. Transfer of the Research Fund in specified circumstances	24
53. Results	25
Winding up	25
54. Winding up	25
Amendment to Constitution	25
55. Amendment to Constitution	25
Indemnity	26
56. Indemnity	26
Transitional provisions	26
57. Transitional provisions	26

Preliminary

1. Defined terms

1.1 In this Constitution unless the contrary intention appears:

Approved Scientific Research means scientific research in the fields of natural or applied science which is, or may prove to be, of value to Australia (as per guidelines issued in relation to ARIs from time to time).

ARI means an ‘approved research institute’ under Item 3.1.1 of section 30-40(1) of the ITAA.

Auditor means the Company's auditor.

Board means the Board of Directors of the Company.

Chairperson means the person elected under clause 37.

Company means The Australian Wine Research Institute (ACN 007 558 296).

Constitution means the constitution of the Company as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

Director includes any person occupying the position of director of the Company.

Directors means all or some of the Directors acting as a board.

Grapes Research Levy Payer means, for the purposes of clause 4.1(e), the producers of fresh grapes, dried grapes and/or grape juice produced in Australia and delivered to a processing establishment in Australia pursuant to the *Primary Industries Levies and Charges Collection Act 1991*, the *Primary Industries (Excise) Levies Act 1999*, or any amendment or re-enactment of, or substitution for, those Acts for the time being in force.

ITAA means the *Income Tax Assessment Act 1997* (Cth)

Levy Payer means, for the purposes of clauses 25, 26 and 28, an owner of a winery or distillery, a partner of a partnership owning a winery or distillery, or a director or the equivalent of an association, body corporate, company or group of companies owning a winery or distillery; which has paid or is liable for the Wine Grapes Levy. For the purposes of clauses 25, 26 and 28 the following classifications of Levy Payers will apply:-

- **Small Levy Payers** are Levy Payers who crush up to 2,000 tonnes of winegrapes per annum;
- **Medium Levy Payers** are Levy Payers who crush between 2,001 and 50,000 tonnes of winegrapes per annum; and
- **Large Levy Payers** are Levy Payers who crush more than 50,000 tonnes of winegrapes per annum.

Managing Director means the person appointed under clause 26.1.

Member means a member under clause 6.

Objects means the objects of the Company set out in clause 4.

Register means the register of Members of the Company.

Related Body Corporate has the meaning in the *Corporations Act*.

Research Committee means the committee established and operated as specified in Clause 51, as the 'Research Committee' required of an ARI.

Research Fund has the meaning given in Clause 50.

RF Research (Research Fund Research) means Approved Scientific Research carried out using the Research Fund.

Seal means the Company's common seal (if any).

Secretary means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of those joint secretaries.

Special Qualification Director means a person who in the opinion of the Members has complementary skills to those of existing Members that may include but not be limited to: business skills, financial skills, viticulture skills, winemaking skills.

Special resolution has the same meaning as in the *Corporations Act*.

Wine Grapes Levy means the levy payable imposed on grapes used in the wine making process as defined under the *Primary Industries Levies and Charges Collection Act 1991*, the *Primary Industries (Excise) Levies Act 1999 (Cwlth)*, or any amendment, re-enactment of, or substitution for those Acts for the time being in force.

Wine Grapes Levy Payer means Levy Payer as defined in this clause 1.1.

- 1.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the *Corporations Act*. Where the expression has more than one meaning in the *Corporations Act* and a provision of the *Corporations Act* deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.
- 1.3 The liability of the Members is limited to the amount expressed in clause 54.

2. Interpretation

In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency; and
- (f) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions.

3. Replaceable rules

To the extent permitted by law, the replaceable rules in the *Corporations Act* do not apply to the Company.

