

Independent Brewers Association Limited
(ACN 154 036 307)

A company limited by guarantee

Constitution



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Overview

This is the Constitution of Independent Brewers Association Limited (ACN 154 036 307).

The Company is a company limited by guarantee. The liability of its members is limited to the amount they have agreed to pay in the guarantee.

The Constitution sets out the basis on which the Company is to be managed. Nothing in the Constitution is intended to derogate from the Corporations Act 2001 (**Act**). The Act:

- imposes many obligations on the Company which are not reproduced in this Constitution; and
- overrules anything in this Constitution to the extent that they are inconsistent.

This Constitution replaces the replaceable rules in the Act. Words used in the Constitution which have a meaning in the Act have the same meaning in this Constitution (unless expressly stated otherwise).

Agreed terms

1 Company's name, Objects and powers

1.1 Name of the Company

The name of the Company is Independent Brewers Association Limited (ACN 154 036 307).

1.2 Objects

- The object of the Company is to operate as a not-for-profit company committed to educating and influencing for the benefit of Australian independent brewing.
- Without limiting the generality of clause 1.2(a), the objects of the Company include:
 - to be the unified voice of Australian independent brewing;
 - to be an advocate for its Members;
 - to facilitate training and development opportunities for its Members; and
 - to negotiate value opportunities for its Members.

1.3 Powers

The Company has:

- the legal capacity and powers of an individual; and
 - all the powers of a body corporate (other than the power to issue shares).
- however, the Company has those capacities and powers only to the extent:
- necessary, or convenient, to carry out the Company's objects; or
 - incidental to carrying out those objects.

2 Members liability and guarantee

2.1 Liability of Members

The liability of each Member is limited to the amount of the guarantee set in clause 2.2.

2.2 Guarantee by Members

If the Company is wound up while a person is a Member (or within one year after they stop being a Member) then that person must contribute up to \$10.00 to the Company for:

- payment of the Company's debts and liabilities incurred before that person ceased to be a Member;
- payment of the costs, charges and expenses of winding-up the Company; and
- adjustment of the rights of the contributories among themselves.

3 How the Company's income and property are to be applied

3.1 For the Company's objects

All of the Company's income and property must be applied solely towards the promotion of the Company's objects as set out in clause 1.2.

3.2 No dividends etc. to Members

The Company may not pay, or transfer, any of its income or property, directly or indirectly, by way of dividend, bonus or otherwise to any person who is or has been a Member.

3.3 Remuneration and expenses for Members allowed

- (a) Despite clause 3.2, the Company may pay remuneration in good faith to any Member, officer or employee of the Company in return for any good or services they provide to the Company in the ordinary and usual course of business.
- (b) The Board may authorise the repayment of any expenses a Member incurs for the Company, or in connection with performing their duties for the Company.

3.4 Payments to directors: restrictions, remuneration, expenses

- (a) If the Company is to pay any remuneration to a Director for services rendered in the capacity as a Director, then the remuneration must be on reasonable commercial terms and the Board must first have:
 - (i) consented to the Director providing those services; and
 - (ii) resolved to approve the amount of the payment.
- (b) If the Company is to pay any remuneration to a Director for services rendered in the capacity as an employee of the Company, then the Board must first have resolved to approve the terms of that employment.
- (c) The Board may authorise the repayment of any expenses a Director incurs for the Company, or in connection with performing their duties for the Company.

3.5 Loans and leases from Members

The Company may pay:

- (a) interest on money borrowed from any Member; and
- (b) reasonable and proper rent for premises a Member leases to the Company.

4 Fees imposed by the Company

- (a) The Board may prescribe:
 - (i) a cost payable by Members by way of Membership fees and any other fees the Board thinks fit; and
 - (ii) when and in what circumstances these fees are payable.
- (b) The Board must give Members at least one month's notice of any increase in the fees, or of a change in the due date for fees payable under this clause 4.

5 Membership

5.1 Members

The Company's Members are as follows (unless the Member has resigned or stops being a Member under clause 5.9 or has been expelled under clause 5.11):

- (a) the Members of the Company as at the date that this Constitution is adopted; and
- (b) any other person the Board admits to Membership in accordance with this Constitution.

5.2 Register of Members

- (a) The Company must keep and maintain the Register in accordance with the Act and otherwise as the Board determines.
- (b) Any dispute that arises in relation to the Register must be referred to the Board. The Board's

decision is final and binding on all Members (in the absence of manifest error).

5.3 Types of membership

- (a) At any time, the Board may (subject to the Act) create different types of membership with different rights, obligations and restrictions.
- (b) As at the date this Constitution is adopted, the Membership Classes are the different classes of Membership.

5.4 Eligibility for membership

- (a) A person that complies with the eligibility criteria of a Membership Class is entitled to apply to be a Member of that Membership Class.
- (b) The eligibility criteria of each Membership Class is, in each case, as described in clause 21.1 for the relevant class.

