

Director's Deed Non-executive Director

**Australian Wagyu Association
Limited ABN 35 003 700 721**



Ref: CC:20203484

111 Faulkner Street, Armidale
PO Box 1226, Armidale NSW 2350
T 02 6772 4899
F 02 6772 5611
www.moin.com.au

Suite 3, 128 William Street, Port Macquarie
PO Box 2293, Port Macquarie NSW 2444
T 02 6772 4899
F 02 6772 5611

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Parties

Australian Wagyu Association Limited ABN 35 003 700 721
of Suite 6, 146 Marsh Street ARMIDALE NSW 2350
(AWA)

of
(Director, you)

Introduction

- A. The Director has been elected as a non-executive director of AWA.
- B. AWA and its Directors are committed to meeting high standards of modern corporate governance for the governance of the organisation. As part of that commitment, directors of AWA are asked to enter into a deed setting out the mutual expectations of the parties for the appointment of the director.
- C. AWA and the Director wish to agree to the terms and conditions set out in this Deed.

It is agreed

1. Definitions and interpretation

1.1 Definitions

In this Deed:

- (1) **Agents** of the Director include lawyers, accountants and other professional advisers engaged or consulted by the Director;
- (2) **Appointment Date** means the date on which the Director commenced as a Director of AWA (notwithstanding the date of this Deed);
- (3) **Approved Purposes** means the purposes of carrying out the proper performance of the Director's role as Officer, seeking advice from an Agent in relation to this Deed and/or her appointment as an Officer;
- (4) **Board** means the board of directors of AWA;
- (5) **Board Papers** means, in relation to the Director:
 - (a) all documents sent, given or made available to the Director or to any other director of AWA during the time that he or she is a director of AWA, including:

- (i) notices, board papers, submissions, minutes, letters, memoranda, board committee and subcommittee papers;
 - (ii) monthly management accounts, annual accounts and any other periodical accounts prepared by AWA; and
 - (iii) all other documents referred to in or annexed to any of the above documents;
- (6) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (7) **Claim** means:
 - (a) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against the Director as a director of AWA;
 - (b) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against the Director as a director of AWA; or
 - (c) any written or oral demand or threat that might result in the Director reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application may be initiated;
- (8) **Confidential Information** means any information (including the Information) which is:
 - (a) relates to the business, property or affairs of AWA; or
 - (b) the property of AWA; or
 - (c) or ought reasonably to be considered confidential in nature; and which is:
 - (d) not in the public domain; or
 - (e) in the public domain because of a breach of confidentiality;
- (9) **Constitution** means the constitution of AWA (as amended or replaced from time to time);
- (10) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (11) **Deed** means this document, including any schedule or annexure to it;
- (12) **Entity** means an individual, company, partnership, joint venture (whether corporate or incorporate) and any other body (whether corporate or incorporate);
- (13) **Information** means any information about AWA or its business (including, but not limited to, any idea, concept, process or know-how) which:
 - (a) comes to your notice in the course of your directorship with AWA; or

(b) is generated by you in the course of acting as director of AWA;

(14) Intellectual Property means all present and future rights to intellectual property including any inventions and improvements, trade marks (whether registered or common law trade marks), designs, copyright, any corresponding property rights under the laws of any jurisdiction and any rights in respect of an invention, discovery, trade secret, secret process, know-how, concept, idea, information, process, data or formula;

(15) Moral Rights means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth);

(16) Notes means notes which relate to, summaries and copies of and extracts from any Confidential Information whether in documentary, visual, machine readable or other form; and

(17) Officer means an 'officer' (as that expression is defined in the *Corporations Act 2001*) of AWA.

1.2 Interpretation

(1) Reference to:

(a) one gender includes the others;

(b) the singular includes the plural and the plural includes the singular;

(c) a person includes a body corporate;

(d) a party includes the party's executors, administrators, successors and permitted assigns;

(e) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:

(i) that Statutory Provision as amended or re-enacted;

(ii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and

(iii) another regulation or other statutory instrument made or issued under that Statutory Provision; and

(f) money is to Australian dollars, unless otherwise stated.

(2) "Including" and similar expressions are not words of limitation.

(3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(4) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.

- (5) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

1.3 Parties

- (1) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

2. Appointment as Officer

2.1 Appointment

- (1) You accept appointment as a director of AWA on and from the Appointment Date.
- (2) You agree to take all steps to complete all documentation that is reasonably necessary or desirable for you to be appointed or continue as an Officer.

2.2 Re-appointment and resignation requirement

Despite anything else in this Deed, you acknowledge that you will be required to offer yourself for re-election and/or resign from that position in accordance with the timeframes specified in the Constitution.

2.3 Warranty

- (1) You warrant that you are not under and will not enter into any obligation or restriction which would interfere or conflict with your appointment as director of AWA or your obligations under this Deed, including your suitability to be an Officer of AWA.
- (2) Without limiting the above, you warrant that you are not precluded from being a responsible entity under the Corporations Act.

2.4 Expectations as Officer

- (1) It is expected that you will carry out the role of non-executive director in accordance with the requirements set out at Schedule 1.

2.5 Committees

During the term of your appointment as a director of AWA, it is expected that you will, from time to time, be required to sit as a member of one or more of AWA's Committees of Directors.

3. Obligations as an Officer

3.1 In carrying out your role, you must, at all times:

- (1) fulfil your duties and comply with your obligations as an Officer under all relevant laws including, without limitation, the Corporations Act; and
- (2) promote and act in the best interests of AWA.

3.2 You agree to abide by, strictly and in the spirit of:

- (1) the Constitution;
- (2) all AWA governance documents including without limitation, the By-laws, Code of Conduct, and Board Charter; and
- (3) all policies of AWA.

3.3 You agree to act with the utmost integrity and objectivity, striving at all times to enhance the reputation and performance of AWA and to act in accordance with the interests of AWA as a whole, Members, staff, and all other stakeholders.

3.4 The Corporations Act sets out duties for directors of companies in Chapter 2D starting at section 180. These duties require a Director to exercise their powers and to discharge their duties:

- (1) with the degree of care and diligence that a reasonable person would exercise (subject to the business judgment rule);
- (2) in good faith in the best interests of AWA and for a proper purpose;
- (3) by not improperly using their position to gain a personal advantage or cause detriment; and
- (4) by not improperly using information obtained in their role in AWA to gain a personal advantage or cause detriment.

4. Director's expenses

4.1 No director's fees

Directors of AWA are not remunerated.

4.2 Expenses

AWA will reimburse you for any reasonable and necessary expenses that you reasonably incur in your capacity as an Officer of AWA, in accordance with relevant AWA policies from time to time. AWA may require you to provide a tax invoice, or other evidence, to substantiate any expenses claim.

5. Review

- 5.1 The Board will review the Director's performance of their obligations under this Deed annually (or thereabouts).

6. Medical examinations

- 6.1 AWA may, from time to time at its discretion, require you to undergo an independent medical examination by a medical practitioner nominated by AWA. AWA will bear the costs of any such examination, and you consent to the medical practitioner releasing the results of that examination to AWA.
- 6.2 AWA will keep the results confidential and will only use them to assess your ability to act in your capacity as Officer or meet AWA's occupational health and safety obligations.

7. Workplace health and safety

- 7.1 You agree and acknowledge that you are an "officer" for the purposes of the *Work Health and Safety Act 2011* (or any replacement or amendment of it) (**WHS Law**) and, as such, you have a duty to take reasonable steps to exercise due diligence to ensure that AWA meets its workplace health and safety obligations.

8. Ceasing to be an Officer

8.1 Ending your appointment

You agree and acknowledge that:

- (1) a Director may not be directly dismissed by the Board¹;
- (2) however, if a Director is the subject of an adverse disciplinary finding by the Board, a Board Committee or by a 3rd party tribunal or court, the Board may:
 - (a) disclose to the AWA membership any part of the finding which is or may be to an interested party, relevant to whether the Director remains a fit and proper person to be a Director of AWA;
 - (b) remove the Director from a committee; and/ or
 - (c) make a public statement about the matter.
- (3) you may resign as an Officer but must do so in accordance with the Constitution; and
- (4) if you resign, you will do all things and execute all such documents as may be required by AWA to effect any such resignation.

¹ Noting that directors are required by the Constitution to be financial full members or the representative of a financial full corporate member, and therefore if their membership ceases for any reason, including if they are expelled from the AWA, they will also cease to be a Director.

8.2 Return of property

Before ceasing to be an Officer, or as soon as practicable thereafter, you must return all property belonging to AWA (including, without limitation, AWA's Intellectual Property and any copies thereof).

9. Disclosure of information

9.1 Your obligations whilst an Officer

- (1) Whilst you are an Officer, you must not use or disclose Confidential Information unless the use or disclosure is:
 - (a) required by law;
 - (b) made for an Approved Purpose; or
 - (c) agreed by AWA.
- (2) This means, by way of example, that the following are confidential:
 - (a) discussions and deliberations of directors that occur during Board meetings and between directors outside of Board meetings when discussing Board activities;
 - (b) any information relating to members of AWA gained in your role as an Officer;
 - (c) any commercial information gained in your role as an Officer;
 - (d) any technical or scientific information gained in your role as an Officer; and
 - (e) information relating to disputes, including legal disputes, between AWA and other parties or members.

9.2 Your obligations after ceasing to be an Officer

After ceasing to be an Officer, and without limiting your general law obligations or those under any legislation, you must:

- (1) maintain and take all steps necessary to maintain all Confidential Information and all Notes in strictest confidence;
- (2) ensure that proper and secure storage is provided for the Confidential Information and all Notes while in your possession or under your control;
- (3) take all precautions necessary to prevent accidental disclosure of any of the Confidential Information or any of the Notes;
- (4) not disclose any of the Confidential Information or Notes to any person other than your legal advisors those of your Agents who are required to receive and consider the Confidential Information in the course of (and solely for) the Approved Purposes;

- (5) use Confidential Information and Notes solely for the Approved Purposes;
- (6) not make Notes or allow Notes to be made except as necessary in connection with the Approved Purposes;
- (7) keep a record of what copies have been made of Confidential Information and of Notes and what Notes have been made and by whom and supply this information to AWA on request;
- (8) keep confidential the fact that Confidential Information has been provided by AWA to you; and
- (9) not expressly or impliedly disclose the existence of Confidential Information or Notes.

9.3 You must:

- (1) use your best endeavours to cause all of your Agents who receive or have access to Confidential Information or Notes to observe all of your obligations and undertakings contained in this Deed;
- (2) give notice to AWA, before allowing any Agents to have access to Confidential Information, of their identity;
- (3) when requested by AWA, immediately supply AWA with a list of the persons to whom Confidential Information has been disclosed; and
- (4) not disclose Confidential Information to any person, including any person to whom you may otherwise disclose it under this Deed, if AWA objects to its disclosure to that person.

9.4 You must return all documents and other media which contain Confidential Information and deliver all Notes to AWA:

- (1) immediately when requested by AWA to do so; and
- (2) if not earlier requested, on or before ceasing to be an Officer of AWA.

9.5 You must certify in writing to AWA that it has complied with its obligations under clauses 9.3 and 9.4 immediately after the Director has done so.

9.6 At the same time as they return the documents and Notes referred to in clause 9.4, you must also ensure that their Agents return any of the documents and Notes held by them.

9.7 You must:

- (1) notify AWA immediately upon discovering any apparent unauthorised use or disclosure of any Confidential Information; and
- (2) take all reasonable steps to enforce the confidentiality obligations imposed or required to be imposed by this clause 9 including:
 - (a) diligently prosecuting at their cost any breach or threatened breach of the confidentiality obligations by any person to whom they have disclosed or allowed access to the Confidential Information; or

- (b) at the option of AWA making all reasonable efforts to assist AWA to regain possession of the Confidential Information and prevent any further unauthorised disclosure or use.

9.8 If you are required, or anticipate or has cause to anticipate that you may be required, by law or court order to disclose Confidential Information or Notes, the Director must immediately notify AWA of the actual or anticipated requirement and use their best endeavours (without breach of applicable law) to delay and withhold disclosure until AWA has had a reasonable opportunity to oppose disclosure by lawful means.

9.9 You acknowledge that:

- (1) the Confidential Information is at all times the property of AWA;
- (2) a breach of this clause 9 would be harmful to the business interests of AWA;
- (3) monetary damages alone would not be a sufficient remedy for a breach of this clause 9; and
- (4) in addition to any other remedy which may be available in law or equity, AWA is entitled to interim, interlocutory and permanent injunctions or any of them to prevent breach of this clause 9 and to compel specific performance of it.

9.10 Your obligations and undertakings continue indefinitely and are not diminished or terminated by the completion or termination for any reason of this Deed.

9.11 Neither AWA nor any Related Body Corporate of AWA has made any representation, warranty, assurance or inducement that Confidential Information does not infringe the rights of other persons.

10. Access to Board Papers

10.1 AWA must, by its secretary, while you are a director of AWA and for 7 years after you cease to be a director of AWA (**Retention Period**) retain a set of all Board Papers:

- (1) in the original form of the Board Papers or in another form, including electronic storage approved by the directors for the time being of AWA;
- (2) in a secure site or, if stored electronically, in a secure format and place, in Australia; and
- (3) in chronological order or catalogued in such a way that specific Board Papers can be readily located.

10.2 If, during the Retention Period, legal proceedings are commenced or threatened, or enquiries authorised by law are commenced, threatened or announced, which relate to or call into question your act or omission as director of AWA, the Retention Period is extended until AWA becomes aware or is notified by the relevant authority that the legal proceedings or enquiries have been concluded.

10.3 AWA must allow you and a reasonable number of your advisers unlimited access to the set of Board Papers:

- (1) at AWA's registered office or at some other venue agreed between AWA and the Director;

- (2) during ordinary business hours; and
- (3) on reasonable notice to AWA's secretary.

10.4 On request by a Director, AWA must provide the Director with copies of any Board Paper.

10.5 AWA is not required to provide the Director with copies of Board Papers which are subject to legal professional privilege. If they are provided, the Director must not do anything which would cause the privilege to be lost.

10.6 A Director must maintain the confidentiality of any Board Papers except to the extent that it may be considered reasonably necessary by the Director to use the Board Papers in court proceedings or otherwise as required by law.

10.7 AWA is not required to comply with clauses 10.3 and 10.4 if AWA reasonably considers that to do so:

- (1) would give rise to a conflict between AWA's interests and the Director's interests; or
- (2) may result in a material adverse effect on:
 - (a) the financial position of AWA; or
 - (b) AWA's ability to perform any of its obligations under any contract or arrangement to which it is a party.

11. Indemnity

11.1 AWA agrees to indemnify you from and against harm and loss you suffer as a result of acting as a director of AWA on the terms of clause 70 of the Constitution (as amended from time to time).

12. Insurance

12.1 AWA will obtain and maintain directors' and officers' insurance which insures you from liability arising as a director of AWA, subject to the limitations on insurance for directors under the Corporations Act and under the AWA Constitution (if any).

12.2 AWA's obligations under clause 12.1 are limited to obtaining insurance which is reasonably available at reasonable cost.

12.3 AWA will obtain and maintain directors' and officers' run-off insurance for a period of 7 years after the Director ceases to be a director of AWA, and after the Director ceases to be a director, provide the Director with a copy of the insurance policy each year as soon as it is renewed.

13. Intellectual property

13.1 Ownership

- (1) AWA owns all Intellectual Property that you create or contribute to during your term as Officer.
- (2) You must do all things necessary to ensure that AWA owns Intellectual Property that you create or contribute to during that time.

13.2 Disclosure

You must inform AWA of all Intellectual Property that you create or contribute to during your term as Officer.

13.3 Survival of obligations

Your obligations under this clause continue after you cease being an Officer of AWA.

14. Moral Rights

14.1 If you have Moral Rights in any Intellectual Property owned by AWA, you:

- (1) irrevocably consent to any act or omission by AWA which infringes those Moral Rights;
- (2) agree that your consent extends to acts and omissions by AWA's licensees and successors in title;
- (3) agree that your consent is a genuine consent given under Part 9 of the Copyright Act 1968 (Cth) and has not been induced by duress or any false or misleading statement; and
- (4) your obligations under this clause continue after you cease being an Officer of AWA.

15. No employment

15.1 Your appointment as Director does not constitute the relationship of employee and employer between you and AWA and the parties acknowledge that you enter into this agreement in a non-executive capacity as Officer and that you retain ultimate responsibility for how you discharge your duties and obligations in that role.

16. Reappointment

16.1 You acknowledge that this deed will continue to apply for further terms as director of the Company if you are re-elected or reappointed after serving a term under the Constitution.

17. General

17.1 Governing law and jurisdiction

- (1) This Deed is governed by the law in force in New South Wales.
- (2) Each party irrevocably submits to the non-exclusive jurisdiction of Courts exercising jurisdiction in New South Wales and Courts of appeal from them in respect of any proceedings arising out of or in connection with this Deed.
- (3) Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

17.2 Entire Deed and no reliance

- (1) This Deed states all the express terms of the Deed between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and Deeds in respect of its subject matter.
- (2) You acknowledge that in accepting the appointment as Officer of AWA you have not relied on any representations regarding that appointment made by AWA (or its agents or employees) other than matters expressly set out in this Deed.

17.3 Invalidity and enforceability

- (1) If any provision of this Deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (2) Clause 17.3(1) does not apply where enforcement of the provision of this Deed in accordance with clause 17.3(1) would materially affect the nature or effect of the parties' obligations under this Deed.

17.4 Waiver

- (1) No party to this Deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.
- (2) The meanings of the terms used in this clause 17.4 are:
 - (a) **conduct** includes delay in the exercise of a right;
 - (b) **right** means any right arising under or in connection with this Deed and includes the right to rely on this clause; and
 - (c) **waiver** includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

17.5 Legal advice

You represent that you have taken, or had the opportunity of taking, legal advice in relation to the nature, effect and extent of this Deed.

17.6 Counterparts

This Deed may be executed in any number of counterparts and all counterparts, taken together, constitute one instrument. A party may execute this Deed by executing any counterpart.

Schedule 1

Non-Executive Director Duties

Purpose: To provide operational leadership to the Australian Wagyu Association Limited and to advise, govern, oversee policy and direction, and assist with the leadership and general promotion of the Australian Wagyu Association Limited so as to support the organisation's mission and needs and articles as consistent with the Constitution.

As a member of the Board of Directors of the Australian Wagyu Association Limited you are expected to share the responsibilities of a member of the Board, while acting in the best interests of the Australian Wagyu Association Limited. This includes sitting as a member of one or more of the Australian Wagyu Association Limited's Committees of Directors.

Competencies

- **Knowledge of a Director's responsibilities-** includes understanding of the role as well as the legal, ethical, fiduciary and financial responsibilities involved
- **Integrity-** fulfilling a director's duties and responsibilities, acting ethically, and having appropriate independence, putting the organisations interests before personal interests
- **Positive communicator-** the ability to engage and communicate with fellow directors and all stakeholders in a positive, collegial and ethical manner
- **Emotional intelligence-** as well as self-awareness and self-management, this role will require the ability to demonstrate empathy through strong interpersonal and leadership skills

Executed as a Deed

Executed as a deed by)
Australian Wagyu Association)
Limited ABN 35 003 700 721) Director
In accordance with section 127 of)
the Corporations Act:)
Director / Secretary

.....
Signed as a deed by INSERT NAME)
)
in the presence of:)

.....
Witness