4. Objects

4.1 The Objects of the Company are:

- (a) To promote research and other scientific work in connection with the wine-making and viticultural industries and other trades and other allied or ancillary industries, including in relation to the promotion of the export trade in wine, brandy and grape must, and for that purpose to acquire, plant and maintain vineyards and to establish form equip and maintain laboratories and workshops and pilot or experimental wineries and distilleries and conduct and carry on experiments, and to provide funds for such work, and for payment to any person or persons engaged in research and other scientific work whether in such laboratories or elsewhere and to encourage and improve the education of persons who are engaged or are likely to be engaged in wine-making and viticultural industries.
- (b) To prepare edit print publish issue acquire and circulate books papers periodicals gazettes circulars and other literary undertakings having a bearing on wine-making and viticultural industries, and to establish form and maintain museums and collections of inventions experiments specimens and other articles and substances, scientific data and other information relating to wine-making and viticultural industries, or to matters of interest to the members thereof, and to translate compile collect publish lend and sell and endeavour to secure or contribute to the translation compilation collection and the publication by Parliament Government Departments and other bodies or persons of any such literature statistics and information and to disseminate the same by means of the reading of papers delivering of lectures giving of advice the appointment of advisory officers and otherwise.
- (c) To retain or employ skilled professional or technical advisers or workers in connection with the objects of the Company and to pay therefore such fees or remuneration as may be thought expedient, also to found aid maintain and endow scholarships and bursaries for the remuneration instruction and support of students in research work or persons engaged in studying the principles involved in or connected with wine-making and viticultural industries whether in the laboratories of the Company or elsewhere, and to employ and remunerate as may be expedient instructors and supervisors for such students and also for persons engaged in studying the principles involved in or connected with the wine-making and viticultural industries paying due regard to the provision of instruction by existing institutions.
- (d) To encourage the discovery of and investigate and make known the nature and merits of inventions improvements processes materials and designs which are used or may seem capable of being used for any of the purposes of wine-making and viticultural industries, and to take out acquire or become sole or part owners of any patents or licences relating to any such inventions improvements or processes, and to acquire and register any designs or standardization marks whether for general or special purposes with a view to the use thereof by the Company or otherwise for the benefit or purposes of the Company and to authorize the use of such inventions improvements processes designs and marks accordingly upon such terms as may seem expedient, and to develop improve perfect and test the value of such inventions improvements processes and designs.
- (e) To take into account the legitimate interests of both Wine Grapes Levy Payers, Grapes Research Levy Payers and other key stakeholders in the pursuit of these objects

- (f) To purchase take on lease or in exchange, hire or otherwise to acquire any real or personal property or any rights or privileges which the Company may think necessary or convenient in the promotion of its objects, and to construct maintain enlarge alter or otherwise adapt any buildings necessary convenient or desirable for the work of the Company.
 - (g) To enter into any arrangements with any Government or authority (municipal, local or otherwise) person, body of persons or body corporate that may seem conducive to the attainment of the Company's objects and to obtain from any such Government or authority, person, body of persons or body corporate any rights licences franchises privileges and concessions which the Company may think desirable to obtain and to carry out and exercise any such arrangements rights licences franchises privileges or concessions.
 - (h) To let any part or parts of any land or buildings of the Company in such manner as may be deemed expedient.
 - (i) To undertake and execute any trusts which may be lawfully undertaken by the Company and may be conducive to the attainment of any of the objects.
 - (j) To do all or any of the above things in any part of the world.
 - (k) To do all or any of the above things either as principals agents trustees or otherwise, and by or through trustees agents or otherwise, and either alone or in conjunction with others.
 - (l) Generally to do all such acts matters and things and to enter into and make such agreements as are incidental or conducive to the attainment of any of the objects of the Company.
- 4.2 Each of the Objects is to be regarded as an independent Object except where the context expressly otherwise provides, and so each Object must not be restricted by reference to any other Object or by juxtaposition of two or more Objects.
- 4.3 The Company is empowered to receive income and property from any source whatsoever in order to pursue any of the Objects.
- 4.4 The Company may only exercise the powers in section 124(1) of the *Corporations Act* to:
- (a) carry out the Objects in this clause 4; and
 - (b) do all things incidental or convenient in relation to the exercise of power under clause 4.4(a);
- provided that section 124(1)(a) and (c) to (e) inclusive will not apply to the Company.

5. Income & property of Company

- 5.1 The income and property of the Company will only be applied towards the promotion of the Objects of the Company set out in clause 4.
- 5.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
 - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

6. Membership

- 6.1 The number of Members comprising the Company is not in excess of 11 but the Board may from time to time register an increase in Members.
- 6.2 The Members of the Company will be all persons who are Directors of the Company at any time, and from time to time.
- 6.3 Subject to clause 21, the rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

7. Ceasing to be a Member

- 7.1 A Member's membership of the Company will cease if the Member:
- (a) resigns or is removed from the Board;
 - (b) dies;
 - (c) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
 - (d) is convicted of an indictable offence.

8. Powers of attorney of Members

- 8.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the Attorney to the Company for notation.
- 8.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- 8.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

General meetings

9. Calling general meeting

- 9.1 The Directors may, at any time, call a general meeting.
- 9.2 A Member may:
- (a) only request the Directors to call a general meeting in accordance with section 249D of the *Corporations Act*; and
 - (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the *Corporations Act*.
- 9.3 An annual general meeting of the Members of the Company will be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as the Directors may decide. Business transacted at the annual general

meetings will be at least the consideration of the financial report, the election of auditors, if required, and ratification of the changes to the Board specified in clauses 25.5, 26.2 and 28.2.

9.4 All other meetings of Members will be called extraordinary general meetings.

10. Notice of general meeting

10.1 Subject to the provisions of section 249H of the *Corporations Act* allowing some general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members for any general meeting of Members, including an annual general meeting.

10.2 A notice calling a general meeting:

- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
- (b) must state the general nature of the business to be transacted at the meeting; and
- (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.