5.5 Membership is not transferable

A Member may not transfer their Membership to another person.

5.6 Voting rights

- (a) Subject to clause 5.6(b), a Voting Member is entitled to one vote at a General Meeting of the Company.
- (b) The Board may suspend a Voting Member's entitlement to vote if that Voting Member owes the Company any amount that is more than 3 months overdue (or such other period as the Board determines).

5.7 A Member's representative

- (a) If a Member or an Applicant is not a natural person, then it must appoint (in writing) a natural person as its Representative. The Representative must be:
 - (i) an employee or independent contractor of the Member; or
 - (ii) a Significant Shareholder of the Member.
- (b) The Member may remove and replace its Representative by giving written notice to the Board in a form the Board approves.
- (c) The Representative may, on the Member's behalf, exercise all the powers that the Member could exercise at a meeting or, in the case of Voting Members, in voting on a resolution, unless those powers are restricted in a way set out in clause 5.7(d).
- (d) The document appointing the Representative may set out either or both of:
 - (i) what the Representative is appointed to do; and
 - (ii) any restrictions on what the Representative may do.
- (e) If the appointment is made by reference to a position held, then the appointment must identify the position.
- (f) The Company must arrange for:
 - (i) the name and address of the Representative to be entered in the Register; and
 - (ii) all correspondence and notices from the Company to the Member to be served on that Representative.

5.8 Applying and being admitted to Membership

- (a) A person's Application to be a Member must:
 - (i) state which Membership Class is being applied for and be made in the form, and accompanied by any fee, the Board has set; and
 - (ii) confirm that the Member will comply with the Member Code of Conduct.
- (b) The Board will consider and, in its absolute discretion, accept or reject an Application.
- (c) If the Board rejects an Application, then:
 - (i) it must arrange for any money the Applicant tendered with the Application to be repaid to the Applicant, without interest; and

- (ii) the Board does not have to give any reasons for the rejection.
- (d) An Applicant does not become a Member until the Company has:
 - (i) received any fee that applies; and
 - (ii) the name and address of the Applicant (and its Representative if relevant) are entered in the Register.
- (e) Each Member is liable for all taxes, duty and charges payable in respect of their Application, their Membership and any related transaction or document and each Member indemnifies the Company and will keep it indemnified in respect of any liability for all those amounts.

5.9 Protection of Company confidential information

5.10 A Member must not, at any time, become a member of a Competing Association. For clarity, if a Member does become a member of a Competing Association, the Member does not have rights under this document (including the right to nominate a Director) and the Board may expel the Member in accordance with clause 5.11. Resigning from Membership or ceasing to be a Member

- (a) A Member may resign from Membership by giving written notice to the Company with immediate effect or with effect from a specified date occurring not more than three months after the service of the notice.
- (b) A Member also resigns if they owe the Company any amount that is more than 3 months overdue (the Board may change the length of that period). If a Member resigns under this clause, then the Board may reinstate their membership if they pay the outstanding amount.
- (c) A person immediately stops being a Member if:
 - (i) they die;
 - (ii) the company is wound up or otherwise dissolved or deregistered (for an incorporated Member); or
 - (iii) they have not responded within three months to a written request from the Secretary that they confirm in writing that they want to remain a Member.

5.11 Expelling and disciplining a Member

- (a) The Board may, in the way described in clause 5.11(b), expel a Member or implement appropriate disciplinary action if the Member:
 - (i) has committed a breach of any obligation or duty under this Constitution;
 - (ii) ceases to meet the eligibility criteria of that Member's Membership Class;
 - (iii) the Board determines (in its absolute discretion) that the Member has breached the Member Code of Conduct; or
 - (iv) has engaged in conduct detrimental to the interests of the Company.
- (b) For any expulsion or discipline to be valid:
 - (i) at least 21 days before the Board meeting at which the resolution is considered, the Member must be given written notice of:
 - (A) the meeting;
 - (B) the intended resolution; and
 - (C) the particulars of the alleged act, omission or conduct complained of;
 - (ii) at the meeting (and before the resolution is passed), the Member must be given the opportunity to explain themselves in writing or orally (or both if they request it);
 - (iii) if the Member does give an explanation, then the Board must take it into account;
 - (iv) the relevant resolution must be passed by a majority of the Directors present and voting;
 - (v) the Board must arrange for the Member to be given written notice of any Board resolution on the matter; and
 - (vi) if the Board resolves to expel the Member, then the Member ceases to be a Member when the Board serves them with the notice and the Member's name will be removed

from the Register as set out in clause 5.12(a).

5.12 Removing a Member's name from the Register

- (a) If a Member resigns, stops being a Member or is expelled from the Company, then their name (and that of any Representative they have appointed) must be removed from the Register on:
 - (i) the date of effect of any notice of resignation issued in accordance with clause 5.10(a);
 - (ii) on the date they stop being a Member in accordance with clause 5.10(c); or
 - (iii) the date of expulsion,
and the Member stops being a Member on such date but:
 - (iv) they remain liable for any money they owe the Company; and
 - (v) under clause 2.2, they remain liable for another 12 months.
- (b) The Company has no liability to a Member in respect of their removal from the Register.
- (c) When a Member's name is removed from the Register, the Member no longer has:
 - (i) any rights or privileges attaching to Membership; or
 - (ii) any rights which they had against the Company that arose out of their Membership.

