

# Australian Distillers' Association Inc.

## Rules of Association

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29 OCTOBER 2021

  
CAMERON MALCOLM SYME BARRISTER AND  
SOLICITOR OF THE SUPREME COURT  
OF WESTERN AUSTRALIA.

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## 1. NAME OF ASSOCIATION

The name of the association is The Australian Distillers' Association Inc. (the '**Association**').

## 2. DEFINITIONS

2.1 In these rules, unless the contrary intention appears:

“**Act**” means the *Associations Incorporation Act 1987* (WA).

“**Chairperson**” means:

- (a) in relation to the proceedings at a Committee meeting or general meeting, the person presiding at the Committee meeting or general meeting in accordance with rule 12; or
- (b) subject to paragraph (a), the person referred to in rule 11.2(a) or, if that person is unable to perform his or her functions, the Vice Chairperson.

“**Committee**” means the committee of management of the Association referred to in rule 11(1).

“**Committee meeting**” means a meeting referred to in rule 17.1.

“**Committee member**” means each person referred to in rule 11.2.

“**financial**” has the meaning given by section 3(1) of the Act.

“**general meeting**” means a meeting convened under rule 18.

“**member**” means a member of the Association.

“**ordinary resolution**” means a resolution other than a special resolution.

“**Public Affairs Officer**” means a Committee member with responsibility for ensuring the continuity of the program

“**program**” means any program implemented by the Association to help achieve the Association's Objects.

“**special resolution**” has the meaning given by section 24 of the Act.

“**Secretary**” means the secretary referred to in rule 11.2(c).

“**Treasurer**” means the treasurer referred to in rule 11.2(d).

“**Vice-Chairperson**” means the vice-Chairperson referred to in rule 11.2(b).

## 3. INTERPRETATION

A reference in section 3(1) of the Act to:

- (a) “‘incorporated association’ or ‘association’” is to be construed as a reference to the Association; and
- (b) “‘Committee’” is to be construed as a reference to the Committee.

## 4. OBJECTS OF ASSOCIATION

4.1 The objects of the Association are:

- (a) to represent and advance the interests of the community of Australian distillers of consumable alcohol products;

- (b) to provide education to the general public on the distillation of alcoholic products and Australian distillers;
  - (c) to promote and encourage the science of the distillation of alcohol;
  - (d) to promote the responsible consumption of alcohol; and
  - (e) to lobby and work with established government and non government units with similar goals and philosophies,  
(together, the “**Objects**”).
- 4.2 The property and income of the Association must be applied solely towards the promotion of the Objects of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to members of the Association, except in good faith in the promotion of the Objects.

## **5. POWERS OF ASSOCIATION**

The Association has powers conferred on an incorporated association by section 13 of the Act.

## **6. QUALIFICATIONS FOR MEMBERSHIP OF ASSOCIATION**

- 6.1 Membership of the Association is open to:
- (a) any natural person whose philosophies are in harmony with those of the Association; and
  - (b) any Australian owned corporate body whose philosophies are in harmony with those of the Association.
- 6.2 There are two classes of membership:
- (a) voting members; and
  - (b) non-voting members.
- 6.3 A person or body corporate is only entitled to be a voting member of the association if they are an Australian commercial distiller. A person or body corporate may be a non-voting member if they are not entitled to be a voting member.
- 6.4 Non-voting members shall, subject to the Act, be entitled to vote only in relation to a proposed resolution under clause 23.1.
- 6.5 Non-voting members may not claim membership of or association with the Association on their products.
- 6.6 A person or body corporate that wishes to become a member must:
- (a) apply to the Committee in writing:
    - (i) signed by the person, if a natural person, or by the chief executive officer, if a body corporate, and both members referred to in paragraph (b); and
    - (ii) in such form as the Committee from time to time directs;
  - (b) be proposed by two members; and
  - (c) set out which class of membership they wish to apply for.

- 6.7 The Committee members must consider each application made under rule 6.6 at a Committee meeting and must, at that Committee meeting or the subsequent Committee meeting, accept or reject that application.

