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**CONSTITUTION**

OF THE

**FOOD AND BEVERAGE**

**DEVELOPMENT FUND SA INC**

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**October 2010**

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## **1. Name**

The name of the incorporated organisation is the 'Food and Beverage Development Fund SA Incorporated' referred to herein as 'the Association'.

## **2. Definitions**

- 2.1** In this Constitution the following expressions shall, unless the context otherwise requires, bear the following meanings:
- 2.1.1** 'Board' means the Board of Management of the Association
  - 2.1.2** 'Board meeting' means a meeting of the Board of Management of the Association convened in accordance with these rules
  - 2.1.3** 'meeting of members' means a general meeting of members of the Association convened in accordance with these rules
  - 2.1.4** 'member' means a member of the Association
  - 2.1.5** 'Tax Act' means the Income Tax Assessment Act 1997;
  - 2.1.6** the 'Act' means the Associations Incorporation Act, 1985
  - 2.1.7** the 'Regulations' means any regulations issued pursuant to Section 67 of the Associations Incorporation Act, 1985
- 2.2** In this Constitution, unless the context otherwise requires:-
- 2.2.1** the singular includes the plural and vice versa;
  - 2.2.2** a reference to one gender includes all genders;
  - 2.2.3** where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
  - 2.2.4** a reference to a person includes a natural person, partnership, corporation, trust, association, unincorporated body, authority or other entities;
  - 2.2.5** a reference to a statute includes regulations and other subordinate instruments issued pursuant to the statute and includes consolidations, amendments, re-enactments or replacements of any of them;
  - 2.2.6** references to a clause or paragraph mean a clause or paragraph respectively of this Constitution;
  - 2.2.7** the reference to a statutory or other body that ceases to exist or the powers and functions of which are transferred to another body includes a reference to the body that replaces it or to which substantially all powers and functions are transferred; and
  - 2.2.8** clause headings and the table of contents are provided for convenience only and do not affect the interpretation of this Constitution.

### **3. Financial year**

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

### **4. Objects and Purposes**

The objects and purposes of the Association shall be:

- 4.1** to provide the means to enable individuals to develop their own knowledge, for the benefit of the food and beverage industries in South Australia, through research, education and/or training;
- 4.2** to award scholarships, donations, endowments or gifts with the object of funding and encouraging study and research in any of the Relevant Areas whether at the Universities, other post-secondary educational institution or trade training establishment in Australia approved by the Board;
- 4.3** to commission, promote or subsidise innovative research projects into any of the Relevant Areas whether at university or at any other post-secondary educational institution in Australia approved by the Board;
- 4.4** to publish or subsidise the publication of the results of academic research projects into any of the Relevant Areas;
- 4.5** to disseminate or subsidise the dissemination of educational materials relating to any of the Relevant Areas;
- 4.6** by means of scholarships, grants, sponsorships, prizes or other financial assistance to support students or intending students in any educational institution in Australia approved by the Board in the pursuit of their studies into any of the Relevant Areas whether in Australia or overseas;
- 4.7** to solicit and accept gifts, donations, endowments, bequests, subsidies, sponsorships or grants from any individual, organisation, association, estate or governmental body to assist the Association in carrying out its functions, and to raise funds for all or any of the Association's objects;
- 4.8** to advertise and promote the activities of the Association by any means or medium;
- 4.9** to do all such other acts, matters or things as are, or appear to the Board to be, incidental or conducive to the attainment of the above objects.

### **5. Powers**

For the purpose of carrying out its objects, the Association shall save and except such modifications and exclusions as are specified in these rules, have all the powers conferred by section 25 of the Act including:

- 5.1** to acquire, hold, deal with, and dispose of, any real or personal property; and
- 5.2** to administer any property on trust; and
- 5.3** to open and operate Approved Deposit-Taking Institution (ADI) accounts; and
- 5.4** to invest its moneys—
  - 5.4.1** in any security in which moneys may, by Act of Parliament, be invested; or

- 5.4.2 in any other manner authorised by the rules of the association; and
- 5.5 to borrow money upon such terms and conditions as the association thinks fit; and
- 5.6 to give such security for the discharge of liabilities incurred by the association as the association thinks fit; and
- 5.7 to appoint agents to transact any business of the association on its behalf; and
- 5.8 to enter into any other contract it considers necessary or desirable.