10.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:

- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
- (b) the ratifying of the election of Directors; or
- (c) the appointment of the Auditor.

10.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 9.2).

10.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 48.1 entitled to receive notices from the Company.

10.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

Proceedings at general meetings

11. Member

In clauses 12, 13, 15 and 18, **Member** includes a Member present in person or by proxy or attorney.

12. Quorum

12.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.

12.2 A quorum of Members is six Members.

- 12.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
 - (b) in any other case:
 - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
 - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

13. Chairperson

- 13.1 The Chairperson of the board, or in their absence, another Member elected by the Directors, will be the chairperson at every general meeting.
- 13.2 The Directors present may elect a chairperson of a general meeting if:
- (a) there is no Chairperson; or
 - (b) the chairperson is not present within 15 minutes after the time appointed for holding the general meeting; or
 - (c) the chairperson is unwilling to act as chairperson of the general meeting.
- 13.3 If no election is made under clause 13.2, then:
- (a) the Members may elect one of the Directors present as chairperson; or
 - (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.
- 13.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

14. Adjournment

- 14.1 The chairperson of a general meeting at which a quorum is present:
- (a) in their discretion may adjourn the general meeting with the meeting's consent; and
 - (b) must adjourn the general meeting if the meeting directs him or her to do so.
- 14.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 14.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 14.4 Notice of an adjourned general meeting must only be given in accordance with clause 10 if a general meeting has been adjourned for more than 10 days.

15. Decision on questions

- 15.1 Subject to the *Corporations Act* in relation to special resolutions, a resolution is carried if a majority of the votes of Members cast on the resolution are in favour of the resolution.

- 15.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the *Corporations Act*.
- 15.3 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
 - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 15.4 The demand for a poll may be withdrawn.
- 15.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

16. Taking a poll

- 16.1 A poll will be taken when and in the manner that the chairperson directs.
- 16.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 16.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 16.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 16.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 16.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

17. Casting vote of chairperson

The chairperson has a casting vote in addition to the chairperson's votes as a Member, proxy, attorney or Representative.

Votes of Members

18. Entitlement to vote

A Member entitled to vote has one vote.

19. Objections

- 19.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.
- 19.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.
- 19.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

20. Votes by proxy

- 20.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.
- 20.2 A proxy may demand or join in demanding a poll.
- 20.3 A proxy or attorney may vote on a poll.
- 20.4 A proxy may vote or abstain as they choose except where the notice of appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

21. Document appointing proxy

- 21.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the *Corporations Act*. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the *Corporations Act*.
- 21.2 For the purposes of clause 21.1, a notice of appointment received at an electronic address will be taken to be signed by the Member if:
 - (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
 - (b) the notice of appointment has been verified in another manner approved by the Directors.
- 21.3 A proxy's notice of appointment is valid at an adjourned general meeting.
- 21.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 21.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
 - (a) to vote on:
 - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
 - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,

even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 21.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.

22. Lodgement of proxy

- 22.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:

- (a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
 - (b) the taking of a poll on which the appointee proposes to vote.
- 22.2 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
- (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

23. Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

24. Written resolutions of Members

- 24.1 A resolution in writing signed by all the Members of the Company entitled to attend and vote at a general meeting where a majority of whom sign in favour of the resolution will be as valid and effectual as if it had been passed at a meeting of the members duly convened provided that this provision will not apply to a resolution required by the *Corporations Act* to be dealt with at a general meeting or by an extraordinary or special resolution.
- 24.2 For the purposes of this clause 24, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 24.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 24.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause.

Appointment & removal of Directors

25. Number of Directors

- 25.1 There will not be less than 7 nor more than 11 Directors of the Company, unless the Company in general meeting by resolution changes the minimum or maximum number.
- 25.2 The Board will consist of the following persons, each a Director of the Company:
- (a) the Managing Director of the Company as an ex officio Director;

- (b) up to four Special Qualification Directors having the appropriate experience, capabilities and complementary skills as defined in clause 25.3, appointed in accordance with clause 26.2;
- (c) six persons who are appointed by Wine Grape Levy Payers in the manner set out in this clause 25.2(c) and Schedule 1 attached, provided that at any time there must not be more than one director appointed under this clause who is employed by, or who represents:-
 - (i) the same company; or
 - (ii) any company and a Related Body Corporate of that Company.

25.3 It is the intention that the Directors will possess the necessary skills, expertise and experience to:

- (a) develop an understanding of and be competent to deal with the current and emerging issues facing the Company;
- (b) develop and have knowledge of the scientific aspects of the Company;
- (c) exercise independent judgment;
- (d) provide an industry perspective to the direction and the priorities of the Company's research, development and extension activities;
- (e) encourage enhanced performance of the Company;
- (f) effectively review and challenge the performance of management; and
- (g) otherwise comply with their duties as Directors.

25.4 For avoidance of doubt each Director appointed under this clause 25 must be a natural person and while they hold office is also a Member of the Company. However any employer or associate of that Director has no entitlement to become a Member by reason of that association or employment.