6 General Meetings: frequency and notice

6.1 Annual General Meeting required

The Company must hold an Annual General Meeting:

- (a) in every calendar year;
- (b) within five months after the end of its financial year; and
- (c) at the time and place the Board determines.

6.2 Board calling an Extraordinary Meeting

An Extraordinary Meeting may be convened by the Board at such time and place as the Board thinks fit, (as long as it complies with the Act).

6.3 Members call an Extraordinary Meeting

If Members with at least 5% of the votes that may be cast at a General Meeting make a written request to the Company in accordance with the Act, for an Extraordinary Meeting to be held for a proper purpose, the Directors must:

- (a) within 21 days of the Members' request, give all Members notice of an Extraordinary Meeting, and
- (b) hold the Extraordinary Meeting within 2 months of the Members' request.

6.4 Notice of General Meetings

- (a) The Board must give at least 21 days' written notice of a General Meeting to the Members, the Directors and the Auditor (unless a change to that arrangement is made under clause 6.5).
- (b) The notice must specify:
 - (i) the place, the day and the hour of meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (ii) the general nature of the meeting's business;
 - (iii) the details of any special resolutions to be proposed at the meeting; and
 - (iv) that Members are entitled to appoint a proxy who must be a Member.
- (c) A Member that is a company is responsible for notifying its Representative of any General Meeting.

6.5 Changing the notice procedure for General Meetings

A meeting may be convened in a way other than, and on shorter notice than, clause 6.4(a) requires as long as:

- (a) all Voting Members consent to the change beforehand; and
- (b) the notice and the shorter notice period comply with the Act.

6.6 Failure to receive Notice

A meeting and its proceedings and resolutions are valid even if any one or more of the following is the case:

- (a) the Company accidentally omitted to give notice of a meeting to any Member; or
- (b) any Member did not receive notice of the meeting.

7 General Meetings: proceedings

7.1 Use of technology in conferencing

- (a) The Company may hold a General Meeting at two or more venues using any virtual meeting platform or using a virtual meeting platform only, where the platform gives Members a reasonable opportunity to participate, including to hear and be heard.
- (b) Without limiting clause 7.1(a), the Chair may confer with Members and others by radio, telephone, facsimile, computer, Internet, closed circuit television or other electronic means of audio or audio-visual communication.
- (c) Any resolution passed using such a system is to be treated as having been passed at a meeting of the Members held on the day and at the time the conference was held, even if the Members were not present together in one place at the time.
- (d) The provisions of this Constitution regulating the proceedings of the Members apply so far as they are capable to such conferences.

7.2 Business at the meeting

- (a) The ordinary business of an Annual General Meeting may include:
 - (i) considering any annual financial report, directors' report and Auditor's report;
 - (ii) electing and appointing Directors; and
 - (iii) appointing the Auditors and fixing the Auditor's remuneration (if the Company is required to have an auditor).
- (b) All other business at an Annual General Meeting, and all business at an Extraordinary Meeting, is regarded as special business.

7.3 Quorum required

For any business to be transacted at any General Meeting (except the adjournment of the meeting) a quorum must be present. The quorum for a General Meeting is 5% of Voting Members, present in person or by Representative, proxy or attorney.

7.4 If no Quorum present

If a quorum is not present within half an hour after the time appointed for a General Meeting then:

- (a) if the meeting was convened on the requisition of Members, then it will be dissolved; or
- (b) in any other case, the meeting will be adjourned to the same day in the next week at the same time and place (or at such other place as the Chair decides).
- (c) If at an adjourned meeting a quorum is not present within fifteen minutes after the time appointed for holding the meeting, then the Voting Members present are a valid quorum.

7.5 Chair of the meeting

- (a) The Chair or in the Chair's absence, the Deputy Chair is to preside as chair at every General Meeting.
- (b) If at any General Meeting neither the Chair nor the Deputy Chair is present within fifteen minutes after the time appointed for holding the meeting (or if neither is willing to preside), then the Voting Members present are to choose a Director to preside. If no Director is present (or if all Directors present decline to preside), then those persons present will choose a Voting Member who is present to preside as Chair.

7.6 Adjourning (and resuming) a meeting

- (a) The Chair of a General Meeting:
 - (i) may, with the consent of the Voting Members present and entitled to vote at any meeting, and at which a quorum is present, adjourn a meeting; and
 - (ii) must adjourn a meeting if the meeting directs them to do so.
- (b) If the Chair adjourns a General Meeting, then they may do so to another time or place (or both).
- (c) If a General Meeting is adjourned for one month or more, then the Company must arrange for a new notice of the adjourned meeting to be given.
- (d) After an adjourned meeting is resumed, the only business that may be transacted at the meeting is business that was unfinished before the adjournment.