## **6. Membership**

### **6.1 Scope of Membership**

The members of the Association shall be those persons whose application for membership of the Association is approved by the Board and whose name is added to the register of members.

### **6.2 Membership Eligibility**

The Board may receive and consider expressions of interest from natural persons to become members providing that:

- 6.2.1 The applicant's expression of interest demonstrates Industry and or Occupational synergy with the objects of the Association.
- 6.2.2 The applicant will be bound, and abide by, decisions of the Board and these rules.

### **6.3 Resignation**

A member may resign from membership of the Association by giving written notice thereof to the Board. Any resignation shall take effect from the date advised, contained in, or on receipt of the notice whichever is the latter.

### **6.4 Expulsion of a Member**

- 6.4.1 Subject to giving a Member an opportunity to be heard or to make a written submission, the Board may resolve to expel a Member upon a charge of misconduct detrimental to the interests of the Association.
- 6.4.2 Particulars of the charge shall be communicated to the Member at least one month before the meeting of the Board at which the matter will be determined.
- 6.4.3 The determination of the Board shall be communicated to the Member, and in the event of an adverse determination, the Member shall cease to be a Member 14 days after the Board has communicated its determination to the Member.
- 6.4.4 It shall be open to a Member to appeal to the Association in general meeting against the expulsion. The intention to appeal shall be communicated to the Public Officer within 14 days after the determination of the Board has been communicated to the Member.
- 6.4.5 In the event of an appeal, the appellant's Membership of the Association shall not be terminated unless the determination of the Board to expel the Member is upheld by the Association in general meeting, and in such event membership will be terminated at the date of the general meeting at which the determination of the Board is upheld.

## **6.5 Register of Members**

A register of Members must be kept and contain:

- 6.5.1** the name and address of each Member
- 6.5.2** the date on which each Member was admitted to the membership of the Association; and
- 6.5.3** if applicable, the date of, and reason(s) for, termination of membership

## **7. The Board**

- 7.1** The affairs of the Association shall be managed and controlled exclusively by the Board which in addition to any powers and authorities conferred by these rules may exercise all such powers and do all such things as are within the objects of the Association, and are not by the Act or by these rules required to be done by the Association in general meeting.
- 7.2** The Board shall have the power to appoint such officers and employees as are required to carry out the objects of the Association, including a Public Officer, and may discuss or delegate any of its powers to such officers and employees.
- 7.3** In the exercise of the authorities, powers and discretions vested in them, the Board shall, unless otherwise expressly provided in this Constitution, have an absolute and uncontrolled discretion and they may at any time exercise or refrain from exercising or enforcing any of their authorities, powers and discretions, provided that at all times the Board shall observe any and all relevant legislation pertaining to their activities.
- 7.4** The Board shall ensure that proper books of account and records of the Association are kept at all times. An account of the Association's finances shall be prepared in respect of every financial year.
- 7.5** The Board shall be entitled to delegate the administration of the Association and the financial management of the Association to a person or persons appointed by the Board for that purpose. Accounts and reports will be provided to the Board whenever so required by the Chairperson.
- 7.6** The Board shall have power to pay out of the Association's funds all costs, charges and expenses incidental to the administration, maintenance or management of the Association. Such costs, charges and expenses shall be taken to include any income or other taxes payable in respect or by reason of the activities of the Association and the costs and expenses connected with the preparation and implementation of this Constitution, and to include the payment for public liability and other relevant insurances determined by the Board to be necessary for the Board members and the members of any Committees.
- 7.7** The Board shall consist of six (6) members, appointed by members at the Annual General Meeting comprising:
  - 7.7.1** Three persons whose skills and experience enable them to bring an employee perspective to the Board
  - 7.7.2** Three persons whose skills and experience enable them to bring an employer perspective to the Board
- 7.8** Each Board member shall be appointed for a period of two (2) years. One half of the positions filled shall become vacant at each Annual General Meeting.
- 7.9** A retiring member of the Board shall be eligible to stand for re-election without nomination. Other applicants for Board positions may only stand for elections

if a written nomination has been received by the Public Officer of the Association at least 7 days before the meeting.