- (a) The method of appointment of the persons as Directors by the Levy Payers referred to in clause 25.2(c) will be as is set out in the Rules contained in Schedule 1 attached.
- (b) Whenever a Director is to be appointed, the Members must ensure that, to the extent possible, the Director is appointed by the Small, Medium or Large Levy Payers (as the case may be) such that, following the appointment of that Director, there are two Directors who have been appointed by each of the Small, Medium and Large Levy Payers respectively.
- (c) For the avoidance of doubt persons appointed by the Small, Medium or Large Levy Payers are not to be construed as representing the particular interests of that classification but to facilitate a mix of Directors across the classifications.

26. Appointment & removal of Directors

26.1 The Managing Director of the Company is appointed by the Directors and entrusted with the general direction and supervision of all aspects of the day to day operations of the Company. The Managing Director will not by reason of this appointment be precluded from holding any other office within the Company.

- 26.2 Special Qualification Directors will be appointed to the Board from nominations received by Members of the Company. Any such appointment will be subject to ratification by a majority of the Members endorsing the appointment of the person at the next general meeting.
- 26.3 All Directors will hold office for a period of three years or such other period as might be determined by the Board from time to time .
- 26.4 Subject to clauses 26 and 27, the Company may by resolution passed in general meeting:
- (a) appoint new Directors;
 - (b) subject to clause 25.1 increase or reduce the number of Directors;
 - (c) remove any Director before the end of the Director's period of office; and
 - (d) subject to any special provisions in clause 25.2 appoint another person in the Director's place.
- 26.5 A person appointed under clause 26.4(d) will hold office for the period for which the Director replaced would have held office if the Director had not been removed.
- 26.6 If the conduct or position of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Company, a majority of Directors at a meeting of the Directors specifically called for that purpose may suspend that Director.
- 26.7 Within 21 days of the suspension, the Directors must call a general meeting, at which the Members may either confirm the suspension and remove the Director from office in accordance with clause 26.4(c) or annul the suspension and reinstate the Director.

27. Additional & casual Directors

- 27.1 Subject to clauses 25.1 the Directors may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors.
- 27.2 A Director appointed under clause 27.1 will hold office until the next general meeting of the Company when the Director may be re-elected.

28. Retirement

- 28.1 Retirement of Directors will be in accordance with this clause 28.
- 28.2 Until the office has been vacated under clause 29 or until the appointment is determined by the Board:
- (a) each member of the Board nominated or elected by the Levy Payers will hold office for a period of three years from the date of their appointment. For the purposes of this clause the date of appointment will be the next 1 January following the annual general meeting at which their election was ratified;
 - (b) the term of office of the Special Qualification Directors will expire on 31 December of the third year of their term or on 31 December of such term nominated by the Directors.

29. Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) is removed by the termination of the Director's period of appointment or the revocation of the instrument of their appointment;
- (b) is prohibited by the *Corporations Act* from holding office or continuing as a Director;
- (c) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing their duties;
- (d) resigns by notice in writing to the Company; or
- (e) is removed by a resolution of the Company;
- (f) is absent from Directors' meetings for 2 consecutive meetings without leave of absence from the Directors;
- (g) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the *Corporations Act*.

Powers & duties of Directors

30. Powers and duties of Directors

- 30.1 The business of the Company is managed by the Directors or by such other person or persons as are delegated by the Board who may exercise all powers of the Company that this Constitution and the *Corporations Act* do not require to be exercised by the Company in general meeting.
- 30.2 Without limiting the generality of clause 30.1, the Directors may exercise all the powers of the Company to:
- (a) borrow money;
 - (b) charge any property or business of the Company;
 - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
 - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

Proceedings of Directors

31. Directors' meetings

- 31.1 The Directors will meet at such times as are determined by the Board from time to time.
- 31.2 The Secretary must on the request of the chairperson or any two Directors, call a Directors' meeting.
- 31.3 Subject to clause 31.1 and unless the Directors agree otherwise, a Directors' meeting will be called on at least 14 days written notice, and notice of the meeting will be given to each Director.

- 31.4 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- 31.5 Subject to the *Corporations Act*, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 31.6 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 31.7 Subject to clause 35, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 31.8 Clauses 31.5 to 31.7 apply to meetings of Directors' committees as if all committee members were Directors.
- 31.9 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 31.10 A quorum is six Directors present in person.
- 31.11 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting to deal with the matter.
- 31.12 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

32. Regulations

- 32.1 The Board will prepare and maintain and have custody of the Regulations of the Company. The Regulations will assist the Members, the Directors and the Company's committees, if any, to fairly deal with questions and procedures not fully dealt with in this Constitution.
- 32.2 The Regulations may be altered, rescinded and replaced by substitution by resolution of the Board at any time so long as the changes to the Regulations are approved by the Members at the next following general meeting.
- 32.3 A copy of the Regulations will be made available to every Member of the Company on request.
- 32.4 The Regulations will bind the Company and each Member to the same extent as if they had respectively signed and sealed them, and agreed to be bound by all of the provisions in the Regulations.