7.7 Auditor attending etc. meeting

The Auditor is entitled:

- (a) to attend any General Meeting of the Company;
- (b) to receive the same notices of, and other communications relating to, any General Meeting that a Member is entitled to receive; and
- (c) to be heard at any General Meeting which the Auditor attends on any part of the business of the meeting which concerns the Auditor in that capacity. The Auditor's right to be heard exists even if the Auditor retires at that meeting or if a resolution to remove the Auditor from office is passed at that meeting.

8 General Meetings: voting

8.1 How many votes does each Member have

Each Ordinary Member and each Contracting Brewery Members has one vote each.

8.2 Show of hands vote

Subject to clause 8.4, every item of business submitted to a General Meeting is to be decided in the first instance by a show of hands of the Voting Members, or their Representatives, who are personally present (including by proxy or attorney) and entitled to vote. The Chair will not have a casting vote.

8.3 Evidence of resolution

It is conclusive evidence that a resolution has been passed (regardless of whether there is any proof of the number or proportion of the votes recorded in favour of or against the resolution) if:

- (a) the Chair declares that a resolution has been passed or lost (having regard to the majority required); and
- (b) an entry to that effect has been made in the Company's books and signed by the Chair of that, or the next meeting.

8.4 Poll vote

- (a) The Chair or any Voting Member present (personally or by Representative, proxy or attorney) may demand a poll before, or on the declaration of the result of, a show of hands. Any person who has demanded a poll may withdraw their demand.
- (b) A poll demanded on any question of adjournment must be taken before any adjournment.
- (c) The poll is to be taken:
 - (i) in the manner and at the time and place as the Chair of the meeting directs; and
 - (ii) either at once or after an interval or adjournment or otherwise.
- (d) The result of the poll is to be the resolution of the meeting at which the poll was demanded.
- (e) If there is a dispute as to the admission or rejection of a vote, then the Chair will finally determine that dispute.
- (f) At a poll, the Chair will not have a casting vote.

8.5 Continuing with other business before a Poll

After a poll has been demanded, the meeting may continue with any business other than the issue on which poll has been demanded.

9 General Meetings: appointing a proxy

9.1 Eligibility to be proxy

Any Voting Member may:

- (a) appoint a natural person who is a Member, or a Representative, as a proxy to vote on the Member's behalf; and
- (b) may direct the proxy to vote either for or against each or any resolution or to abstain from voting.

9.2 Company receiving notice of proxy

- (a) For an appointment of a proxy to be valid, the Company must receive the instrument appointing the proxy (and an original, or certified copy, of the power of attorney, if any, under which it is signed):
 - (i) at least 48 hours before the time for holding the relevant meeting or adjourned meeting or poll; and
 - (ii) at one of:
 - (A) the Registered Office; or
 - (B) a place or electronic address specified for such purpose in the notice of meeting.
- (b) An instrument appointing a proxy is valid for any adjournment of the meeting to which it relates unless it states something to the contrary.

9.3 Form of proxy

An instrument (including an electronic instrument) appointing a proxy must be signed by the appointor or their attorney and may be signed by any electronic means. The instrument must contain the following information:

- (a) the Company name;
- (b) the Voting Member's name and address;
- (c) the Voting Member's type of Membership Class;
- (d) the proxy's name or the name of the office held by the proxy; and
- (e) the meetings at which the appointment may be used.

(Proxy Form)

9.4 Proxy's voting instructions

A Proxy Form appointing a proxy may specify the way in which the proxy is to vote for a particular resolution. If it does so, then the proxy must vote on the resolution as specified.

9.5 Proxy's authority

A Proxy Form appointing a proxy will be treated as giving the proxy:

- (a) authority to demand, or join in demanding, a poll; and
- (b) the power to act generally at the meeting for the person giving the proxy (except to the extent to which the proxy is specifically directed to vote for or against any proposal).

10 General Meeting: appointing an attorney

10.1 Member appointing an attorney

Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all, or certain specified, meetings of the Company. If the attorney wishes to appoint a proxy for a Voting Member granting the power of attorney, then the attorney must at the Registered Office (or any other place the Board determines) produce:

- (a) the power of attorney for inspection; and
- (b) any evidence the Board requires that it has been properly executed.

10.2 Directors appointing an attorney of the Company

The Directors may, by power of attorney, appoint any person whether nominated directly or indirectly by the Directors to be an attorney or attorneys of the Company. The appointment:

- (a) may be for any purposes and with powers, authorities and discretions (not exceeding those vested in, or exercisable by, the Directors under this Constitution);
- (b) may authorise any attorney to sub-delegate all or any of the powers, authorities and discretions vested in them;
- (c) may be for periods and on conditions as the Directors think fit; and
- (d) may contain provisions for the protection and convenience of persons dealing with any attorney as the Directors think fit.