- 7.10** Any Board member may retire or resign from office by giving to the Public Officer seven days' notice in writing of his or her intention.
- 7.11** The Office Bearers of the Association, being Chairperson, Deputy Chairperson, Treasurer and Public Officer shall be elected by and from the members of the Board at the first meeting following the Annual General Meeting.
- 7.12** The Board may appoint a member to fill a casual vacancy, and such a member of the Board shall hold office until the next annual general meeting of the Association and shall be eligible for reappointment.
- 7.13** If only the required number of persons is nominated to fill existing vacancies for designated officers and other members of the Board, the Chairperson shall report accordingly to the Annual General Meeting, and the Chairperson shall declare such persons duly elected to the positions. If less than the required number of persons are nominated, then in respect of any vacancies not filled, the Board may subsequently appoint eligible persons who will hold the position for the remaining term of that position. When the number of nominations exceeds the number of vacancies, an election shall be conducted by show of hands to resolve the election to the vacancy.
- 7.14** The Board members shall not be entitled to any remuneration for acting as such, but each of them may claim his or her expenses properly incurred in attending to the affairs of the Association. Such expenses shall be repaid out of the Association funds as soon as practicable.

## **8. Disqualification of Members of the Board**

**8.1** The office of Board member shall become vacant if the Board member resigns from the position, or is:

- 8.1.1** Bankrupt;
- 8.1.2** Enters into a scheme of arrangement with his creditors;
- 8.1.3** Has a receiver or administrator appointed over any of his assets or finances;
- 8.1.4** Convicted of any offence of dishonesty or offence in connection with the promotion, formation or management of a body corporate;
- 8.1.5** Otherwise disqualified by the Act;
- 8.1.6** Expelled under these rules;
- 8.1.7** Permanently incapacitated by ill health;
- 8.1.8** Deceased
- 8.1.9** Absent without apology from more than three (3) consecutive Board meetings

## **9. Proceedings of the Board**

- 9.1** The Board shall meet as often as they consider necessary for the proper performance of their duties, and at least twice in every year.
- 9.2** A quorum at any meeting shall be half the number of current members of the Board plus one.

- 9.3** At meetings of the Board each member of the Board including the Chairperson shall have one vote. The Chairperson shall if necessary also have a casting vote as required to resolve a deadlock on any matter.
- 9.4** Every meeting of the Board shall be chaired by the Chairperson or in his or her absence by the Deputy Chairperson or (if neither is present) by another of the Board appointed by the Board then present at the meeting.
- 9.5** The Board may meet together either in person or (provided that all persons participating in the meeting are able to hear and be heard by all other participants) by telephone or any other form of instantaneous communication for the dispatch of business and may adjourn and otherwise regulate their meetings and proceedings as they see fit. Any Board member not present in person at any meeting but participating in a meeting in the manner previously mentioned shall be taken for the purpose of this Constitution to be present at that meeting.
- 9.6** The Chairperson may convene a meeting of the Board by giving not less than twenty-one days' prior notice in writing to the Board, specifying in the notice the time, date and place and the business of the proposed meeting. If all the Board so agree, a meeting may be held notwithstanding that no prior notice or less than twenty-one days' prior notice may have been given.
- 9.7** Any two Board members may petition the Chairperson to convene a meeting of the Board. Such a petition must include the nature of business proposed to be conducted at the meeting. On receipt of such a petition, the Chairperson shall take such steps as are necessary to convene the meeting within 21 days.
- 9.8** Unless otherwise provided in this Constitution, all decisions of the Board shall be made by simple majority of those present and voting at the meeting.
- 9.9**
- 9.9.1** If all the Board members have signed a document containing a statement that they are in favour of a resolution of the Board members in terms set out in the document, a resolution in those terms shall be taken to have been passed at a meeting of the Board members held on the day on which the document was signed and at the time at which the document was last signed by a Board member, or (if the Board members signed the document on different days) on the day on which and at the time at which the document was last signed by a Board member.
- 9.9.2** For the purposes of Clause 9.9.1, two or more separate documents containing statements in identical terms each of which is signed by one or more Board members shall together be taken to constitute a single document containing a statement in those terms signed by those Board members on the respective days on which they signed the separate documents.
- 9.9.3** The 'signing' of documents may include the electronic transmission of agreement, by facsimile or electronic mail, providing the agreement is unambiguous and makes adequate reference to the proposed resolution.
- 9.10** Pursuant to the Act, where a Board member
- 9.10.1** has a direct or indirect interest in a contract or proposed contract or any matter from which they may benefit; or
- 9.10.2** is also an employee of the Association;



**9.10.3** he/she must disclose that interest and abstain from consideration of, and voting on any directly or indirectly related matter and remain absent from deliberations by the Board.

## **10. Sub-Committees**

- 10.1** The Board may establish Sub-Committees as it deems necessary for specific purposes and to promote the Association.
- 10.2** Sub-Committees may not commit the Association to any expenditure or other liability without the prior consent of the Board.
- 10.3** Each Sub-Committee will have a Chairperson, appointed by the Board, who will be responsible to report to the Board on a regular and timely basis regarding the activities of the Committee.
- 10.4** Sub-Committees established under this Constitution shall be bound by the provisions of this Constitution.

## **11. Patrons**

- 11.1** The Association in general meeting may appoint such distinguished members of society as it determines to be Patrons of the Association.
- 11.2** The Board may, at their absolute discretion, withdraw the status of Patron at any time.

## **12. Borrowing Powers**

- 12.1** Subject to this rule the Association may borrow money from banks or other financial institutions upon such terms and conditions as the Board sees fit, and may secure the repayment thereof by charging the property of the Association.

## **13. Non-Profit**

- 13.1** The income and property of the Association shall be applied solely towards the promotion of the objects of the Association and no portion shall be paid or transferred directly or indirectly by way of dividend, bonus or other profit to the members or to relatives of members of the Association. Nothing herein shall prevent the payment in good faith to any officer or servant of the Association in return for any service actually rendered or reasonable and proper rent for premises let by any member of the Association.

## **14. Amendment of Constitution**

- 14.1** Subject to approval by a resolution of the members of the Association, these rules may be altered (including an alteration to name), or be rescinded and replaced by substitute rules.
- 14.2** Any proposal to so alter the Constitution shall rest with the members for at least 21 days before a vote to allow sufficient time for consideration of the proposal.
- 14.3** Such alteration shall be registered with the Office of Business and Consumer Affairs as required by the Act.
- 14.4** The registered rules shall bind the Association and every member to the same extent as if they had respectively signed and sealed them, and agreed to be bound by all of the provisions thereof.

## **15. The Seal**

- 15.1** The Association shall have a common seal upon which its incorporated name shall appear in legible characters.
- 15.2** The seal shall not be used without the express authorisation of the Board, and every use of the seal shall be recorded in the minute book of the Association. The Chairperson or Deputy Chairperson and one other member of the Board shall witness the affixing of the seal.
- 15.3** The seal shall be kept in the custody of the Public Officer or such other person as the Board may from time to time decide.

## **16. Meetings of the Association**

- 16.1** The Board shall call an Annual General Meeting in accordance with the Act within five (5) months of the end of its financial year.
- 16.2** At the Annual General Meeting, the agenda for the business of the meeting shall be:
  - 16.2.1** the consideration of the accounts and reports of the Board and the auditors;
  - 16.2.2** other relevant reports;
  - 16.2.3** the appointment of auditors and members of the Board (if required); and
  - 16.2.4** any other business requiring consideration by the Association in general meeting.
  - 16.2.5** any other business of which proper notice has been given
- 16.3** The Board may call a Special General Meeting of the Association at any time.
- 16.4** Upon a requisition in writing of not less than ten per cent (10%) of the total number of members of the Association, the Board shall, within one month of the receipt of the requisition, convene a Special General Meeting for the purpose specified in the requisition.
- 16.5** Every requisition for a Special General Meeting shall be signed by the members making the same and shall state the purpose of the meeting.
- 16.6** If a Special General Meeting is not convened within one month as required by Clause 16.4, those who have requisitioned the meeting may convene a Special General Meeting.
- 16.7** Such a meeting shall be convened in the same manner as a meeting convened by the Board, and for this purpose the Board shall ensure that those who have requisitioned the meeting are supplied free of charge with particulars of the members entitled to receive a notice of meeting. The reasonable expenses of convening and conducting such a meeting shall be borne by the Association.
- 16.8** At least fourteen (14) days notice of any general meeting shall be given to members. The notice shall set out where the meeting will be held, and particulars of the nature and order of the business to be transacted at the meeting.
- 16.9** Notice of a meeting at which a special resolution is to be proposed shall be given at least 21 days prior to the date of the meeting.

- 16.10** A notice may be given by the Association to any member by serving the member with the notice in writing, or by sending it by post to the address appearing in the register of members.
- 16.11** Where a notice is sent in writing, service of the notice shall be deemed to be effected from the date it is served, or if posted one business day following posting.

## **17. Proceedings at General Meetings**

- 17.1** Ten per cent (10%) of members present personally or by proxy shall constitute a quorum at any general meeting of members.
- 17.2** If within thirty (30) minutes of the time appointed for the meeting, a quorum of members is not present, a meeting convened upon the requisition of members shall lapse. In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place and if at such adjourned meeting a quorum is not present within thirty (30) minutes of the time appointed for the meeting the members present shall form a quorum.
- 17.3** The Chairperson or if there shall be no Chairperson, the Deputy Chairperson, or in his/her absence, or on his/her declining to take, or retiring from the chair, one of the Board members chosen by the meeting shall preside as Chairperson at general meetings of the Association.
- 17.4** If there is no such person as is described in Clause 17.3, present within five (5) minutes after the time appointed for holding the meeting, the members present may choose one of their number to be the Chairperson of the meeting.
- 17.5** The Chairperson may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 17.6** When a meeting is adjourned for thirty (30) days or more notice of the adjourned meeting shall be given as if that meeting were an original meeting of members.
- 17.7** At any general meeting, a resolution put to vote shall be decided on a show of hands, and a declaration by the Chairperson that a resolution has been carried or lost, shall unless the show of hands is challenged (in which case a secret ballot will be conducted), be final without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 17.8** If a poll is demanded by the Chairperson or by three (3) or more members present personally or by proxy, it shall be taken in such manner as the Chairperson directs. The result of such poll shall be the resolution of the meeting, except that in the case of a special resolution a majority of not less than three-quarters of the members who, being entitled to do so, vote personally or by proxy at the meeting is required.
- 17.9** A poll demanded on the election of a Chairperson of a meeting or on any question of an adjournment, shall be taken at the meeting and without adjournment.

## **18. Minutes**

- 18.1** Proper minutes of all proceedings of meetings of the Association and of meetings of the Board, shall be entered within one (1) month after the relevant meeting in minute books kept for the purpose.
- 18.2** The minutes kept pursuant to this rule shall be signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the next succeeding meeting.
- 18.3** Where minutes are entered and signed they shall, until the contrary is proved, be evidence that the meeting was convened and duly held, and that all proceedings held at the meeting shall be deemed to have been duly held, and that all appointments made at a meeting shall be deemed to be valid.

## **19. Voting Rights**

- 19.1** Subject to these rules each member present in person or by proxy shall be entitled to one (1) vote.

## **20. Proxies**

- 20.1** A member shall be entitled to appoint in writing a person who is also a member of the Association to be his/her proxy, and attend and vote at any meeting of the Association.

## **21. Winding Up of Association and Application of Surplus Assets**

- 21.1** Subject to the provisions of Clause 16.9 and Clause 21.2, the members may at any time by special resolution determine to wind up the Association.
- 21.2** Upon the winding up or dissolution of the Association (whether voluntary or not) and after satisfaction of all the debts and liabilities of the Association, including the expenses of the winding up or dissolution, the balance of the funds then remaining together with any unexpended income shall be disposed of in accordance with Clauses 21.3 and 21.4.
- 21.3** The balance of the funds together with any unexpended income shall be given or transferred to a like minded body which has objects similar to those of the Association.
- 21.4** The selection of the recipients under Clause 21.3 and the proportions in which they are to benefit shall be determined by the Board at or before the time of winding up or dissolution. If the Board fails to make a determination then the President of the Law Society of South Australia shall be requested to nominate an arbitrator to assist and if necessary make a final determination of the matter.

## **22. Confidentiality**

- 22.1** The Association shall keep confidential any confidential information supplied to it in the course of pursuing the Objects of the Association by any other party and which other party either designates as being confidential at the time it is supplied, or which should, by its nature or on normal business principles, be considered confidential.
- 22.2** The Association shall respect the copyright or other intellectual property rights of others at all times.
- 22.3** The Association shall not, without the permission of the owner of the confidential information, use any such confidential information for any purpose whatsoever other than in the pursuit of its Objects in accordance

with this Constitution and for the purposes for which such confidential information was provided.

**22.4** The Association's obligations under this Clause shall not apply to any information which is, or becomes, generally available to the public (except where such information becomes available to the public as a result of a breach of this Clause), or which is required to be disclosed to a third party by law.

**22.5** The obligations established by this Clause shall survive termination of this Constitution and shall remain in effect and be binding on the Association and its members.

### **23. Governing Law**

**23.1** This Constitution shall be governed by and construed in accordance with the law of the State of South Australia.