33. Decision on questions

- 33.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 35, each Director has one vote.
- 33.2 In the case of an equality of votes, the chairperson has a second vote in addition to their deliberative vote.

Payments to Directors

34. Payments to Directors

34.1 Subject to clause 35.1, a Director or a body or entity in which a Director has a direct or indirect interest, may:

- (a) enter into any agreement or arrangement with the Company;
- (b) hold any office or place of profit other than as auditor in the Company; and
- (c) act in a professional capacity other than as auditor of the Company,

and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or by holding an office or a place of profit in or acting in a professional capacity with the Company.

34.2 The Directors as a whole may be paid or provided remuneration for their services the total amount or value of which must not exceed an aggregate maximum of \$150,000.00 per annum or such other maximum amount determined by the Company in general meeting.

34.3 The aggregate maximum sum will be divided among the Directors in such proportion and manner as the Directors agree and, in default of agreement, equally and is deemed to accrue from day to day.

34.4 If a Director is required to perform services for the Company which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, the Company may pay or provide the Director remuneration determined by the Directors which may be either in addition to or instead of the Director's remuneration under clause 34.2. No remuneration may be paid or provided under this clause 34.4 if the effect would be to exceed the aggregate maximum sum of Directors' remuneration determined by the Company in general meeting.

34.5 Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the Company's business.

34.6 The Company may also pay a premium for a contract insuring a person who is or has been a Director against liability incurred by the person as a Director, except in circumstances prohibited by the *Corporations Act*.

34.7 No payment will be made to any Director of the Company other than payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service;
- (c) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company; and
- (d) relating to an indemnity in favour of the Director and permitted by section 199A of the *Corporations Act* or a contract of insurance permitted by section 199B of the *Corporations Act*.

35. Directors' interests

- 35.1 Subject to clause 34 no contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 35.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 35.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 35.4 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
- (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter,
- unless permitted by the *Corporations Act* to do so, in which case the Director may:
- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 35.5 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

36. Remaining Directors

- 36.1 The Directors may act even if there are vacancies on the board.
- 36.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
- (a) appoint a Director; or
 - (b) call a general meeting.

37. Chairperson

- 37.1 The Directors may elect a Director as chairperson of Directors' meetings and may determine the period for which the chairperson will hold office.
- 37.2 If no chairperson is elected or if the chairperson is not present at any Directors' meeting within ten minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.

37.3 The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

38. Delegation

38.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a Board, to a committee or committees.

38.2 The Directors may at any time revoke any delegation of power to a committee.

38.3 At least one member of each committee must be a Director.

38.4 A committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.

38.5 A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.

38.6 Meetings of any committee of Directors will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each member was a Director.

39. Written resolutions of Directors

39.1 The Directors may pass a resolution without a Director's meeting being held if all the Directors entitled to vote on the resolution sign a document containing the resolution and a majority of the Directors sign in favour of the resolution set out in the document. The resolution is passed when the last Director signs.

39.2 For the purposes of clause 40.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

39.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.

39.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause.

39.5 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

40. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of a Directors' committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

41. Minutes & Registers

- 41.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
 - (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
 - (c) all resolutions passed by Directors in accordance with clause 40;
 - (d) all appointments of officers;
 - (e) all orders made by the Directors and Directors' committees; and
 - (f) all disclosures of interests made under clause 35.
- 41.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 41.3 The Company must keep all registers required by this Constitution and the *Corporations Act*.

Local management

42. Local management

- 42.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.
- 42.2 Without limiting clause 42.1 the Directors may:
- (a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
 - (b) delegate to any person appointed under clause 42.2(a) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,
- on any terms and subject to any conditions determined by the Directors.
- 42.3 The Directors may at any time revoke or vary any delegation under this clause.

43. Appointment of attorneys & agents

- 43.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the *Corporations Act* appoint any person to be the attorney or agent of the Company:
- (a) for the purposes;
 - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
 - (c) for the period; and
 - (d) subject to the conditions,
- determined by the Directors.

- 43.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any member of any local board established under this Constitution;
 - (b) any company;
 - (c) the members, directors, nominees or managers of any company or firm; or
 - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 43.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 43.4 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.
- 43.5 An attorney or agent appointed under this clause may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

Secretary

44. Secretary

- 44.1 If required by the *Corporations Act*, there must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 44.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 44.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

Seal

45. Common Seal

If the Company has a Seal:

- (a) the Directors must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Directors or a Directors' committee authorised to use the Seal;
- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document.

Inspection of records

46. Inspection of records

- 46.1 Except as otherwise required by the *Corporations Act*, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and

other documents of the Company or any of them will be open for inspection by Members other than Directors.