11 General Meeting: voting by attorney or proxy

11.1 Validity of vote after death or revocation

If a person who has appointed a proxy or attorney has either died or revoked the appointment but any notice in writing of the death or revocation has not been received at the Registered Office before the meeting, then a vote given in accordance within the terms of appointment will be valid.

11.2 Person who has appointed proxy or attorney may attend meetings

A person who has appointed a proxy or attorney may attend and take part in a meeting and doing so does not revoke the appointment unless the person votes on the resolution to which the appointment applies.

12 Directors

12.1 Number of Directors

- (a) The number of Directors comprising the Board will be a maximum of 9 Directors elected or appointed in accordance with this clause 12.
- (b) The Board must include:
 - (i) no fewer than 1 and no more than 7 Directors elected in accordance with clause 12.2;
 - (ii) no more than 2 Directors appointed in accordance with clause 12.5; and
 - (iii) no more than 3 Directors, elected in accordance with clause 12.2, may be from any single State or Territory at any time.

12.2 Elected Directors

- (a) The Voting Members may elect a Director by a resolution passed at an Annual General Meeting.
- (b) Where there are more candidates standing for election as Directors than vacancies available:
 - (i) a separate resolution will be put for each candidate standing; and
 - (ii) those candidates with the highest number of 'For' votes will be elected, such that the total number of Directors does not exceed the maximum specified in clause 12.1(b).
- (c) If there are candidates who have equal number of 'For' votes, then the candidate to be appointed shall, in default of agreement between them, be determined by drawing lots.
- (d) A Director appointed or elected at an Annual General Meeting is taken to have been appointed or elected with effect from immediately after the conclusion of that Annual General Meeting unless the resolution by which the Director was appointed or elected specifies a different time.

12.3 Eligibility of Elected Directors

- (a) To be eligible for election to the Board under clause 12.2:
 - (i) a candidate must be a Qualified Person; and

- (ii) nominated by a Member in accordance with clause 12.4.
- (b) Not more than seven Directors may represent Ordinary Members at any one time.
- (c) Not more than two Directors representing Contracting Brewery Members may be elected to the Board at any one time.

12.4 Election of Elected Directors

- (a) The Board shall notify the Voting Members at least 6 weeks prior to the relevant Annual General Meeting of the call for nominations for election as a Director.
- (b) All nominations for election as a Director must be:
 - (i) in such form as the Board may from time to time prescribe;
 - (ii) signed by at least one Ordinary Member or one Contracting Brewery Member.
 - (iii) signed by the nominee consenting to nomination; and
 - (iv) delivered to and lodged with the Secretary not less than 4 weeks prior to the date of the relevant Annual General Meeting.
- (c) A Member must only nominate a person for election to be a Director if:
 - (i) the nominee is a Qualified Person; and
 - (ii) the Member is not prohibited from nominating a person under clause **Error! Reference source not found..**

12.5 Appointed Directors

- (a) Despite anything else contained in this Constitution, the Board shall have the right to appoint up to 2 additional Directors, each of whom the Board, in its absolute discretion, considers possesses the expertise, experience or other special attributes to make a meaningful contribution to the Company.
- (b) The Board may appoint Directors in accordance with clause 12.5(a) by the passing of a resolution in accordance with clause 14.6.

12.6 Term of office

- (a) At each Annual General Meeting:
 - (i) any Director appointed by the Directors to fill a casual vacancy must retire; and
 - (ii) at least one quarter of the total number of Directors (including the Director retiring pursuant to clause 12.6(a)(i)) must retire.
- (b) The Directors who must retire at each Annual General Meeting under clause 12.6(a)(ii) will be the Directors who have been longest in office since last being elected.
- (c) Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless they agree otherwise.
- (d) A Director's term of office starts:
 - (i) in the case of a Director elected in accordance with clause 12.2, at the end of the Annual General Meeting at which they are elected; and
 - (ii) in the case of a Director appointed in accordance with clause 12.5, on the date they are appointed,
 and ends:
 - (iii) in the case of a Director elected in accordance with clause 12.2, at the end of the Annual General Meeting at which they retire; and
 - (iv) in the case of a Director appointed in accordance with clause 12.5, on the date that they retire.
- (e) Each Director must retire at least once every three years.
- (f) A Director elected in accordance with clause 12.2 who retires under clause 12.6(e) may nominate for election or re-election, subject to clause 12.6(g).
- (g) A Director who has held office for a continuous period of 6 years or more may only be re-

appointed or re-elected by a Special Resolution.

12.7 Chair of the Board

At the first meeting of the Board after each Annual General Meeting, the Directors will elect from among their number a Chair.

12.8 Casual vacancies

- (a) If there is a casual vacancy in the office of Director, then the Board may appoint a replacement Director.
- (b) A replacement Director holds office until the end of the next Annual General Meeting.