## **7. REGISTER OF MEMBERS OF THE ASSOCIATION**

- 7.1 The Secretary must on behalf of the Association keep and maintain the register of members in accordance with section 27 of the Act and that register must be kept and maintained at his or her place or residence.
- 7.2 The Secretary must cause the name of a person who dies or ceases to be a member under rule 8.3, 9.1 or 10 to be deleted from the register of members referred to in subrule 7.1.

## **8. SUBSCRIPTIONS OF MEMBERS OF THE ASSOCIATION**

- 8.1 The members must from time to time at a general meeting determine the amount of the subscription to be paid by each member.
- 8.2 Each member must pay the Treasurer, annually on or before 1 July or such other date as the Committee from time to time determines, the amount of the subscription determined under subrule 8.1.
- 8.3 A member whose subscription is not paid within three months after the relevant date fixed by or under subrule 8.2 ceases on expiry of that three month period to be a member, unless the Committee decides otherwise.

## **9. RESIGNATION OF MEMBERS OF ASSOCIATION**

- 9.1 A member who delivers notice in writing of his or her resignation from the Association to the Secretary or another Committee member ceases to be a member on delivery of that notice.
- 9.2 A person or body corporate who ceases to be a member under subrule 9.1 remains liable to pay the Association the amount of any subscription due and payable by that person to the Association but unpaid at the date of that cessation.

## **10. EXPULSION OF MEMBERS OF ASSOCIATION**

- 10.1 If the Committee considers that a member should be expelled from membership of the Association because that member's conduct is considered by the Committee to be detrimental to the interests of the Association, the Committee must communicate, either orally or in writing to the member:
- (a) notice of the proposed expulsion and the time, date and place of the Committee meeting at which the question of that expulsion will be decided; and
  - (b) particulars of the detrimental conduct,
- not less than thirty days before the date of the Committee meeting referred to in paragraph (a).
- 10.2 The Committee must hold a Committee meeting on the date set out in the notice under rule 10.1. If that Committee meeting is adjourned, the Committee must provide notice, in accordance with rule 10.1, to the relevant member, of the adjourned Committee meeting.

- 10.3 At the Committee meeting referred to in a notice communicated under this rule 10, the Committee may, having afforded the member concerned a reasonable opportunity to be heard by, or to make representations in writing to, the Committee, expel or decline to expel that member from membership of the Association and must, as soon as possible after deciding whether or not to expel that member, communicate that decision in writing to that member.
- 10.4 Subject to subrule 10.6, a member who is expelled, under subrule 10.3, from membership of the Association ceases to be a member 14 days after the day on which the decision to expel him or her is communicated under subrule 10.3
- 10.5 A member who is expelled under subrule 10.3 from membership of the Association must, if he or she wishes to appeal against that expulsion, give notice to the Secretary of his or her intention to do so within a period of 14 days referred to in subrule 10.3.
- 10.6 When notice is given under subrule 10.4:
- (a) the Association in a general meeting may, after having afforded the member who gave notice reasonable opportunity to be heard by, or to make representations in writing to, the Association in the general meeting, confirm or set aside the decision of the Committee to expel that member; and
  - (b) the member who gave the notice does not cease to be a member unless and until the decision of the Committee to expel him or her is confirmed under this subrule.

## **11. COMMITTEE OF MANAGEMENT**

- 11.1 A committee of management will manage the affairs of the Association.
- 11.2 The Committee will comprise:
- (a) a Chairperson;
  - (b) a Vice Chairperson;
  - (c) a Secretary;
  - (d) a Treasurer; and
  - (e) not less than 5 other persons,
- all of whom must be members of the Association and be elected to membership of the Committee at an annual general meeting of the Association, or appointed under subrule 11.11.
- 11.3 If at any time there are less than 9 members in the Association, the number of committee members required under subrule 11.2(e) is reduced to equal the number that is 4 less than the number of members of the Association.
- 11.4 The committee or the voting members may, by a unanimous resolution, appoint a non-voting member as a committee member.
- 11.5 At the commencement of the first annual general meeting held after the incorporation of the Association under the Act:
- (a) if the Committee consists of an even number of members, half of that number; or

- (b) if the Committee consists of an odd number of members, the number of members nearest to, and exceeding, half of the total number of members on the Committee,

must cease to become Committee members but are eligible for re-election to membership of the Committee. The members who must cease to be members of the Committee must be chosen by secret ballot of the Committee. The 3 Committee members who poll the least votes in that secret ballot must cease to be Committee members.