- 46.2 Except as otherwise required by the *Corporations Act*, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

Notices

47. Service of notices

- 47.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
- (a) by serving it on the person; or
 - (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 47.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
 - (b) on the day after the day on which it was posted.
- 47.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
 - (b) on the day after its despatch.
- 47.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.
- 47.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's for the purposes of this clause.
- 47.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 47.7 Subject to the *Corporations Act* the signature to a written notice given by the Company may be written or printed.
- 47.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

48. Persons entitled to notice

- 48.1 Notice of every general meeting must be given to:
- (a) every Member;
 - (b) every Director; and
 - (c) any Auditor.
- 48.2 No other person is entitled to receive notice of a general meeting.

Audit & accounts

49. Audit & accounts

- 49.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the *Corporations Act*.
- 49.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the *Corporations Act*.

ARI Provisions

50. Establishment and operation of Research Fund

- 50.1 Where the Company is operating as an ARI, the Company must establish a separate fund to which tax deductible gifts are credited (**Research Fund**).
- 50.2 The Research Fund must only be used or applied for research that is:
- (a) Approved Scientific Research; and
 - (b) consistent with the Objects of the Company.
- 50.3 Records must be maintained as to the receipt and disbursement of moneys from the Research Fund.

51. Research Committee

- 51.1 The Directors will establish and maintain a Research Committee to determine the research activities for which the Research Fund will be used, and to maintain effective control over the application of the Research Fund.
- 51.2 The Research Committee will be comprised as required for an ARI, including:
- (a) at least 5 people;
 - (b) a majority of whom will have appropriate qualifications and expertise in grape and/or wine science.
- 51.3 An approved authority for the purposes of the definition of an ARI must approve in advance each individual appointed to the Research Committee.

52. Transfer of the Research Fund in specified circumstances

Upon the earlier of:

- (a) revocation of the endorsement of the Company under sub-division 30-B of the ITAA; or
- (b) the winding up of the Company,

any assets in the Research Fund that remain after the payment of liabilities attributable to it must be transferred to one or more ARIs which:

- (c) have objects similar to the Objects of the Company; and
- (d) are endorsed as a deductible gift recipient under sub-division 30-B of the ITAA,

as selected by the Members at or before the relevant time.

53. Results

- 53.1 Subject to Clause 53.2, the Company will publish the results of its RF Research in scientific or technical press.
- 53.2 The Company may patent results of its RF Research as appropriate, provided it makes any patent licensing available to interested parties on equal terms.

Winding up

54. Winding up

- 54.1 If the Company is wound up:
- (a) each Member; and
 - (b) each person who has ceased to be a Member in the preceding year,
- undertakes to contribute to the property of the Company for the:
- (c) payment of debts and liabilities of the Company (in relation to clause 54.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
 - (d) adjustment of the rights of the contributories amongst themselves,
- such amount as may be required, not exceeding \$2.00.
- 54.2 If any surplus remains following the winding up of the Company, that surplus (apart from any assets dealt with by clause 52) will not be paid to or distributed amongst Members, but will be given or transferred to one or more charitable funds, authorities or institutions:
- (a) which are not carried on for the profit or gain of their members; and
 - (b) which have objects that are similar to the Objects of the Company,
- such corporation to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of South Australia for determination.

Amendment to Constitution

55. Amendment to Constitution

- 55.1 This Constitution must not be amended other than in accordance with the Corporations Act.
- 55.2 Subject to Clause 55.1, the Company may revoke, add to or vary this Constitution provided that if the Company has Deductible Gift Recipient endorsement that the Commissioner of Taxation must be notified of any amendments which may affect that endorsement.

Indemnity

56. Indemnity

56.1 To the extent permitted by law and subject to the restrictions in section 199A of the *Corporations Act* the Company indemnifies every person who is or has been an officer of the Company against:

- (a) any liability (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment); or
- (b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

56.2 The amount of any indemnity payable under clauses 56.1(a) or 56.1(b) will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

56.3 For the purposes of this clause, **officer** means:

- (a) a Director; or
- (b) a Secretary.

Transitional provisions

57. Transitional provisions

This Constitution will be read and construed in such manner that:

- (a) every Director in office as such immediately before the adoption of this Constitution is a Director of the Board of the Company and will continue in office in that capacity subject to this Constitution;
- (b) every Director, Managing Director and Secretary in office as such immediately before the adoption of this Constitution will continue in office in that capacity subject to this Constitution;
- (c) any register maintained by the Company immediately before the adoption of this Constitution will be deemed to be a register maintained under to this Constitution;
- (d) any seal adopted by the Company before the adoption of this Constitution as an official seal will be deemed to be a seal which the Company has under a relevant authority conferred by this Constitution; and
- (e) unless a contrary intention appears in this Constitution all persons, things and circumstances appointed or created by or under the constitution of the Company in force before the adoption of this Constitution will continue to have the same status, operation and effect after the adoption of this Constitution.