12.9 Disqualification of Directors

The office of a Director will be vacated if:

- (a) the Board resolves that the Director has breached the Code of Conduct;
- (b) the Director is a Member, or a Representative of a Member, and the Director or Member respectively becomes bankrupt or make any arrangement or composition with their creditors;
- (c) the Director is a Representative of a Member and that Member resigns or is expelled as a Member;
- (d) the Director is a Representative of a Member which is not a natural person, and a winding up order is made in respect of that Member;
- (e) the Director becomes of unsound mind;
- (f) the Director is absent for three consecutive Board Meetings without leave of the Board (unless the Board resolves to the contrary);
- (g) the Director resigns from their Directorship by giving written notice to the Company; or
- (h) the Director ceases to hold office by reason of any order made under the Act.

13 Powers of the Board

13.1 The board controls and directs the company

- (a) The control and direction of the Company and the management of its property and affairs are vested in the Board.
- (b) The Board may exercise all powers of the Company that are not required to be exercised or done by the Company in General Meeting.

13.2 Borrowing

The Board may raise money in any manner it thinks fit including by borrowing money (whether on the security of the Company's assets or not) and the issuing of a security for any other purpose, so long as this is done to further the Company's objects set out in clause 1.2.

13.3 Investment

The Board may invest the Company's money in any manner, and for any period, it thinks fit.

13.4 Negotiable instruments

Two Directors, or one Director and some other officer authorised by the Board for the purpose, may sign, draw, accept, endorse or otherwise execute (as the case may be) the following documents for and on behalf of the Company: all cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company.

14 Proceedings of the Board

14.1 General

- (a) The Board may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) The Board must meet at least 1 time a year.

14.2 Use of technology in Board conferencing

- (a) The Board may, if it thinks fit, confer by radio, telephone, facsimile, computer, Internet, closed circuit television or other electronic means of audio or audio-visual communication. Any resolution passed using such a system is to be treated as having been passed at a meeting of the Board held on the day and at the time the conference was held, even if the Directors were not present together in one place at the time.
- (b) Clause 14.2(a) does not limit the discretion of the Board to regulate its meetings.
- (c) The provisions of this Constitution regulating the proceedings of the Board apply so far as they are capable to such conferences.

14.3 Notice of meeting

At any time, the Board may convene a Board meeting by notice served on each Director. The Secretary is to arrange that notice at the request of the Chair or Deputy Chair.

14.4 Quorum

A quorum for Board meetings is (unless the Board determines otherwise) if the number of Directors:

- (a) is an even number, half of the Board plus one other director; or
- (b) is an odd number, the odd number nearest to, and greater than, half of the number of Directors.

14.5 Chair

- (a) The Chair, or in the Chair's absence the Deputy Chair, is to chair every Board meeting.
- (b) If at a Board meeting neither the Chair nor the Deputy Chair is present within fifteen minutes after the time appointed for holding that meeting (or if neither is willing to chair), then the Directors present will choose one of their number to chair the meeting.

14.6 Voting

- (a) Questions arising at any meeting will be decided by a majority of votes. Each Director present is entitled to one vote, subject to clause 14.6(c).
- (b) The Chair does not have a casting vote.
- (c) The Board may suspend a Director's entitlement to vote if the Director (or the Member for whom the Director is a Representative) owes the Company any amount that is more than 3 months overdue (or such other period as the Board determines).

14.7 Delegation by the Board

- (a) Subject to clause 14.7(b), the Board may, as it thinks fit, delegate any of its powers to individual Directors or Members or to committees. A committee may consist of the Directors or Members (or both) that the Board thinks fit. Any individual or committee must comply with any Board direction about how to execute the delegated powers.
- (b) The Board may not delegate its power to delegate.
- (c) The meetings and proceedings of any committee will be governed by the provisions of this Constitution that regulate the meetings and proceedings of the Board so far as they apply and so far as the Board has not replaced them.

14.8 Defects in appointment

An act done in good faith by any meeting of the Board, any meeting of any committee formed by the Board or by any person acting as a Director will not be invalidated merely because of:

- (a) any defect in the election, appointment or tenure of a Director or person acting on any such committee; or
- (b) the disqualification of any of them.

15 Board minutes and circulated resolutions

15.1 Making Board resolutions

The Board may make resolutions either:

- (a) in a meeting, of which minutes must be kept as set out in clause 15.2; or

- (b) by circulated resolution which must be made and kept as set out in clause 15.3(a).

15.2 Minutes to be kept

The Board must arrange for:

- (a) proper minutes to be made of the proceedings and resolutions of all meetings of the Company, the Board and committees formed by the Board;
- (b) the minutes to be entered in books kept for that purpose; and
- (c) the minutes to be signed by the Chair of the meeting or by the Chair of the next meeting.

15.3 Circulated Resolution General

- (a) If all the Directors have signed a document containing a statement that they are in favour of a resolution set out in the document, then that resolution is to be treated as having been passed as a Circulated Resolution at a meeting of the Board held at the time and date on which the resolution was last signed by a Director. (However, the reference to "all the Directors" in this clause does not include any Director who is not entitled to vote on the Resolution.)
- (b) Any Circulated Resolution may consist of several documents in identical terms, each signed by one or more Directors and must be entered in the relevant book of minutes of the Company.