- 11.6 At the commencement of each successive annual general meeting after the general meeting referred to in subrule 11.5, the 3 Committee members who have served for a longer period than the other Committee members must cease to be Committee members but are eligible for re-election to membership of the Committee. If more than 3 Committee members have each served an equal period, which is longer than the other Committee members, the Committee may, by secret ballot, determine which 3 Committee members must cease to be Committee members. If a secret ballot is held, the 3 Committee members who poll the least votes in that secret ballot must cease to be Committee members.
- 11.7 A person who is eligible for election or re-election under this rule may, at the annual general meeting concerned:
  - (a) propose or second him or herself for election or re-election; and
  - (b) vote for him or herself.
- 11.8 Subject to subrule 11.9, a person is not eligible for election to membership of the Committee unless:
  - (a) a member has nominated him or her for election by delivering a notice in writing of that nomination to the Secretary not less than 28 days before the day on which the annual general meeting concerned is to be held; and
  - (b) the notice, referred to in paragraph (a), is signed by:
    - (i) the nominating member; and
    - (ii) the nominated member, to signify his or her willingness to stand for election.
- 11.9 Subrule 11.8 does not apply in relation to a person who is eligible for election or re-election under subrule 11.5 or 11.6.
- 11.10 Notwithstanding any provision within this rule, a Committee member must cease to be a Committee member on the date of the 3rd anniversary of his or her election as a Committee member, but is eligible for re-election to membership of the Committee.
- 11.11 The Secretary must ensure that notice of all persons seeking election to membership of the Committee is given to all members when notice is given to the members of the Association calling the annual general meeting at which that election is to be held.
- 11.12 If the number of persons nominated for election to membership of the Committee does not exceed the number of vacancies in the Committee to be filled:
  - (a) the Secretary must report accordingly to; and

- (b) the Chairperson must declare those persons duly elected as members of the Committee at, the annual general meeting concerned.
- 11.13 When a casual vacancy within the meaning of rule 15 occurs in the membership of the Committee:
- (a) the Committee may appoint a member to fill that vacancy; and
  - (b) a member appointed under this subrule will, unless he or she resigns or is removed before the next annual general meeting:
    - (i) hold office until the commencement of; and
    - (ii) be eligible for election to membership of the Committee at, the next annual general meeting.

## **12. CHAIRPERSON**

- 12.1 Subject to this rule, the Chairperson must preside at all general meetings and committee meetings.
- 12.2 If the Chairperson is not present at a general meeting or a Committee meeting, the Vice Chairperson must preside at that general meeting or Committee meeting.
- 12.3 If the Chairperson and the Vice Chairperson are not present at a general meeting or a Committee meeting, a member or committee member (as the case may be) elected by the other members present, must preside at that general meeting or committee meeting (as the case may be).

## **13. SECRETARY**

The Secretary must:

- (a) co-ordinate the correspondence of the Association;
- (b) keep full and correct minutes of the proceedings of the Committee and of the Association;
- (c) comply on behalf of the Association with:
  - (i) section 27 of the Act in respect of the register of members of the Association;
  - (ii) section 28 of the Act in respect of the rules of the Association; and
  - (iii) section 29 of the Act in respect of the records of the office holders and any trustees, of the Association;
- (d) have custody of all books, documents, records and registers of the Association, including those referred to in paragraph (c), other than those required by rule 14 to be kept and maintained by, or in custody of, the Treasurer; and
- (e) perform such other duties as are imposed by these rules on the Secretary.

## **14. TREASURER**

- 14.1 The Treasurer must:



- (a) be responsible for the receipt of all monies paid to or received by the Association, or by him or her on behalf of the Association and must issue receipts for those monies in the name of the Association;
- (b) pay all moneys referred to in paragraph (a) into such account or accounts of the Association, as the Committee may from time to time direct;
- (c) make payments from the funds of the Association with the authority of a general meeting or of the Committee and in doing so ensure that all cheques are signed by the Treasurer and by one other Committee member;
- (d) comply, on behalf of the Association, with sections 25 and 26 of the Act;
- (e) whenever directed to do so by the Chairperson, submit to the Committee a report, balance sheet, or profit and loss statement, in accordance with that direction;
- (f) have custody of all securities, books and documents of a financial nature and accounting record of the Association, including those referred to in paragraphs (d) and (e); and
- (g) perform such other duties as are imposed by these rules on the Treasurer.

## **15. CASUAL VACANCIES IN THE MEMBERSHIP OF THE COMMITTEE**

15.1 A casual vacancy occurs in the office of a Committee member and that office becomes vacant if the Committee member:

- (a) dies;
- (b) resigns by notice in writing delivered to the Chairperson or, if the Committee member is the Chairperson, to the Vice Chairperson;
- (c) is convicted of an offence under the Act;
- (d) is permanently incapacitated by mental or physical ill-health;
- (e) is absent from more than:
  - (i) 3 consecutive Committee meetings; or
  - (ii) 3 Committee meetings in the same financial year, of which he or she has received notice without tendering an apology to the person presiding at each of those Committee meetings; or
- (f) ceases to be a member of the Association.

## **16. PUBLIC AFFAIRS OFFICER**

16.1 At the first meeting of the Committee each year, the Committee shall appoint one of its members to be the Public Affairs Officer.

16.2 The Committee may, by ordinary resolution (on which the Public Affairs Officer may not vote) replace the Public Affairs Officer at any meeting.

16.3 The Public Affairs Officer must:

- (a) be responsible for the continuity of the program; and
- (b) report to the Committee, at each Committee meeting, on the progress of the program.

## **17. PROCEEDINGS OF COMMITTEE**

- 17.1 The Committee must meet, together or by electronic means of communication, to consider the business of the Association not less than once every 3 calendar months.
- 17.2 Subject to rule 17.3, the Secretary must give to all Committee members not less than 5 days notice of a meeting of the Committee and of any business to be considered at the Committee meeting.
- 17.3 The Chairperson may, at any time, convene a meeting of the Committee.
- 17.4 Each Committee member has one vote.
- 17.5 A question arising at a Committee meeting must be decided by a majority of votes, but, if there is an equality of votes, the person presiding at the committee meeting has the casting vote in addition to his or her other vote.
- 17.6 Five Committee members entitled to vote present in person or by electronic means constitutes a quorum for a Committee meeting.
- 17.7 A Committee member (in this rule called the Appointing Committee member) may, at any Committee meeting at which the Committee member is present in person, nominate in writing a member to be his or her alternate at Committee meetings (the "Alternate"). The Committee may, in its absolute discretion:
- (a) appoint or not appoint an Alternate; and
  - (b) set the duration of the term of the appointment of the Alternate,
- for any Appointing Committee member. If the Committee approves the appointment of the Alternate, the Alternate may, during the term of his or her appointment, represent the Appointing Committee member, and has all of the rights (including, but not limited to, the right to vote) of the Appointing Committee member at a Committee meeting.
- 17.8 Subject to these rules, the procedure and order of business must be determined by the Committee members present at the Committee meeting.
- 17.9 A Committee member having a direct or indirect pecuniary interest, referred to in sections 21 or 22 of the Act, must comply with those sections.

## **18. GENERAL MEETINGS**

- 18.1 The Committee:
- (a) may at any time convene a special general meeting;
  - (b) must convene annual general meetings within the time limits provided for the holding of annual general meetings by section 23 of the Act; and
  - (c) must, within 30 days of:
    - (i) receiving a request in writing to do so from not less than 5 members, convene a special general meeting for the purpose specified in that request; or
    - (ii) the Secretary receiving a notice under rule 10.5, convene a special general meeting for the purpose of dealing with the appeal to which that notice relates.

- 18.2 The members making a request referred to in subrule 18.1(c)(i) must:
- (a) state in that request the purpose for which the special general meeting concerned is required; and
  - (b) sign that request.
- 18.3 If a special general meeting is not convened within the relevant period of 30 days referred to:
- (a) in subrule 18.1(c)(i), the members who made the request concerned may themselves convene a special general meeting as if they were the Committee; or
  - (b) in subrule 18.1(c)(ii), the member who gave the notice concerned may himself convene a special general meeting as if he or she were the Committee.
- 18.4 When a special general meeting is convened under subrule 18.3(a) or (b):
- (a) the Committee must ensure that the members or member convening the special general meeting are supplied, free of charge, with particulars of all members; and
  - (b) the Association must pay the reasonable expenses of convening and holding the special general meeting.
- 18.5 Subject to subrule 18.8, the Secretary must give to all members not less than 14 days notice of general meeting and of any motions to be moved at the general meeting.
- 18.6 A notice given under subrule 18.5 must specify:
- (a) when and where the general meeting is to be held; and
  - (b) particulars of the business to be transacted at the general meeting concerned and the order of business in which that business is to be transacted.
- 18.7 In the case of an annual general meeting, the order of business is to be transacted is:
- (a) first, the consideration of the accounts and reports of the Committee;
  - (b) second, the election of Committee members to replace the outgoing Committee members with effect from the conclusion of the annual general meeting; and
  - (c) third, any other business requiring consideration by the Association in a general meeting.
- 18.8 The Secretary must give to all members not less than 21 days notice of a general meeting at which a special resolution is to be proposed and any other motions to be moved at that general meeting.
- 18.9 The Secretary may give a notice under subrule 18.5 or 18.8 by:
- (a) serving it on a member personally; or
  - (b) sending it by post to a member at the address of the member appearing in the register of members kept and maintained under section 27 of the Act.

18.10 When a notice is sent by post under subrule 18.9(b) the notice is deemed to be properly effected if the notice is sufficiently addressed and posted to the member concerned by ordinary prepaid post.

## **19. QUORUM IN PROCEEDINGS AT MEETING**

19.1 At a general meeting, 8 members present in person constitute a quorum. A member is present if he or she is represented by a proxy or attends by electronic means of communication. To determine if a quorum is present, any person can only be counted once.

19.2 If within 30 minutes after the time specified for the holding of the general meeting in a notice given under rule 18.5 or 18.8:

- (a) as a result of a request or notice referred to in rule 18.1(c) or as a result of action taken under rule 18.3 a quorum is not present, the general meeting lapses; or
- (b) otherwise than as a result of a request, notice or action referred to in paragraph (a), the general meeting stands adjourned to the same time on the same day in the following week and to the same venue.

19.3 If within 30 minutes of the time appointed by subrule 19.2(b) for the resumption of an adjourned meeting a quorum is not present, the members who are present in person or by proxy may nevertheless proceed with that general meeting or adjourn that meeting from time to time and from place to place.

19.4 The Chairperson may, with the consent of a general meeting at which a quorum is present, and must, if so directed by such a general meeting, adjourn that general meeting from time to time and place to place.

19.5 There must not be transacted at an adjourned meeting any business other than the business left unfinished or on the agenda at the time when the general meeting was adjourned.

19.6 When a general meeting is adjourned for a period of 30 days or more, the Secretary must give notice under rule 18 of the adjourned meeting as if that general meeting were a fresh general meeting.

19.7 At a general meeting:

- (a) an ordinary resolution put to the vote must be decided by a majority of votes cast on a show of hands; and
- (b) a special resolution put to the vote must be decided in accordance with section 24 of the Act.

19.8 A declaration by the Chairperson at a general meeting that a resolution, voted on at the general meeting, has been passed as an ordinary resolution is evidence of that fact unless, during the general meeting at which the resolution is submitted, a poll is demanded in accordance with subrule 19.9.

19.9 At a general meeting, a poll may be demanded by the Chairperson at a general meeting or by three or more members present in person or by proxy and, if so demanded, must be taken as the Chairperson directs.

- 19.10 If a poll is demanded and taken under subrule 19.9 in respect of an ordinary resolution, a declaration by the Chairperson of the result of the poll is evidence of that fact.
- 19.11 A poll demanded under subrule 19.9 on the election of a person to preside over a general meeting or on the question of an adjournment must be taken immediately on that demand being made.

## **20. MINUTES OF MEETINGS OF ASSOCIATION**

- 20.1 The Secretary must take minutes of all general and Committee meetings and must, within 30 days after the holding of the general or Committee meeting (as the case may be), enter those minutes in a minute book kept for that purpose.
- 20.2 The Chairperson must ensure that the minutes taken of a general meeting or Committee meeting under subrule 20.1 are checked and signed as correct by the Chairperson of:
- (a) the general meeting or Committee meeting to which those minutes relate; or
  - (b) the next succeeding general meeting or Committee meeting,
- as the case requires.
- 20.3 When minutes have been entered and signed as correct under this rule, they are, until the contrary is proved, evidence that:
- (a) the general meeting or Committee meeting to which they relate (in this subrule called the "meeting") was duly convened and held;
  - (b) all proceedings recorded as having taken place at the meeting did in fact take place at the meeting; and
  - (c) all appointments or elections purported to have been made at the meeting have been validly made.

## **21. VOTING RIGHTS OF ASSOCIATION**

- 21.1 Subject to these rules, each voting member present in person or by proxy or by electronic means of communication at a general meeting is entitled to a deliberative vote.
- 21.2 A voting member which is a body corporate may appoint a person in writing, whether or not the person is a member, to represent it at a particular general meeting or at all general meetings.
- 21.3 An appointment made under subrule 21.2 must be made by a resolution of the board or other governing body of the body concerned and a copy or extract of that resolution must be lodged with the Secretary.
- 21.4 A person appointed under subrule 21.2 to represent a voting member which is a body corporate is deemed, for all purposes, to be a member until:
- (a) that appointment is revoked by the body corporate; or
  - (b) in the case of an appointment in respect of a particular general meeting, for which the appointment is not revoked, the conclusion of that general meeting.

21.5 If a member is a body corporate or is employed by a body corporate, the member will have a vote only if there are less than 3 members of the Association employed by the same body corporate or a related body corporate of that body corporate.

21.6 If there are more than 3 voting members of the Association who are:

- (a) a body corporate and/or, employees of the same body corporate or a related body corporate;
- (b) related bodies corporate; or
- (c) employed by the same body corporate or a related body corporate,

only the first 3 of those members to be members of the Association shall be entitled to vote at a general meeting.

## **22. PROXIES OF MEMBER OF ASSOCIATION**

22.1 A voting member (in this rule called the “appointing member”) may appoint in writing another member which is a natural person to be a proxy of the appointed member and to attend and vote on behalf of the member at any general meeting.

## **23. RULES OF ASSOCIATION**

23.1 The Association may only alter, replace or rescind these rules, or make rules additional to these rules, in accordance with the procedure set out in sections 17, 18 and 19 of the Act.

23.2 These rules bind every member and the Association to the same extent as if every member and the Association had signed and agreed to be bound by these rules.

## **24. COMMON SEAL OF ASSOCIATION**

24.1 The Association must have a common seal on which its corporate name must appear in legible characters (in this rule called the “common seal”).

24.2 The common seal must not be used without the express authority of the Committee and every use of the common seal must be recorded in the minute book referred to in rule 20.

24.3 Any 2 of the Chairperson, the Secretary, and the Treasurer, must witness the affixing of the common seal.

24.4 The common seal must be kept in the custody of the Secretary or of such other person as the Committee from time to time decides.

## **25. INSPECTION OF RECORDS, ETC. OF ASSOCIATION**

25.1 A member may at any reasonable time inspect without charge the books, documents, records and securities of the Association.

## **26. DISTRIBUTION OF SURPLUS PROPERTY ON WINDING UP OF ASSOCIATION**

26.1 If, on the winding up of the Association, any property of the Association remains after satisfaction of the debts and liabilities of the Association and the costs, charges and expenses of that winding up, that property must be distributed:

- (a) to another incorporated Association having objects similar to those of the Association; or
  - (b) for charitable purposes.
- 26.2 The body to which the property is to be distributed, pursuant to rule 26.1, must be determined by a resolution of the members when authorising and directing the Committee, under section 33(3) of the Act to prepare a distribution plan for the distribution of the surplus property of the Association.

## **27. DISSOLUTION CLAUSE**

In the event of the Association being dissolved, the amount which remains after such dissolution and the satisfaction of all debts and liabilities, must, subject to the Act, be paid and applied by the Committee in accordance with its powers to any fund, institution or authority approved under the provisions of Subdivision 30-A in respect of any of the items covered by the tables in Subdivision 30-B of the Income Tax Assessment Act 1997.