Schedule 1

Rules for appointment of Directors by Levy Payers under Clause 25.5(a) of the Constitution

1. Defined terms

1.1 For the purpose of these Rules, unless the contrary intention appears:

Category means a category of Small Levy Payers, Medium Levy Payers or Large Levy Payers, as the case may be.

Department means the Department of Agriculture or such other government department which assumes responsibility from time to time for the collation of grape tonnages to assess levy obligations of wine grape growers in accordance with the scale referred to in these Rules;

Group of Companies means:

- (a) Two or more companies where at least 50% of the issued share capital of each is held:
 - (i) in the name of;
 - (ii) on behalf of; or
 - (iii) in trust for,a common shareholder or shareholders.
- (b) Two companies where at least 50% of the issued share capital of one is held:
 - (i) in the name of;
 - (ii) on behalf of;
 - (iii) or in trust for,the other.
- (c) Any number of companies who would, but for this sub-clause, comprise two distinct groups of companies under (a) or (b) above where at least 50% of the issued share capital of one or more companies in a group is held:
 - (i) in the name of;
 - (ii) on behalf of; or
 - (iii) in trust for,one or more companies of the other group of companies.

Returning Officer means a returning officer appointed under Rule 2.

2. Returning Officer

The Directors will appoint a Returning Officer for the purposes of these Rules.

3. Appointment of Directors

The Levy Payer vacancies on the Board are to be filled by the appointment of a maximum of 2 Directors at any time as nominated by each of the 3 Levy Payer Categories, totalling 6 Levy Payer Directors.

4. Nomination process

4.1 How nominations are made

The nomination procedure will be as follows:-

- (a) Nominations for an election will be called at least twenty-one days prior to the date determined for their closure, by notice delivered to each Levy Payer by the Returning Officer.
- (b) The notice will advise the date when nominations will close and the method by which the nominations must be made.
- (c) It will also include extracts of:-
 - (i) information from the Constitution concerning the definition of Small, Medium and Large Levy Payers;
 - (ii) the method of calculation of votes from these Rules; and
 - (iii) the clauses of the Constitution dealing with the appointment of Directors by the Levy Payers and their term of office.
- (d) The Returning Officer will inspect the nominations which have been made and notify the Department as soon as practical but no later than 5 business days after the nominations have closed if an election under Rule 5 is required.
- (e) Nominations for election returned to the Returning Officer will be in writing and will include:
 - (i) the full name, address and signature of the nominee;
 - (ii) the full name and address of the Levy Payers proposing and seconding the nomination and the title and name of the person signing on behalf of the Levy Payer;
 - (iii) information on whether the proposer and seconder are Small, Medium or Large Levy Payers; and
 - (iv) a declaration by the nominee, proposer and seconder that the nominee has, in their opinion, the necessary skills, expertise and experience to satisfy clause 25.3 of the Constitution.
- (f) The proposer and seconder of a nomination cannot propose or second another nomination for the election. In the event that a Levy Payer proposes or seconds more than one nomination, the Returning Officer will accept the first nomination proposed or seconded.

- (g) The Returning Officer will determine the Category from the information provided by the Levy Payer on the nomination.
- (h) A Levy Payer can only propose a nomination for a Director in relation to the Category to which it belongs.
- (i) While it is desirable for the Proposer and Secunder to be from the same Category a nomination will still be valid if the Secunder is from a different Category to the Proposer. In these circumstances the Returning Officer shall deem the nomination to be in the Category of the Proposer.
- (j) Where a person has been nominated in more than one Category, he or she will be deemed to be in the Category in which he or she received the highest number of nominations. If he or she received an equal number of nominations for more than one Category, he or she will be deemed to be in the Category in the nomination first received by the Returning Officer.

4.2 Returning Officer to determine candidates

- (a) The Returning Officer will determine the candidates for each of Small, Medium and Large Levy Payers.
- (b) The process for electing Directors in these Rules is to be repeated for each Category.

4.3 If required number of candidates are nominated

- (a) If only the required number of candidates for a Category are nominated, the Returning Officer will declare them duly elected and will advise the Chairperson of the Directors of the result.

4.4 If lesser number of candidates are nominated or casual vacancy

- (a) If a lesser number of candidates for a Category are nominated than there are vacancies, the Returning Officer will declare those candidates nominated as duly elected, will advise the Chairperson of the Directors of the results of the election and provide a list of those positions for which nominations were not received.
- (b) Where:
 - (i) insufficient nominations for a Category are received to fill all vacancies; or
 - (ii) a casual vacancy arises during a term of office,
 the Chairperson will call for oral nominations from the Members.
- (c) The Chairperson will then conduct an election by the Members in the manner the Chairperson thinks best but so that if there is an equality of votes the Chairperson will have a casting vote in accordance with clause 17 of the Constitution.
- (d) A Director elected as a result of Rules 4.4(b) and (c) will hold office until the current term of office expires, at which time the Returning Officer will call for nominations from the Levy Payers.

4.5 If more candidates are nominated

If more candidates are nominated for a Category than there are vacancies, the Returning Officer must conduct an election for that Category in accordance with Rule 5.

5. Election

- (a) Where an election by the Levy Payers is necessary in a particular Category under Rule 4.5 the Returning Officer must provide a written notice to the Department (**Determination Notice**) of the requirement to conduct an election as soon as practical but no later than 5 business days after the nominations have closed. The Determination Notice must specify the following details:
- (i) the particular Category to which an election is necessary (**Specified Category**); and
 - (ii) a request to the Department to provide a list of Levy Payers for the Specified Category.
- (b) Within 10 business days from the date of the Determination Notice, the Department must provide to the Returning Officer the following details:
- (i) a list of the names of the Levy Payers for the Specified Category; and
 - (ii) in relation to each Levy Payer for the Specified Category, the individual contact name, address, email address (if available) and the number of votes that may be cast by each Levy Payer as contemplated in Rule 7, (**Levy Payer Details**).
- (c) Once the Levy Payer Details from the Department are received in accordance with Rule 5(b), the Returning Officer will then conduct an election by the Levy Payers for the Specified Category in such manner as the Returning Officer considers appropriate, acting reasonably (including but not limited to conducting the election via an electronic voting process).
- (d) The manner in which an election will be conducted (electronically or in another manner) must ensure that details of votes cast by any particular Levy Payer, and the information provided by the Department, are kept confidential.
- (e) Not less than 10 business days before the day fixed by the Returning Officer as the closing date, the Returning Officer will notify each Levy Payer in the Specified Category of the details for the election (**Election Notice**) including:
- (i) the closing date and time for the election;
 - (ii) the full names of candidates for each Category in drawn order;
 - (iii) the number of candidates for each Category required to be elected; and
 - (iv) the method of voting.
- (f) An election will not be invalidated by a failure of any individual Levy Payer to receive an Election Notice. However any Levy Payer who declares to the Returning Officer that they have not received an Election Notice may be issued a second Election Notice.
- (g) On any equality of votes for candidates made by the Levy Payers, the Returning Officer will decide by lot which candidate or candidates will be elected.
- (h) The Returning Officer will, as soon as reasonably practicable after the closing date for the election, notify the Chairperson of the Directors of:

- (i) the result of the election; and
- (ii) the number of votes received by each candidate.

6. Notice to Levy Payers

- (a) A notice (including an Election Notice) from the Returning Officer or the Company to a Levy Payer under these Rules must be:
 - (i) in writing and signed by a duly authorised person of the sender; and
 - (ii) subject to Rule 6(b), sent by email to the Levy Payer at the Levy Payer's email address as specified in the most recent Levy Payer Details provided by the Department to the Returning Officer in accordance with Rule 5(b) above.
- (b) Where the most recent Levy Payer Details provided by the Department to the Returning Officer does not specify a Levy Payer's email address, then notice to the Levy Payer may be delivered by sending it by prepaid post to the Levy Payer at the Levy Payer's address as specified in the most recent Levy Payer Details provided by the Department to the Returning Officer.
- (c) A notice to a Levy Payer given in accordance Rule 6(a) or Rule 6(b) is taken to be delivered:
 - (i) if sent by email, 24 hours after the email was sent; and
 - (ii) if sent by post, on the day after the day on which it was posted.

7. Calculation of votes

The number of votes which any Levy Payer may cast will be calculated and determined in accordance with the following scale:-

For tonnes of grapes in respect of which the Levy Payer is currently assessed for payment of the Wine Grape Levy, as determined by the Department in relation to the most recent full financial year for which levy returns have been received by the Department:

- (a) Up to 100 tonnes of grapes - 1 vote.
- (b) For each additional 100 tonnes of grapes or part thereof:
 - (i) in excess of 100 tonnes; and
 - (ii) up to 1,000 tonnes– an additional vote.
- (c) For each additional 200 tonnes of grapes or part thereof:
 - (i) in excess of 1,000 tonnes; and
 - (ii) up to 5,000 tonnes- an additional vote.

- (d) For each additional 500 tonnes of grapes or part thereof, in excess of 5,000
– an additional vote.

8. Role of Board and Department

- (a) It is acknowledged that:
 - (i) these Rules require Department to be involved in the election process where there is more than 1 candidate for a position under Rule 4.5;
 - (ii) the Department is not under the day-to-day control of the Company; and
 - (iii) the Company is not permitted to verify the information provided by the Department, including without limitation the voting rights and Category of any Levy Payer.
- (b) The Company and its Directors are not liable to any proposer, seconder, candidate or Levy Payer for any act or omission of the Department contemplated in these Rules.