15.4 Evidence of proceedings and resolutions

A minute or Circulated Resolution that is recorded and signed in accordance with clause 15.2 or clauses 15.3(a) to 15.3(b) (as the case may be) is evidence of the proceeding or resolution to which it relates (unless the contrary is proved).

16 Accounts

16.1 Accounts to be kept

The Board must arrange for the Company to keep proper books of account that:

- (a) record true and complete accounts of the affairs and transactions of the Company; and
- (b) give a true and fair view of the state of the Company's affairs and explain its transactions.

16.2 Location and inspection of accounts

The Board must arrange for the books of account:

- (a) to be kept at the Registered Office, or in a place or places it thinks fit; and
- (b) to be open to the inspection of the Directors during usual business hours.

16.3 Auditor

The Company will comply with the Act in relation to the appointment, removal and resignation of an Auditor.

17 Indemnity

17.1 Definition of Liability and Officer

- (a) In this clause 17:
 - (i) **Liability** means costs, losses, liabilities and expenses; and
 - (ii) **Officer** means a Director, secretary or other officer of the Company and includes a former Officer, but does not include an auditor or agent of the Company.

17.2 Indemnity of Officers

- (a) The Company must indemnify every Officer out of the assets of the Company against any Liability incurred by that Officer in their capacity as an Officer by reason of any act or thing done or omitted to be done by that person:
 - (i) in that capacity; or
 - (ii) in any way in the discharge of that person's duties; or
 - (iii) by reason of or relating to the person's status as an Officer.

- (b) However, the indemnity in clause 17.2(a) does not extend to any Liability from, or against, which the Company is not permitted by the Corporations Act to exempt or indemnify the Officer.

17.3 Indemnity for Proceedings

- (a) Without limiting clause 17.2(a), the Company must indemnify every Officer out of the assets of the Company against any Liability incurred by that person in defending proceedings, whether civil or criminal, in respect of any act or thing done by the Officer in that person's capacity as such Officer.
- (b) However, the indemnity in clause 17.3(a) does not extend to any Liability from, or against, which the Company is not permitted by the Corporations Act to exempt or indemnify the Officer.

18 Notices

- (a) The Company may serve notice on any Member in the ways shown in the left hand column of the table below. A notice will be taken to be served at the time shown in the right-hand column of that table on the relevant row. Any notice to be served on a Representative is served by serving it on the relevant Member.

Way of serving notice	Timing of notice taken to be
Personally	When served
By sending it through the ordinary post to the Member's Registered Address	7 days after the day it is posted. In proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and deposited as a prepaid letter at the post office or in some postal receptacle.
By leaving it at their Registered Address in an envelope addressed to the Member.	Business Day: The same day it is left at the Registered Address. Non-Business Day: the Business Day after it is left at the Registered Address.
By sending it to the electronic address (if any) nominated by the Member.	On the Business Day after it is sent.

- (b) A certificate in writing signed by the Secretary or any officer of the Company that the envelope containing the notice was properly stamped, addressed and posted or delivered will be conclusive evidence of the service of such notice.

19 Distribution of property on winding-up

- (a) If on the winding-up or dissolution of the Company after all its debts and liabilities have been satisfied there remains any property, then that property must not be paid to or distributed among the Members.
- (b) Instead, this property must be given or transferred to some other institution or institutions that have:
- (i) objects similar to the objects of the Company (if there is one); and
 - (ii) a Constitution which prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under clause 3.1 of this Constitution.
- (c) Choosing which institution or institutions the Company will transfer this property to must be done by:
- (i) a Special Resolution of the Members at or before the time of the Company's dissolution; or
 - (ii) if no such Special Resolution is passed, then by a Judge or Registrar of the Supreme Court or such other court of competent jurisdiction.
- (d) If the Company is endorsed, as a whole, as a deductible gift recipient under subdivision 30BA

of the Tax Act at the time it is wound up, then in addition to the requirements under clause 19(b), the charity or charities to which the surplus assets are distributed must also be endorsed as a deductible gift recipient at the time the distribution is made.

- (e) Choosing the charity or charities to which the Company will transfer this property, must be done:
 - (i) by a Special Resolution at or before the time of winding up; or
 - (ii) if no such Special Resolution is passed, by a Judge or Registrar of the Supreme Court or such other court of competent jurisdiction.
- (f) If the Company's deductible gift recipient endorsement is revoked (whether or not the Company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of clauses 19(d) and 19(e), as decided by the Directors.
- (g) For the purpose of this section, gift funds means:
 - (i) gifts of money or property for the Purposes;
 - (ii) contributions made in relation to a fund-raising event held for the Purposes; and
 - (iii) money received by the Company because of such gifts and contributions; and
 - (iv) contributions and fund-raising event have the same meaning as in Division 30 of the Tax Act.

