

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.
- * Incorporating alterations passed 25 February 2020: amending Schedule 1 to deal with non-involvement of Department going forward.
- * Incorporating alterations passed 22 February 2022 : significant changes including to rules relating to categories of Levy Payers, composition of the Board, and elections

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Preliminary

1. Defined terms

1.1 In this Constitution unless the contrary intention appears:

Appointed Directors means Directors appointed under clause 26.

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.

Board Charter means the 'Board Charter' in place from time to time.

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

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.

Elected Directors means Directors elected under clause 27 and Schedule 1.

Grapes Research Levy or **GRL** means the levy payable on 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.

GRL Payer means a sole producer, partner of a partnership or the director or the equivalent of an association, body corporate, company or group of companies producing grapes and who has paid or is liable for the Grapes Research Levy.

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

Levy Payers means the GRL Payers and the WGL Payers.

Managing Director means the person appointed under clause 25.5.

Member means a member under clause 6.

Nominations Committee means the Nominations Committee established under clause 26.

Nominations Committee Charter means such charter, terms of reference or other rules as the Board may prescribe for the Nominations Committee from time to time.

Non-Executive Directors means Directors other than the Managing Director.

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 Resolution has the same meaning as in the *Corporations Act*.

WGL Payer means 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 this purpose, the following classifications of Levy Payers will apply:-

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

Wine Grapes Levy or **WGL** 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.

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 WGL Payers, GRL 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 and the election of auditors (if required).

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;
or
- (b) 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 five 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. Composition of Board

- 25.1 There will not be less than 5 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 six Appointed Directors; and
 - (c) four Elected Directors.
- 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:
- (a) each Director 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.

- (b) Elected Directors are not to be construed as representing the particular interests of the Category that elected them.
- 25.5 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.
- 25.6 All Non-Executive Directors are to be appointed or elected (as the case may be) having regard to the Board Charter (including, without limitation, any diversity principles incorporated in the Board Charter) at the relevant time.

26. Appointed Directors

- 26.1 Appointed Directors will be appointed by the Board. Subject to clauses 26.3, 28.3(b) and (d), such appointments will only be made from nominations received from the Nominations Committee.
- 26.2 Notwithstanding the foregoing, the Directors may:
 - (a) remove any Appointed Director before the end of their period of office, and appoint another person in their place; and
 - (b) in the event of an Appointed Director otherwise ceasing to be a Director before the end of their period of office, appoint another person in their place.
- 26.3 A person appointed under clause 26.2 will hold office for the balance of the period for which the Appointed Director who is replaced would have held office if they had not been removed or ceased to be a Director.
- 26.4 The Directors will establish a 'Nominations Committee' for the purpose of considering possible candidates for appointment as Appointed Directors, and making nominations in respect of same.
- 26.5 The composition of the Nominations Committee will be determined by the Board from time to time, but will initially comprise:
 - (a) two current Directors (irrespective of whether they were appointed or elected);
 - (b) one person who is not currently a Director; and
 - (c) one person nominated by Australian Grape and Wine Incorporated (or such other body as substantially replaces same).
- 26.6 The Nominations Committee must act in accordance with the Nominations Committee Charter.
- 26.7 It is intended that Appointed Directors will be persons who have complementary skills to those of the existing Board (and in making its nominations, the Nominations Committee will have regard to any skills register referenced in the Nominations Committee Charter).

27. Elected Directors

- 27.1 Elected Directors will be elected in accordance with this clause and Schedule 1 PROVIDED THAT at any time there must not be more than one Elected Director who is employed by, or who represents:
 - (a) the same company; or

- (b) any company and a Related Body Corporate of that company.
- 27.2 If the conduct or position of any Elected 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 Elected Director.
- 27.3 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 Elected Director from office, or annul the suspension and reinstate the Elected Director.
- 27.4 In the event that an Elected Director is removed under clause 27.3, or otherwise ceases to be a Director before the end of their period of office, the Directors may appoint another person in their place, who will hold office for the balance of the period for which the removed or ceased Elected Director would have held office if they had not been removed or ceased.

28. Terms

- 28.1 The terms of Directors will be in accordance with this clause 28.
- 28.2 It is intended that:
 - (a) Appointed Directors will commence their term on the 1 November immediately following their appointment;
 - (b) Elected Directors will commence their term on the 1 January immediately following their election.
- 28.3 Subject to this Constitution:
 - (a) Appointed Directors will be appointed for an initial period of three years, or such shorter period as might be determined by the Board (**Initial Term**);
 - (b) upon expiration of that Initial Term, the Appointed Director may be re-appointed by the Board (without any need to seek a nomination from the Nominations Committee) for a second term of up to three years (**Second Term**);
 - (c) upon expiration of that Second Term, the Appointed Director may be re-appointed by the Board, for a further term of up to three years (**Third Term**) PROVIDED THAT this is only to be done following a nomination by the Nominations Committee;
 - (d) upon expiration of that Third Term, the Appointed Director may be re-appointed by the Board (without any need to seek a nomination from the Nominations Committee) for one or more further terms of up to three years.
- 28.4 Subject to this Constitution:
 - (a) Elected Directors will be appointed for an initial period of three years, or such shorter period as might be determined by the Board (**Initial Elected Term**);
 - (b) upon expiration of that Initial Elected Term, the Elected Director may be re-elected under clause 27 and Schedule 1 for one or more further periods.

29. Vacation of office

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

- (a) is removed under clauses 26.2(a) or 27.3;
- (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 absent from Directors' meetings for 2 consecutive meetings without leave of absence from the Directors;
- (f) 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 five Directors present at the meeting.
- 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 Non-Executive 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 \$175,000.00 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 Non-Executive 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 Non-Executive 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 that Non-Executive 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 Non-Executive 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 a payment under any of clauses 34.2 to 34.6 (inclusive);
- (b) 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;
- (c) 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;

- (d) of any salary, wage or reimbursement 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
- (e) 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. Committees

- 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 39.1, 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; and
 - (b) every Director.
- 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

This Constitution must not be amended other than in accordance with the Corporations Act.

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

- 57.1 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.

57.2 Notwithstanding clause 57.1, and any other provision of this Constitution to the contrary:

- (a) there will be two Elected Directors elected by large WGL Payers until such time as Nigel Sneyd ceases to be an Elected Director (which will occur on or before 31 December 2023);
- (b) there will be two Elected Directors elected by Medium WGL Payers until such time as Louisa Rose ceases to be an Elected Director (which will occur on or before 31 December 2022);
- (c) there will be two Elected Directors elected by Small WGL Payers until such time as Toby Bekkers ceases to be an Elected Director (which will occur on or before 31 December 2022);
- (d) there will be no Elected Director elected by GRL Payers before 1 January 2023;
- (e) notwithstanding clause 25.2(b), the Board may not appoint an Appointed Director if that appointment would cause (as a result of the previous paragraphs of this clause 57.2) the composition of the Board to breach the maximum number of Directors under clause 25.1; and
- (f) for the purpose of clause 28.3, and notwithstanding the terms of their appointment:
 - (i) the Second Term of Kiaran Kirk will end on 31 October 2022;
 - (ii) the Initial Term of Trish Giannini will end on 31 October 2023; and
 - (iii) the Fourth Term of Liz Riley will end on 31 October 2023.

Schedule 1

Rules for election of Elected Directors by Levy Payers under Clause 25.2(b) of the Constitution

1. Defined terms

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

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. Election of Directors

The Elected Director vacancies on the Board are to be filled by the election of a maximum of one Director nominated by each of the four Categories, totalling four Elected 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 in such a manner determined by the Returning Officer, acting reasonably and with the intention of notifying all Levy Payers.
- (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 WGL Payers and GRL Payers; and
 - (ii) the clauses of the Constitution dealing with the election of Elected 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 Chairperson 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 the Category applicable to the proposer and seconder; 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 an Elected 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 the Categories.
- (b) The process for electing Elected Directors in these Rules is to be repeated for each Category.

4.3 If required number of candidates are nominated

If only one candidate for a Category is nominated, the Returning Officer will declare them duly elected and will advise the Chairperson of the result.

4.4 If more candidates are nominated

- (a) If more than one candidate is nominated for a Category, the Returning Officer must conduct an election for that Category (**Specified Category**) in accordance with Rule 5.

4.5 If no candidate is nominated

- (a) If no candidate for a Category is nominated, the Returning Officer will advise the Chairperson, who shall then call for at least two oral nominations from the Members.
- (b) The Chairperson will then instruct the Returning Officer to conduct an election by the Levy Payers of the relevant Category in accordance with Rule 5.

5. Election

- (a) Where an election is necessary in a particular Category (**Specified Category**), the Returning Officer will conduct an election by the Levy Payers for the Specified Category in such manner as the Returning Officer considers appropriate, acting reasonably and with the intention of providing all Levy Payers within the Specified Category the opportunity to vote (including but not limited to conducting the election via an electronic voting process).
- (b) 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 are kept confidential.
- (c) Not less than 10 business days before the day fixed by the Returning Officer as the closing date, the Returning Officer will notify Levy Payers in the Specified Category of

the details for the election by notice in such a manner determined by the Returning Officer (**Election Notice**) including:

- (i) the closing date and time for the election;
 - (ii) the full names of candidates for the Specified Category in drawn order;
 - (iii) the number of candidates for the Specified Category required to be elected; and
 - (iv) the method of voting.
- (d) 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.
- (e) To be accepted by the Returning Officer as a valid vote for a candidate, a Levy Payer must declare it:
- (i) is a Levy Payer which has submitted a levy return to the Department in the most recent full financial year; and
 - (ii) belongs to the Specified Category for which the election is being held
- (f) The Returning Officer may reasonably request any voter to provide sufficient evidence to support the declarations made under Rule 5(e), and that should such evidence not be provided then those votes may be omitted from results.
- (g) On an equality of votes for candidates made by the Levy Payers, the Returning Officer will refer the matter to the Members. The Chairperson will then conduct an election by the Members in the manner that 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. The candidate with the majority of votes from Members shall then be regarded as having been 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. Votes of Levy Payers

Each Levy Payer may cast one vote only for a candidate nominated in the category to which the Levy Payer belongs. In the event the Levy Payer belongs to more than one category, for example the small WGL category and the GRL category, that Levy Payer may cast one vote only in each category to which it belongs.

7. Role of Board and Returning Officer

- (a) It is acknowledged that the Company and the Returning Officer cannot independently verify the information provided by Levy Payers during an election, including without limitation the Category of any Levy Payer.

- (b) The Company, its Directors and the Returning Officer are not liable to any proposer, seconder, candidate or Levy Payer for any act or omission of another Levy Payer contemplated in these Rules.