20 Replaceable Rules displaced

Each of the provisions of the Act that would, but for this clause, apply to the Company as a replaceable rule is expressly displaced and does not apply to the Company.

21 Definitions and interpretation

21.1 Definitions

In this Constitution:

Act means the *Corporations Act 2001* (Cth).

Annual General Meeting means the annual general meeting of Members.

Applicant means a person who lodges an Application under this Constitution.

Application means an application for Membership.

ASIC Act means the Australian Securities and Commission Act 2001.

Associate Member means any person or entity who has a demonstrated interest in the Company, including but not limited to:

- (a) suppliers to the independent brewing industry;
- (b) members of the liquor trade;
- (c) members of the media; or
- (d) an individual who is interested in beer including as a consumer, home brewer, beer writer or blogger.

ATO means the Australian Tax Office.

Auditor means the auditor or auditors of the Company, if the Company is required to have one. If the Company is not required to have an auditor, but has one, then it includes any such auditor.

Board means the board of directors of the Company.

Brewery in Planning Member means an entity or person in the development stages of becoming an Independent Brewer.

Business Day means Monday to Friday excluding public holidays in the State or Territory the Company is registered in.

Chair means the Director who is elected to this office in accordance with clause 12.7.

Company means Independent Brewers Association Limited (ACN 154 036 307).

Constitution means this Constitution, as amended from time to time.

Contracting Brewery Member means an Independent Brewer that:

- (a) does not manufacture, blend, or repackage beer using its own brewing equipment;
- (b) does not have a manufacturer licence issued by the ATO for the purposes of excise;
- (c) contracts for the manufacture of beer from another Independent Brewer;
- (d) holds a commercial, wholesaler and/or producer licence (or equivalent) issued by the relevant Australian State or Territory allowing them to supply alcohol; and
- (e) markets beer under a brand owned by it.

Competing Association means an association that directly advocates for the interests of large breweries, including the Brewers Association of Australia.

Deputy Chair means the Director who is elected to this office in accordance with clause 12.7.

Directors means the members individually or collectively of the Board.

Dominant Retailer means Endeavour Group Limited and Coles Group Limited and any of their subsidiaries or joint ventures trading under the same or a similar name from time to time.

Extraordinary Meeting means a General Meeting of Members other than an Annual General Meeting.

General Meeting means an Annual General Meeting or an Extraordinary Meeting of the Company.

Independent Brewer means an entity that brews, or commissions the brewing of, beer in Australia and:

- (a) is more than 51% owned and controlled by persons who are Australian citizens or Australian residents;
- (b) does not have 20% or more ownership/controlling or other interest from a Dominant Retailer or another alcoholic drinks business who would not itself be assessed as an 'Independent Brewery' in accordance with this definition; and
- (c) does not derive more than 51% of its revenue from gaming.

Member means a person admitted to Membership, being the members of each of the Membership Classes from time to time.

Membership Classes means:

- (a) Ordinary Members;
- (a) Contracting Brewery Members;
- (b) Brewery in Planning Members; and
- (c) Associate Members.

Member Code of Conduct means the member code of conduct of the Company as amended from time to time.

Membership means membership of the Company.

Ordinary Member means an Independent Brewer that brews beer at its own facility in Australia and holds its own manufacturer licence issued by the ATO for the purposes of excise.

Proxy Form means an instrument as described in clause 9.3.

Qualified Person means any natural person that is:

- (a) an employee or independent contractor of a Member; or
- (b) a Significant Shareholder of a Member,

and is not:

- (c) disqualified from managing a corporation under the Act or the ASIC Act; or
- (d) a director, officer, office holder, employee, independent contractor or shareholder of a Competing Association.

Register means the register of Members kept in accordance with the Act.

Registered Address means the address of a Member shown in the Register.

Registered Office means the registered office of the Company.

Relevant Interest has the same meaning as set out in the Act.

Representative means a person as described in clause 5.7.

Secretary means the Director who is elected to this office in accordance with clause 12.7.

Significant Shareholder means a person that holds at least a 20% Relevant Interest in a Member.

Special Resolution has the same meaning as a resolution:

- (a) of which notice has been given under clause 6.4; and
- (b) that has been passed by at least 5% of the total number of Members.

Treasurer means the Director who is elected to this office in accordance with clause 12.7.

Voting Member means Ordinary Members and Contracting Brewery Members.

21.2 Interpretation

In this Constitution, unless the context requires otherwise:

- (a) a person includes a corporate body, association, firm, partnership, or other unincorporated body;
- (b) a statute includes regulations under it and consolidations, amendments, reenactments or replacements of any of them;
- (c) this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- (d) a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;
- (e) a word or phrase that is defined has the corresponding meaning in its other grammatical forms
- (f) writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- (g) the singular includes the plural and vice versa;
- (h) a gender includes all other genders; and
- (i) headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution.