

Constitution of Plant Health Australia Limited

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Preliminary

1A Nature of Company

The Company is a not-for-profit public company limited by guarantee, which is established to be, and to continue as, a Charity.

1. Replaceable rules excluded

- (a) The replaceable rules contained in the Act do not apply to the Company.
- (b) While the Company is a Charity, the ACNC Legislation and the Act override any clauses in this Constitution that are inconsistent with those acts, as they apply to a Charity.
- (c) If at any time the Company is not a Charity, the Act (unless it is a replaceable rule) overrides any part of this Constitution to the extent of any inconsistency.

2. Definitions and interpretation

2.1 Definitions

In this Constitution:

ACNC means the Australian Charities and Not-for-profits Commission.

ACNC Legislation means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), *Australian Charities and Not-for-profits Commission Regulations 2022* (Cth) and *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (Cth) and includes any amendment or re-enactment of those acts or any legislation passed in substitution for them.

Act means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it.

Annual Subscription means the Annual Subscription payable by a Member in accordance with clause 15.

Application Fee means the fee payable by an applicant in accordance with clause 12.5.

Approved Statistical Authority means:

- (a) the Australian Bureau of Statistics (ABS); or
- (b) if a required statistic has not been published by the ABS, the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES); or
- (c) if a required statistic has not been published by either the ABS or ABARES, a source of the required statistic as determined by the Directors.

Associate Members means persons having an interest in plant health or the Australian plant industry and admitted as Associate Members.

Bond Rate means the interest rate quoted by the Reserve Bank of Australia (RBA) as its RBA Cash Rate (Published Rate) or, should there cease to be a Published Rate, the rate at which the RBA designates as being an appropriate substitute for the Published Rate (Substitute Rate). A certificate signed by a manager or other officer of the RBA stating the Published Rate or the Substitute Rate at a particular date is conclusive evidence of the rate at a particular date.

Business Day means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office.

Chairperson means the person appointed as chairperson of the board of Directors of the Company under clause 26.

Charity means a charity registered under the ACNC Legislation.

Chief Executive Officer means the person appointed by the Directors under clause 51.

Commonwealth means the Commonwealth of Australia.

Company means Plant Health Australia Limited (ACN 092 607 997).

Constitution means the constitution of the Company as amended from time to time.

Crop or **Crops** includes plants, forests and fungi.

Default Rate means $(x + 3)$ percent per annum where x is the Bond Rate.

Deputy Chairperson means the person appointed as deputy chairperson of the board of Directors of the Company under clause 27.

Directors means the directors for the time being of the Company or the directors assembled as a board.

Funding Act means the *Plant Health Australia (Plant Industries) Funding Act 2002* and includes any amendment or re-enactment of it or any legislation passed in substitution for it.

Government Members means Members that are the Commonwealth of Australia, New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory.

Guidelines means the guidelines (if any) issued by the Directors to the Selection Committee in relation to the selection process.

Member means a member of the Company in accordance with clauses 9 to 14.

Minimum Subscription means the minimum Annual Subscription determined by the Directors from time to time.

Objects means the objects of the Company set out in clause 3.

Other Payment has the meaning given in clause 15.12.

PI Full Sub Members means those Plant Industry Members which are required to pay the full Annual Subscription, as determined in accordance with clause 15.4(c).

PI Minimum Sub Members means those Plant Industry Members which are required to pay the Minimum Subscription, as determined in accordance with clause 15.4(b).

PISP means a Plant Industry Member's individual proportional share of local value of production of all Crops in Australia for which growers are represented by all Plant Industry Members calculated as follows:

$$\frac{\text{LVP (Plant Industry Member)}}{\text{LVP (All Plant Industry Members)}}$$

where:

LVP (Plant Industry Member) means the average of the local value of production for the prior 3 years for which statistics have been published by the Approved Statistical Authority for a Crop or Crops (including forestry production for logs) for which the Plant Industry Member is a representative body of growers as at the respective 1 July; and

LVP (All Plant Industry Members) means the average of the local value of production for the prior 3 years for which statistics have been published by the Approved Statistical Authority for all Crops (including forestry production for logs) for which growers are represented by all Plant Industry Members as at the respective 1 July,

provided that:

- (a) if there is more than 1 Plant Industry Member representing growers of a particular Crop then the local value of production for that Crop will be apportioned between those Members for the purposes of the above calculation by the Directors in their discretion; and
- (b) for the purposes of this definition of PISP, a Plant Industry Member is deemed to represent the growers of a Crop or Crops if the Register of Members specifies that the Plant Industry Member is a representative body for that crop.

PITAS means the proposed total Annual Subscriptions payable by all Plant Industry Members determined by the Members in accordance with clause 15.2. The PITAS will equal the sum of:

- (a) the Minimum Subscriptions payable by the PI Minimum Sub Members; and
- (b) the Annual Subscriptions payable by the PI Full Sub Members.

Plant Industry Members means Members that are national representative bodies of growers of a Crop or Crops as determined by the Directors.

Register of Members means the register of Members of the Company.

Replacement Body means a new legal entity which is:

- (a) created as a result of a restructure of, or to otherwise replace, an existing Plant Industry Member; and
- (b) qualified to represent growers of the same Crop or Crops that the existing Plant Industry Member is currently qualified to represent.

Representative means a person appointed as a Member's representative in accordance with clause 84.

Resolution Institute means the Resolution Institute (ACN 008 651 232).

Secretary means the secretary appointed pursuant to clause 55 to perform the duties of secretary of the Company.

Selection Committee means the committee appointed in accordance with clause 25.

Specified Period means:

- (a) in respect of a Directors' Notice or Member's Notice that relates to an application for Membership for a Replacement Body, 14 days; and
- (b) in respect of a Directors' Notice or Member's Notice that relates to any other application for Membership, 28 days.

State/Territory Members means those Members that are New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Australian Capital Territory and Northern Territory.

ST Full Sub Members means those State/Territory Members which are required to pay the full Annual Subscription, as determined in accordance with clause 15.3(c).

ST Minimum Sub Members means those State/Territory Members which are required to pay the Minimum Subscription, as determined in accordance with clause 15.3(b).

STSP means a State/Territory Member's individual proportional share of local value of production of all Crops in Australia calculated as follows:

LVP (State/Territory Member)

LVP (All State/Territory Members)

LVP (State/Territory Member)

LVP (All State/Territory Members)

where:

LVP (State/Territory Member) means the average of the local value of production for the prior 3 years for which statistics have been published by the Approved Statistical Authority for all Crops (including forestry production for logs) produced in the State or Territory of that State/Territory Member as at the respective 1 July; and

LVP (All State/Territory Members) means the average of the local value of production for the prior 3 years for which statistics have been published by the Approved Statistical Authority for all Crops (including forestry production for logs) produced in the States and Territories that have representation by a State/Territory Member as at the respective 1 July.

STTAS means the proposed total Annual Subscriptions payable by all State/Territory Members determined by the Members in accordance with clause 15.2. The STTAS will equal the sum of:

- (a) the Minimum Subscriptions payable by the ST Minimum Sub Members; and
- (b) the Annual Subscriptions payable by the ST Full Sub Members.

Tax Act means the *Income Tax Assessment Act 1997* and includes any amendment or re-enactment of it or any legislation passed in substitution for it.

Transfer Date means the date of the first day on which a Replacement Body satisfies each of the following:

- (a) it exists as a legal entity;
- (b) it has been accepted for Membership; and
- (c) it has become qualified to represent the growers of the Crop or Crops previously represented by the Member that submitted the application for Membership for the Replacement Body.

2.2 Interpretation

In this Constitution:

- (a) reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular; and
 - (iii) a person includes a body corporate or government;
- (b) except so far as the contrary intention appears in this Constitution:
 - (i) an expression has in this Constitution the same meaning as in the Act; and
 - (ii) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act;
- (c) 'including' and similar expressions are not words of limitation; and
- (d) headings are for convenience only and do not form part of this Constitution but may be used in its interpretation.

3. Objects

The Objects for which the Company is established are to: advance education, the security or safety of Australia or the Australian public, and the natural environment by, among other matters:

- (a) coordinating a cooperative whole of industry and whole of government approach to the development and implementation of plant health policies and management programs including incursion management;
- (b) providing strategic leadership in the development and implementation of national plant health policies and management programs;
- (c) maintaining and improving international and domestic confidence in Australia's plant health status;
- (d) contributing to the sustainability of Australia's plant industries and native flora;
- (e) developing effective consultative, transparent and auditable systems for the management of the Company; and
- (f) commissioning, co-ordinating, facilitating and managing national plant health projects.

4. Powers

Solely to carry out the Objects, the Company has all the powers of an individual and a body corporate but does not have the power to issue shares.

5. Application of income and property

The income and property of the Company, from wherever it is derived, must be applied solely towards the promotion of the Objects.

6. No distribution to Members

6.1 No payment to Members

No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise, to the Members in their capacity as Members.

6.2 Acts not prevented

Clause 6.1 does not prevent:

- (a) the making of a payment to a Member in carrying out the Objects;
- (b) the payment in good faith of remuneration to any officer, servant or Member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
- (c) the payment of interest, at a rate per annum not exceeding the current Bond Rate, on money borrowed from any Member of the Company;

- (d) the payment of reasonable and proper rent by the Company to a Member of the Company for premises leased by the Member to the Company;
- (e) the reimbursement of expenses incurred by any Member on behalf of the Company;
- (f) the reimbursement of funds paid by the Commonwealth to the Company, pursuant to any cost sharing arrangements made between Members and the Company for the emergency eradication of exotic plant pest and disease incursions; or
- (g) the payment to the Commonwealth of any amount required to be repaid to the Commonwealth under section 4 or section 5 of the Funding Act.

7. Limited liability

The liability of the Members is limited to the guaranteed amount referred to in clause 8.

8. Guarantee

Every Member undertakes to contribute an amount not exceeding \$2 (two dollars) to the property of the Company in the event of its being wound up while the Member is a Member or within 1 year after the Member ceases to be a Member, if required for payment:

- (a) of the debts and liabilities of the Company (contracted before the Member ceases to be a Member);
- (b) of the costs, charges and expenses of winding up; and
- (c) for the adjustment of the rights of the contributories among themselves.

Membership

9. Number of Members

The number of Members for which the Company proposes to be registered is unlimited.

10. Membership

The Members of the Company are:

- (a) the existing Members; and
- (b) any other persons the Directors admit to Membership in accordance with this Constitution.

11. Categories of Membership

The categories of Membership are:

- (a) Government Members;
- (b) Plant Industry Members; and

- (c) Associate Members.

12. Form of application

12.1 Application

An application for Membership must:

- (a) be in writing in a form approved by the Directors;
- (b) be signed by the applicant;
- (c) nominate the category of Membership applied for; and
- (d) include an agreement to contribute the guaranteed amount in accordance with clause 8.

12.2 Application to be a Plant Industry Member

If an applicant applies to be a Plant Industry Member, the application must also:

- (a) specify the Crop or Crops for which the applicant purports to be the national representative of growers; and
- (b) be accompanied by any other documents or evidence:
 - (i) as to the applicant's qualification for the category of Membership applied for;
 - (ii) that supports the applicant's qualification to represent the growers of the Crop or Crops specified; and
 - (iii) that the Directors may reasonably require.

12.3 Representative to be nominated

The application form must also:

- (a) state the name and contact details of at least 1 person (or, if appointment is to be by reference to a position held, the position contact details for that position) the applicant nominates as its Representative; and
- (b) be signed by such nominated Representative(s) (or, if appointment is by reference to a position held, the person currently holding that position).

12.4 Application Fee to accompany form

An application form must be accompanied by the Application Fee.

12.5 Amount of Application Fee

The Application Fee payable by an applicant for Membership is the sum (if any) the Directors determine from time to time for each category of Membership.

12.6 Replacement Body

A Plant Industry Member may submit an application for Membership for a Replacement Body if:

- (a) the Plant Industry Member is proposing to restructure or has restructured or is going to be replaced or has been replaced by another entity as the representative body for the Crop or Crops which the Plant Industry Member currently represents;
- (b) the restructure or replacement will result in or has resulted in the creation of a Replacement Body; and
- (c) the Replacement Body will be qualified on creation or is qualified to represent growers of the same Crop or Crops that the Plant Industry Member is currently qualified to represent.

For the avoidance of doubt, a Plant Industry Member must not submit an application for Membership for a Replacement Body in respect of a new entity that will represent or represents only a subset of the Crops for which the Plant Industry Member is recorded in the Register of Members as the representative body.

12.7 Application for Membership for a Replacement Body

An application for Membership for a Replacement Body must:

- (a) be in writing in a form approved by the Directors;
- (b) specify the name of the applicant and the name and contact details of the Replacement Body;
- (c) specify the Crop or Crops the growers of which the applicant currently represents (and which the applicant claims that the Replacement Body will be qualified on creation or is qualified to represent);
- (d) be accompanied by evidence that supports that the Replacement Body will be qualified on creation or is qualified to represent the growers of the Crop or Crops specified;
- (e) nominate a Representative of the Replacement body in accordance with clause 12.3; and
- (f) subject to clause 12.8, be accompanied by the Application fee.

12.8 Application Fees in respect of a Replacement Body

The Directors may, at their discretion, elect to waive the Application Fee for an application for Membership for a Replacement Body.

13. Admission to Membership

13.1 Notice to Members

The Directors must give written notice to all Members (Directors' Notice) of each application submitted in accordance with clause 12 in respect of a person who is qualified for Membership

or, in the case of a Replacement Body, who will be qualified for Membership on creation (by reason of being capable of satisfying the respective Member category definition specified in clause 2.1) within 14 days after receipt of the application. The rules in clause 74 for deeming service of notices of general meetings shall apply to service of Directors' Notices.

13.2 Directors to determine

Unless within the Specified Period after the date of service of the Directors' Notice a Member provides written notice to the Directors that it wishes the application to be considered at a general meeting (Member's Notice), then at the next Directors' meeting or by circular resolution, following the expiry of the Specified Period, the Directors must determine the admission or rejection of the application.

13.3 Members to determine

If a Member's Notice is received by the Directors within the Specified Period after the date of service of the Directors' Notice, then the Members must determine the admission or rejection of the application at the next general meeting.

13.4 Determinations made in absolute discretion

Determinations under clauses 13.2 and 13.3 may be made in the absolute discretion of the Directors or the Members as the case may be and no reason need be given for the acceptance or rejection of any application for Membership.

13.5 Rejection

If an application for Membership is rejected:

- (a) the Secretary must notify the applicant in writing; and
- (b) the Application Fee shall not be refunded to the applicant.

13.6 Acceptance

If an applicant or Replacement Body is accepted for Membership, the Secretary must:

- (a) notify the applicant or the Replacement Body, as applicable, in writing;
- (b) subject to clause 13.7, request payment of the Annual Subscription;
- (c) subject to clause 15.8, specify a date by which the Annual Subscription must be paid; and
- (d) update the Register of Members.

If a Replacement Body is accepted for Membership, the following changes occur on the Transfer Date:

- (e) the Replacement Body becomes the representative of the growers of the Crop or Crops previously represented by the Member that submitted the application for Membership for the Replacement Body; and

- (f) the Member that submitted the application for Membership for the Replacement Body ceases to be a Member.

13.7 Annual Subscription

The Annual Subscription payable by any new Member admitted to Membership to commence on a date other than 1 July, or by a Replacement Body, will be an amount (if any) determined by the Directors in their absolute discretion and such Annual Subscription will apply for the period from commencement of Membership until the following 1 July.

13.8 Failure to pay Annual Subscription

If payment of the Annual Subscription is not received within the time specified in the notice referred to in clause 13.6(c), the Directors may at their discretion revoke the acceptance of the applicant for Membership.

14. Register of Members

14.1 Register to be kept

A Register of Members must be kept in accordance with the Act.

14.2 Details to be entered

- (a) The following must be entered in the Register of Members in respect of each current Member:
 - (i) the full name of the Member;
 - (ii) the office address, postal address, telephone number and electronic mail address, if any, of the Member;
 - (iii) the category of Membership;
 - (iv) the date of admission to and cessation of Membership;
 - (v) the date of last payment of the Member's Annual Subscription;
 - (vi) the full name, office address, postal address and electronic mail address of its Representative;
 - (vii) in respect of Plant Industry Members, the Crop or Crops for which the Plant Industry Members is a representative body of growers; and
 - (viii) such other information as the Directors require.
- (b) The following must be entered in the Register of Members in respect of each Member who ceased to be a Member in the past 7 years:
 - (i) their full name;
 - (ii) the date of admission to and cessation of Membership; and

- (iii) such other information as the Directors require.
- (c) Former member entries may be kept separately from current member entries.

14.3 Change to name or contact details

Each Member must notify the Secretary in writing of any change in that person's name, office address, postal address, telephone number or electronic mail address within 1 month after the change.

14.4 Change to Crop representation

A Plant Industry Member may apply to change a Crop or Crops for which the Plant Industry Member is recorded in the Register of Members as a representative body of growers as follows:

- (a) the Plant Industry Member must provide to the Secretary a written application to change the Crop or Crops, including documents or other evidence supporting that the Plant Industry Member is:
 - (i) in the case of an application to add a Crop, qualified to represent the growers of that Crop; or
 - (ii) in the case of an application to remove a Crop, no longer qualified to represent the growers of that Crop;
- (b) at the next Director's meeting following receipt of the application by the Secretary (or the following meeting if received within 14 days prior to the next meeting), the Directors must determine their acceptance or rejection of the application;
- (c) the Secretary must give written notice to the Plant Industry Member of the determination by the Directors within 14 days of the determination;
- (d) if the application is accepted by the Directors, the date of effect of the change to the Crop or Crops is, and the corresponding change to the Register of Members must be made prior to and with effect on:
 - (i) the date 6 months after the date of the application; or
 - (ii) any later date specified in the application,

provided that, for the avoidance of doubt, no adjustment will be made to the Annual Subscription paid or payable by the Plant Industry Member, in relation to the year in which the date of effect occurred unless the date of effect is 1 July.

14.5 Error on Register

A Member may at any time notify the Secretary of a suspected recording error in the Register of Members, including as to the Crop or Crops for which a Plant Industry Member is a representative body, and the Secretary must act immediately to amend any manifest error.

14.6 Access to the Register

- (a) The Company must give members access to the Register of Members in accordance with the Act.
- (b) Information that is accessed from the Register of Members must only be used in accordance with the Act.

Annual Subscription and Other Payments

15. Annual Subscription and Other Payments

15.1 Annual Subscription and Other Payments

Subject to clause 13.7, the Annual Subscription and any Other Payments payable by a Member are as specified in this clause 15.

15.2 Members to determine amounts

The following amounts, calculated as at each 1 July, must be determined by the Members in general meeting, provided that each of the following amounts must be equal:

- (a) the Annual Subscription payable by the Commonwealth;
- (b) STTAS (being the total of the Annual Subscriptions payable by State/Territory Members); and
- (c) PITAS (being the total of the Annual Subscriptions payable by Plant Industry Members).

15.3 State/Territory Member Annual Subscriptions

Each State/Territory Member, as at each 1 July, must pay as its Annual Subscription an amount determined by the Company prior to each 1 July in accordance with the following procedure:

- (a) The Company must determine the STSP of each State/Territory Member by use of the formula set out in the definition of STSP.
- (b) If the Company determines in accordance with clause 15.3(a) that the STSP of any of the State/Territory Members would be less than the Minimum Subscription (each an **ST Minimum Sub Member**), those ST Minimum Sub Members must pay the amount of the Minimum Subscription as their Annual Subscription.
- (c) The Company must then determine the STSP for each State/Territory Member which is not a Minimum Sub Member (each an **ST Full Sub Member**) by use of the formula set out in the definition of STSP but excluding the LVP of all of the ST Minimum Sub Members from the calculation of the denominator (ie from the calculation of "LVP (All State/Territory Members)").
- (d) The Company must then determine the Annual Subscription for each of the ST Full Sub Members in accordance with the following formula:

$$AS = [STTAS - \Sigma STMS] \times STSP$$

where:

- AS = the applicable Annual Subscription for that State/Territory Member
- STTAS = the amount determined in accordance with clause 15.2
- Σ STMS = the sum of the Minimum Subscriptions payable by the ST Minimum Sub Members
- STSP = the amount determined in accordance with clause 15.3(c) for that State/Territory Member

15.4 Plant Industry Member Annual Subscriptions

Each Plant Industry Member, as at each 1 July, must pay as its Annual Subscription an amount: that is determined by the Company, prior to each 1 July, in accordance with the following procedure:

- (a) The Company must determine the PISP of each Plant Industry Member by use of the formula set out in the definition of PISP.
- (b) If the Company determines in accordance with clause 15.4(a) that the PISP of any of the Plant Industry Members would be less than the Minimum Subscription (each a **PI Minimum Sub Member**), those PI Minimum Sub Members must pay the amount of the Minimum Subscription as their Annual Subscription.
- (c) The Company must then determine the PISP for each Plant Industry Member which is not a PI Minimum Sub Member (each a **PI Full Sub Member**) by use of the formula set out in the definition of PISP but excluding the LVP of all of the PI Minimum Sub Members from the calculation of the denominator (i.e. from the calculation of "LVP (All Plant Industry Members)").
- (d) The Company must then determine the Annual Subscription for each of the PI Full Sub Members in accordance with the following formula:

$$AS = [PITAS - \Sigma PIMS] \times PISP$$

where:

- AS = the applicable Annual Subscription for that Plant Industry Member
- PITAS = the amount determined in accordance with clause 15.2
- Σ PIMS = the sum of the Minimum Subscriptions payable by all of the PI Minimum Sub Members
- PISP = the amount determined in accordance with clause 15.4(c) for that Plant Industry Member.

15.5 Associate Members

The Annual Subscription of an Associate Member shall be determined by the Directors from time to time.

15.6 Minimum Subscription

The minimum amount of Annual Subscription that may be payable by State/Territory and Plant Industry Members is the Minimum Subscription.

15.7 Payment period

Subject to clause 13.7, clause 15.8 and clause 15.10, all Annual Subscriptions shall be for the annual period from 1 July to 30 June and are due and payable no later than 30 days from the date of an invoice for them from the Company.

15.8 Instalments

The Chief Executive Officer may determine that an Annual Subscription of any Member may be paid in several instalments, specify the amount for each payment and the times in which each payment of the Annual Subscription must be made.

15.9 Plant Industry Members – Payments under Funding Act

The liability of a Plant Industry Member to pay its Annual Subscription or any Other Payment is discharged to the extent that the Commonwealth has paid amounts to the Company pursuant to section 4(2) or section 5(2) of the Funding Act with respect to the Plant Industry Member for the year. The Plant Industry Member remains liable for any shortfall.

15.10 Plant Industry Members – Levy

If the Commonwealth has notified the Company that a levy has been imposed by the Commonwealth pursuant to which it will be making the payments referred to in clause 15.9 with respect to a Plant Industry Member, the Annual Subscription or any Other Payment for that Plant Industry Member may be paid by instalments throughout the respective year. At the end of the year, the Company shall issue an invoice to the Plant Industry Member for any shortfall, which will be payable within 30 days.

15.11 GST

The Annual Subscription or any Other Payment payable by each Member will be increased to the extent of any applicable goods and services tax. Such goods and services tax is payable at the same time as the balance of the Annual Subscription or Other Payment.

15.12 Other Payments

- (a) In addition to Annual Subscriptions, a Plant Industry Member may be required to pay other amounts to the Company for projects relating to improving biosecurity for the industry (or industries) and the commodity (or commodities) it represents (**Other Payments**).
- (b) The amount of any Other Payments and how they are to be applied by the Company will be determined by agreement between the Company and the relevant Plant Industry

Member(s) prior to each 1 July according to a process to be determined by the Company.

16. Unpaid Annual Subscriptions

If:

- (a) the Annual Subscription of a Member remains unpaid for 2 months after it becomes payable;
- (b) the Directors resolve to give notice under this clause 16; and
- (c) such notice is given to the Member,

the Member:

- (d) ceases to be entitled to any of the rights or privileges of Membership, provided that these will be reinstated on payment of all arrears, including interest in accordance with paragraph (e); and
- (e) must pay to the Company simple interest on any unpaid amount at the current Default Rate calculated daily from the next day after the due date up to and including the date the amount is paid.

Resignation and cessation of Membership

17. Failure to pay

If a Member who has been given a notice under clause 16 has not paid all arrears of the Annual Subscription:

- (a) the Member remains liable for all the obligations and liabilities of Membership until the expiration of 6 months after the date of notification under clause 16; and
- (b) at the expiration of the 6-month period the Member ceases to be a Member and the Member's name must be removed from the Register of Members.

18. Resignation

18.1 Notice

A Member may resign from Membership of the Company by giving 6 months' written notice to the Secretary.

18.2 Effective Date

The resignation of a Member takes effect on the date stated in the notice or, if no date is stated or the date stated is within 6 months of the date the notice is given, on the date 6 months after the date notice is given.

19. Cessation of Membership

A Member ceases to be a Member if:

- (a) the Member is expelled in accordance with clause 21;
- (b) the Member is wound up or is otherwise dissolved or deregistered;
- (c) the Member is insolvent, or has a liquidator or provisional liquidator appointed to it;
- (d) the Member ceases to be a Member under clause 13.6(f) or 17; or
- (e) the Directors determine that the Member no longer meets the definition specified in clause 2.1 for the Member's category of Membership, provided that the Directors have given the Member at least 14 days' prior notice of the proposed resolution and have allowed the Member to provide a written submission on the issue.

20. Effect of cessation of Membership

If any Member ceases to be a Member:

- (a) the Member remains liable to pay to the Company any money which, at the time of the Member ceasing to be a Member, the Member owes to the Company on any account; and
- (b) no part year adjustment will be made to Annual Subscriptions payable and no refund is payable in relation to Annual Subscriptions paid although, if a Replacement Body has taken the place of the Member, the Replacement Body may be given a credit in respect of any amounts of Annual Subscriptions paid by the Member.

Member Discipline

21. Member discipline

- (a) The Board may take disciplinary action against a Member in accordance with this clause 21 if it considers there are sufficient grounds to do so.
- (b) The grounds upon which the Board may take disciplinary action against a Member include, without limitation:
 - (i) non-compliance with this Constitution;
 - (ii) breach of the Member Code of Conduct (if any); and
 - (iii) engagement in conduct prejudicial to the Company.
- (c) The Board may not resolve to suspend or expel a member outside of a Board meeting.
- (d) If the Board intends to consider a resolution to suspend or expel a Member, it must notify the Member in writing at least 7 days prior to the relevant Board meeting:
 - (i) of the date, place and time of the meeting where the resolution will be considered;
 - (ii) of the intended resolution and the grounds on which it is based; and

- (iii) that they may attend the meeting and give an oral or written explanation or submission before the resolution is voted on.
- (e) After considering any oral or written explanation or submission, the Board may, in its sole discretion, resolve to:
 - (i) take no further action;
 - (ii) warn the Member;
 - (iii) suspend the Member's rights for up to 12 months;
 - (iv) expel the Member;
 - (v) require the matter to be determined at a general meeting; or
 - (vi) refer the decision to an unbiased, independent person on conditions that the Board considers appropriate (in which case, the person can only make a decision that the Board could have made under clause 21(e)(i)-(v).
- (f) A decision made by the Board (or by an independent person pursuant to 21(e)(vi)) is final.

Appointment of Directors

22. Number of Directors

The number of Directors must be not less than 5 and no more than 9 persons, including the Chairperson.

23. Appointment and term of Directors

23.1 Appointed at annual general meeting

Subject to clause 29.1, the Directors are appointed by the Company, subject to section 201 E of the Act, from nominees nominated by the Selection Committee, at each annual general meeting of the Company at which positions become vacant.

23.2 Appointment process

If the number of nominees selected by the Selection Committee in accordance with clause 25 is

- (a) less than or equal to the number of vacant Director positions - the nominees will be appointed if a simple majority of votes cast by Members present at the relevant annual general meeting are in favour of each appointment; or
- (b) is greater than the number of vacant Director positions – a ballot must be held for each position in such usual and proper manner as the Board may direct.

23.3 Term

Subject to clause 29.2, the term of appointment of Directors shall be for the period until the fourth annual general meeting after the annual general meeting of his or her appointment.

23.4 Eligible for reappointment

- (a) Subject to clause 23.4(b), Directors are eligible for re-appointment at the expiry of each term of appointment.
- (b) An individual who has served continuously as a Director for 12 years or more is not eligible for reappointment unless:
 - (i) at least 75% of the remaining Directors pass a resolution permitting the individual to seek reappointment; or
 - (ii) a period of twelve months has expired since the individual last held office as a Director.

23.5 Rotation

At every second annual general meeting one-half of the Directors must retire, provided that, if their number is not a multiple of two, then the schedule of retirements must be determined so that the maximum term of appointment in clause 23 is not exceeded.

23.6 Rules for rotation

For the purposes of clause 23.5:

- (a) the Directors to retire are those Directors who have terms of appointment due to expire at the annual general meeting and, if any further retirements are required, those who have been longest in office since their last election;
- (b) Directors elected on the same day must agree among themselves or determine by lot which of them must retire; and
- (c) a Director appointed under clause 29.1 will be regarded as having been in office since the election of the Director he or she replaced.

24. Nomination for appointment

The nomination of persons to be appointed Directors, other than to fill a casual vacancy, shall be the responsibility of the Selection Committee.

25. Selection Committee

25.1 Directors to appoint

The Directors shall, as and when required for the purposes of this Constitution, appoint a Selection Committee in accordance with clause 25.3.

25.2 Term

The term of appointment of the Selection Committee shall commence on the date of appointment and continue until the conclusion of the meeting of the Company at which the vacant positions have all been filled.

25.3 Composition

Subject to clauses 25.4 and 25.5, the Selection Committee must comprise 5 people being:

- (a) the Chairperson, who will chair the Selection Committee;
- (b) two persons approved in writing by at least 75% of all Plant Industry Members, to represent the Plant Industry Members; and
- (c) two persons approved in writing by all Government Members, to represent the Government Members.

25.4 Vote for representatives

If, for the purposes of clause 25.3(b) or clause 25.3(c), the Directors are unable to obtain the approval of 75% of Plant Industry Members or all Government Members as the case may be, then the Directors must convene a meeting of Members of the respective category (to be held by telephone or otherwise) to conduct a vote to determine the 2 persons to represent that category on the Selection Committee. The determination will be made by ordinary majority vote at the meeting. The quorum for such meeting is 5 Members from the respective category and each Member of the category may cast the same number of votes as it would be entitled to cast on a poll at a general meeting in accordance with clause 91 or 92 respectively.

25.5 Ineligibility for Selection Committees

Any Director whose term of appointment as Director is to expire at the general meeting at which the nominations of the Selection Committee are to be considered must not be a member of the Selection Committee or vote on the composition of the Selection Committee. In the event that the Chairperson's term of appointment as Director is to expire, the Deputy Chairperson is to chair the Selection Committee. If both the Chairperson's and Deputy Chairperson's terms of appointment as Director are to expire then, those Directors whose terms are not to expire are to select another suitably qualified person, including one of their number, to chair the Selection Committee.

25.6 Guidelines

The Selection Committee must act in accordance with any Guidelines.

25.7 Attributes

The Selection Committee must, in exercising its functions, nominate to the Members persons that:

- (a) are not:
 - (i) ineligible to be a Director under the Act; or

- (ii) disqualified by the Commissioner of the ACNC from being a responsible person of a Charity;
- (b) have demonstrated the capacity to meet the duties of Responsible Persons under ACNC Governance Standard 5; and
- (c) will result in the board of Directors having a combination of expertise and experience in all of the following areas:
 - (i) plant industry production, industry operations and marketing;
 - (ii) plant health policy and government policy processes, plant health management and international trends in plant health practices;
 - (iii) strategic planning, business and financial management and economics; and
 - (iv) corporate leadership.

25.8 Nominations may exceed positions

The Selection Committee may, subject to any Guidelines, nominate more persons than the number of positions to be filled.

25.9 Remaining vacancies

If not all vacant positions are filled following the general meeting, the Selection Committee shall nominate other persons as Directors, for consideration by Members at a further general meeting or meetings.

25.10 Nomination of Selection Committee member prohibited

The Selection Committee must not nominate one of their number as Director.

26. Appointment and term of Chairperson

26.1 Appointment of Chairperson

The Directors shall appoint one of their number as Chairperson.

26.2 Term

The term of appointment of a Director as Chairperson shall be:

- (a) until the commencement of the next Directors' Meeting following the expiration of 2 years from appointment (at which meeting the Directors must appoint one of their number as Chairperson); or
- (b) a period equal to the remainder of the person's term of appointment as Director,

whichever is the shorter. If the Chairperson vacates his or her office as Director, he or she vacates office as Chairperson at the same time.

26.3 Eligible for re-appointment

A Chairperson is eligible for re-appointment at the expiry of each term of appointment as Chairperson.

27. Appointment and term of Deputy Chairperson

The Directors may appoint one of their number as Deputy Chairperson for such term as the Directors determine and may vary the term of that appointment.

28. Removal from office of Chairperson or Deputy Chairperson

The Board may remove or suspend a person from holding the Chairperson or Deputy Chairperson position (but not from the office of Director) by resolution passed at a Board meeting provided:

- (a) the resolution is passed by not less than two-thirds of the Directors present; and
- (b) at least 21 days' notice in writing of the resolution has been given to the Secretary and to the person who is the subject of the resolution.

29. Casual vacancies and additional Directors

29.1 Directors to appoint

- (a) The Directors may, on consultation with such Members as the Directors consider appropriate, appoint any person:
 - (i) qualified to be a Director with a demonstrated capacity to meet the duties of Responsible Persons under ACNC Governance Standard 5; and
 - (ii) that is not:
 - (A) ineligible to be a Director under the Act; or
 - (B) disqualified by the Commissioner of the ACNC from being a responsible person of a Charity,to fill a casual vacancy.
- (b) In appointing a person to fill a casual vacancy the continuing Directors must select a person that enables the board of Directors to have the combination of expertise and experience set out in clause 25.7.

29.2 Term

Any Director appointed under clause 29.1 holds office for the remainder of the term of the Director replaced.

30. Insufficient Directors

In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act, but if the number of remaining Directors is not sufficient to

constitute a quorum at a meeting of Directors, they may act only pursuant to clause 25 and for the purpose of convening a general meeting of the Company.

Powers and obligations of Directors

31. Validation of acts of Directors and Secretaries

31.1 Defects

The acts of a Director or Secretary are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.

31.2 Vacation of office

If a person whose office as Director is vacated purports to do an act as a Director, that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

32. General business management

32.1 Role of Directors

Subject to clause 32.5, the Directors are responsible for governing the business of the Company and furthering the Objects.

32.2 Directors to execute powers of company

The Directors may exercise all the powers of the Company except any powers that the Act or this Constitution requires the Company to exercise in a general meeting.

32.3 Duties of Directors

Directors must comply with their duties, including those duties imposed on them by the Act and governance standard 5 of the ACNC Legislation.

32.4 No invalidation of prior act

No rule made or resolution passed by the Company in a general meeting can invalidate any prior act of the Directors which would have been valid if that rule or resolution had not been made or passed.

32.5 Consultation with Members

In performing their duties the Directors must, to the extent that is reasonable and appropriate to do so, consult with relevant Members. This clause 32.5 is subject to any obligation of the Directors under the Act.

33. Strategic plan

33.1 Directors to prepare plan

The Directors must prepare a strategic plan for the Company in consultation with the Members. The strategic plan is to be made available to all Members.

33.2 Updates

The strategic plan is to be updated as and when required by the Directors.

33.3 Keep Members informed

The Directors must keep the Members informed about:

- (a) significant changes to the strategic plan; and
- (b) matters that arise that might significantly affect the achievement of objectives in the strategic plan.

34. Annual operational plan

The Directors must prepare an annual operational plan for the Company each year in consultation with the Members. The annual operational plan is to be made available to all Members.

35. Reports

- (a) The Directors must report to Members as to the following significant matters:
 - (i) the formation by the Company of a subsidiary company; and
 - (ii) participation by the Company in a significant:
 - (A) partnership;
 - (B) trust; or
 - (C) unincorporated joint venture or other major commercial transaction that may affect the financial risk of the Company.
- (b) The Directors must ensure that:
 - (i) the Company prepares and submits its annual information statement to the ACNC as required by the ACNC Legislation; and
 - (ii) if required by the ACNC Legislation, the Company prepares and submits financial reports in accordance with all legal and regulatory requirements.

36. Borrowing powers

Without limiting the generality of clause 32, the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

37. Delegations

37.1 Delegations

The Board may delegate any of its powers to one or more Directors, the Chief Executive Officer, a committee, an employee or any other person for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the Directors), for the period and subject to the conditions it sees fit.

37.2 Delegate provisions

A delegate may contain those provisions for the protection and convenience of persons dealing with the delegate that the Directors see fit and may also authorise the delegate to further delegate all or any of the powers and discretions vested in the delegate.

38. Committees

38.1 Delegation to committee

The Directors may establish and delegate any of their powers to a committee, which may include or be comprised of non-Directors.

38.2 Exercise of Powers

A committee must exercise the powers delegated to it in accordance with any directions of the Directors. The effect of the committee exercising a power in this way is the same as if the Directors exercised it.

38.3 Meetings of committees

The meetings and proceedings of any committee consisting of 2 or more Directors are governed by the provisions in this Constitution regulating the meetings and proceedings of the Directors.

39. By-laws

- (a) The Board may make regulations, policies or by-laws not inconsistent with this Constitution for the general conduct and management of the Company and the business of the Board.
- (b) The Board may revoke and alter regulations, policies or by-laws as it sees fit.

Removal and resignation of Directors

40. Removal of Directors

Subject to the Act, the Company may by resolution remove a Director from holding office as a Director.

41. Resignation of Director

A Director may resign as a Director by giving a written notice of resignation to the Company at its registered office.

42. Vacation of office of Director

In addition to any other circumstances in which the office of a Director becomes vacant under the Act, the office of a Director becomes vacant if the Director:

- (a) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) is absent from 3 consecutive meetings of Directors without special leave of absence from the Directors;
- (d) becomes prohibited from being a Director under or by reason of any order made under the Act or the ACNC Legislation;
- (e) is removed by resolution in accordance with clause 40; or
- (f) resigns from office in accordance with clause 41.

Directors' interests

43. Disclosure of interests

A Director must disclose the nature and extent of any perceived or actual material conflict of interest to the other Director (or the Members if the other Director share that conflict).

44. Prohibition on being present or voting

A Director who has a material personal interest in a matter that is being considered by the Board:

- (a) must not be present while the matter is being considered at a Board meeting; or
- (b) vote on the matter;

unless permitted by clause 43.

45. Circumstances where a Director may be present or vote

Provided the Board approves and it is permitted by law, a Director may be present or vote if:

- (a) the interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as an officer of the Company;
- (b) the interest relates to any payment by the Company under clause 56 in respect of an indemnity permitted under the Act or any contract relating to such an indemnity;
- (c) the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter;

- (d) the interest relates to a contract the Company is proposing to enter into that:
 - (i) is subject to approval by the Members; and
 - (ii) will not impose any obligation on the Company if it is not approved by the Members; or
- (e) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company, and
 - (ii) states that those Directors are satisfied that the interest should not stop the Director from voting or being present.

46. Permissible conduct

Provided a Director complies with clauses 43-45, the Director may:

- (a) hold any other position in the Company, except that of auditor;
- (b) hold any office or place of profit in any other entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;
- (d) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (e) sign or participate in the execution of a document by or on behalf of the Company; and
- (f) do any of the above despite the fiduciary relationship of the Director's office:
 - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
 - (ii) without affecting the validity of any contract or arrangement.

47. Other directorships and shareholdings

47.1 Other directorships and shareholdings

A Director may be or become a Director, officer, employee or member of any company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and, subject to clause 50, is not accountable for any reasonable benefits received as a director, officer, employee or member of the other company.

47.2 Permitted acts

Subject to the Act:

- (a) the Directors may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any of them as directors or other officers of the other company;
- (b) any Director may vote at a meeting of Directors in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that Director as a director or other officer of the other company;
- (c) any Director may be appointed to represent the Company and may vote at a general meeting of the other company in favour of a resolution appointing that Director as a director or other officer of the other company; and
- (d) a Director who is also a director of the other company may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the Director to any other office in the other company and a resolution appointing any other Directors as directors or other officers of the other company.

Remuneration of Directors

48. Directors' remuneration

- (a) The remuneration of the Directors, including the Chairperson must be determined by the Directors and approved by the Company in general meeting.
- (b) Remuneration must be reasonable and consistent with the duties and obligations of Responsible Persons under ACNC Governance Standard 5.

49. Directors' expenses

The Company may pay the Directors' travel and other expenses that they properly incur:

- (a) in attending Directors' meetings or any meetings of committees of Directors;
- (b) in attending any general meetings of the Company; and
- (c) in connection with the Company's business and pursuit of the Objects.

50. Financial benefit

Any financial benefit conferred on a Director or related party must comply with the Act, the ACNC Legislation and Governance Standard 5, including proper authorisation and disclosure.

Chief Executive Officer

51. Power to appoint

The Directors shall appoint a person to the position of Chief Executive Officer for the period and on the terms (including as to remuneration) the Directors see fit.

52. Powers

52.1 Conferral of powers

The Directors may, upon terms and conditions and with any restrictions they see fit, confer on a Chief Executive Officer any of the powers that the Directors can exercise.

52.2 Powers may be concurrent or exclusive

Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the Directors.

53. Withdrawal of appointment or powers

The Directors may revoke or vary:

- (a) an appointment of; or
- (b) any of the powers conferred on,
a Chief Executive Officer.

54. Temporary appointments

If a Chief Executive Officer becomes incapable of acting in that capacity for any reason, the Directors may appoint any other suitably qualified person to act temporarily as Chief Executive Officer.

Secretary

55. Terms of office of Secretary

The Secretary shall be appointed by the Directors and shall hold office on the terms and conditions (including as to remuneration) that the Chief Executive Officer determines.

Indemnity and insurance

56. Indemnity

To the extent permitted by law and the Act, the Company indemnifies:

- (a) every person who is or has been an Officer of the Company; and
- (b) if the Directors consider it appropriate to do so, any person who is or has been an Officer of a related body corporate of the Company,

against any liability incurred by that person in his or her capacity as an Officer of the Company or of the related body corporate (as the case may be):

- (c) excluding liability arising from:
 - (i) wilful misconduct;
 - (ii) gross negligence; and

- (iii) breaches of their duties, including (without limitation, the duties set out in ACNC Governance Standard 5;
- (d) to any other person (other than the Company or a related body corporate) unless the liability arises out of conduct involving a lack of good faith; and
- (e) for costs and expenses:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; and
 - (ii) in connection with an application in relation to those proceedings, in which the Court grants relief to the person under the Act.

The amount of any indemnity payable under clauses 56(a) or 56(b) will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

57. Insurance

57.1 Permitted insurance

The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an Officer of the Company or a related body corporate of the Company against:

- (a) any liability other than a liability incurred by the person as an Officer of the Company or a related body corporate arising out of conduct involving a wilful breach of duty in relation to the Company, including (without limitation, the duties set out in ACNC Governance Standard 5); or
- (b) any costs and expenses incurred by the person in defending proceedings, whether civil or criminal, whatever their outcome.

57.2 Interpretation

In the case of a Director, any premium paid under this clause is not remuneration for the purpose of clause 48.

58. Director voting on contract of insurance

Despite anything in this Constitution, a Director is not precluded from voting in respect of any contract or proposed contract of insurance, merely because the contract insures or would insure the Director against a liability incurred by the Director as an Officer of the Company or of a related body corporate.

59. Meaning of Officer

For the purposes of clauses 56, 57 and 58, 'Officer' means a Director, Secretary or Chief Executive Officer.

Inspection of records

60. Rights of inspection

60.1 Authorisation

The Directors, or the Company by a resolution passed at a general meeting, may authorise a Member to inspect the books of the Company.

60.2 Limitation

A Member does not have the right to inspect any document of the Company other than the minute books for general meetings, except as provided by law or authorised by the Directors or by the Company in a general meeting.

61. Confidential information

Except as provided by the Act, no Member is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

Directors' meetings

62. Circulating resolutions

62.1 Method for circular resolution

- (a) A Board resolution may be passed without a meeting if all of the Directors entitled to vote on the motion vote in favour.
- (b) A Director may vote by sending an email or signed document to the Secretary that contains the text of the proposed resolution and states whether they are in favour of the motion.

62.2 Counterparts

Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

62.3 When passed

- (a) The resolution is passed only if and when a vote in favour is received from every Director entitled to vote on the motion.
- (b) The motion fails if it has not achieved unanimous consent within ten Business Days after the notice was given.

62.4 Recording resolutions

Circular resolutions must be recorded in the Out of Session register and presented at the next Board meeting.

63. Meetings of Directors

63.1 Meetings

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they see fit.

63.2 Minutes

The minutes of any meeting of the Directors must state the method of meeting and the persons present.

64. Calling Directors' meetings

A Director may at any time, and the Secretary must on the requisition of a Director, call a meeting of the Directors.

65. Notice of meeting

65.1 Notice

Reasonable notice of every Directors' meeting must be given to each Director except that it is not necessary to give notice of a meeting of Directors to any Director who:

- (a) has been given special leave of absence; or
- (b) is absent from Australia and has not left an electronic mail address at which he or she may be given notice.

65.2 Manner of notice

Any notice of a meeting of Directors may be given in writing or orally, and whether by telephone, electronic mail or any other means of communication.

66. Technology meeting of Directors

66.1 Technology meeting

A Directors' meeting may be held using any technology consented to by all the Directors (Technology Meeting). The consent may be a standing one. A Director may only withdraw the consent within a reasonable period before the meeting.

66.2 Deemed consent

If a Technology Meeting is held and all the Directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.

66.3 Ability to hear and be heard

Subject to clause 66.8, each of the Directors taking part in a Technology Meeting must be able to hear and be heard by each of the other Directors taking part in the meeting.

66.4 Announce presence

At the commencement of a Technology Meeting each Director must announce his or her presence to all the other Directors taking part in the meeting.

66.5 Minutes

If the Secretary is not present at a Technology Meeting, one of the Directors present must authorise an individual to take minutes of the meeting.

66.6 Notify chair before disconnection

A Director may not leave a Technology Meeting by purposely disconnecting his or her link to the meeting unless that Director has previously notified the chair of the meeting of his or her departure.

66.7 Presumed present

A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a Technology Meeting, except in the case of evident disconnection of that Director's link or if that Director has previously obtained the express consent of the chair to leave the meeting.

66.8 Technology failure

Subject to clause 68, a Technology Meeting may proceed notwithstanding technology failure causing any Directors to fail to establish their link to the meeting or to disconnect their link.

67. Chairing Directors' meetings**67.1 Chairperson is chair**

Subject to clause 67.2, the Chairperson is the chair of all meetings of the Directors.

67.2 Chairperson absent

At a meeting of Directors, if:

- (a) the position of Chairperson is vacant; or
- (b) the Chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the Deputy Chairperson shall chair the meeting. If the position of Deputy Chairperson is vacant or the Deputy Chairperson is not then present or is unwilling to act, the Directors present must elect a Director present to chair the meeting. If the Chairperson subsequently joins the meeting, he or she may take the chair.

68. Quorum

The quorum for a Directors' meeting is 5 Directors entitled to vote. The quorum must be present at all times during the meeting.

69. Passing of Directors' resolutions

69.1 Majority resolution

A resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.

69.2 Casting vote of chair

The chair of the meeting has a casting vote if necessary in addition to any vote he or she has as a Director. The chair has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.

Meetings of Members

70. Calling of general meeting

70.1 Directors may call

A majority of the Directors may call a general meeting whenever they see fit.

70.2 Annual general meeting

An annual general meeting must be held at least once in every calendar year in accordance with this Constitution including for the purposes of compliance with ACNC Governance Standard 2.

70.3 Call by Members

No Member or Members may call a general meeting.

71. Amount of notice of meeting

At least 21 days' notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Company.

72. Persons entitled to notice of general meeting

72.1 Persons to be given notice

Written notice of a general meeting must be given individually to:

- (a) each Member;
- (b) each Director; and
- (c) the Company's auditor.

72.2 No other person entitled

No other person is entitled to receive notice of general meetings.

73. How notice is given to a Member

The Company may give the notice of a general meeting to a Member:

- (a) by serving it on the person;
- (b) by sending it by post to the address for the Member in the Register of Members or the alternative address (if any) nominated by the Member; or
- (c) by sending it to the electronic address (if any) nominated by the Member.

74. When notice is given

74.1 Notice sent by post

A notice of general meeting sent by post is taken to be given 3 days after it is posted.

74.2 Notice sent by electronic means

A notice of general meeting sent by electronic means is taken to be given on the Business Day after it is sent.

75. Contents of notice

A notice of a general meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- (d) contain a statement setting out the following information:
 - (i) that the Member has a right to appoint a proxy;
 - (ii) that the proxy need not be a Member of the Company; and
 - (iii) that a Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

76. Notice of adjourned meeting

When a general meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

77. Accidental omission to give notice

The accidental omission to give notice of any general meeting to, or the non-receipt of the notice by, any person entitled to receive notice of a general meeting under this Constitution does not invalidate the proceedings at or any resolution passed at the meeting.

78. Postponement of general meeting

78.1 Postponement by Directors

The Directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by Members as provided by the Act) for not more than 42 days after the date for which it was originally called.

78.2 Notice of new meeting

Whenever any meeting is postponed (as distinct from being adjourned under clause 80.2 or clause 81.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

79. Technology

The Company may hold a general meeting at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

80. Quorum

80.1 Number

The quorum for a general meeting is 5 Government Members and 5 Plant Industry Members, such Members being present in person or by Representative, attorney or proxy, and the quorum must be present at all times during the meeting.

80.2 Quorum not present

If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:

- (a) if the meeting was called by the Members or upon the requisition of Members, the meeting is dissolved; or
- (b) in any other case, the meeting is adjourned to the date, time and place the Directors specify. If the Directors do not specify 1 or more of those things, the meeting is adjourned to:
 - (i) if the date is not specified – the same day in the next week;
 - (ii) if the time is not specified – the same time; and
 - (iii) if the place is not specified – the same place.

80.3 Resumed meeting

If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

81. Chair at general meetings

81.1 Chairperson presides as chair

Subject to clause 81.2, the Chairperson presides as chair at every general meeting.

81.2 Chairperson not present

At a general meeting, if:

- (a) the position of Chairperson is vacant; or
- (b) the Chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the Deputy Chairperson shall chair the meeting. If the position of Deputy Chairperson is vacant or the Deputy Chairperson is not then present or is unwilling to act, the Members present may appoint any Member present or any Director present to be chair of the meeting.

81.3 Adjournment

The chair must adjourn a general meeting if the Members present with a majority of votes at the meeting so agree or direct that the chair must do so.

82. Business at adjourned meetings

Only unfinished business is to be transacted at a general meeting resumed after an adjournment.

83. Business of an annual general meeting

83.1 Ordinary business

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, Directors' report and auditor's report;
- (b) the election of Directors; and
- (c) the fixing of the auditor's remuneration.

All other business transacted at an annual general meeting and all other business transacted at any other general meeting is special business.

83.2 Special business

The business of the annual general meeting also includes any other business which under this Constitution ought to be transacted at an annual general meeting.

83.3 Questions from Members

The chair of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.

83.4 Questions to auditor

If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

Members' Representatives and attorneys

84. Members' Representative

84.1 Appointment

Subject to clause 85, a Member must appoint, in accordance with clause 84.6, at least one individual as a Representative to exercise all or any of the powers the Member may exercise:

- (a) at general meetings;
- (b) at meetings of creditors or debenture holders; and
- (c) relating to resolutions to be passed without meetings.

The appointment may be a standing one.

84.2 Restrictions

The appointment may set out restrictions on the Representative's powers.

84.3 Appointment by reference to position

If the appointment is to be by reference to a position held, the appointment must identify the position.

84.4 Number

A Member may appoint more than 1 Representative but only 1 Representative may exercise the Member's powers at any one time.

84.5 Powers

Unless otherwise specified in the appointment, the Representative may exercise, on the Member's behalf, all of the powers that the Member could exercise at a meeting or in voting on a resolution.

84.6 Member to notify change

Each Member must promptly notify the Secretary in writing of any change to its Representative.

85. Representative of Government Members

The Representative of each Government Member is the person from time to time holding the office of Minister of the Crown for that Government responsible for agriculture, or a person nominated by that Minister for the purpose of this clause 85.

86. Attorney of Member

An attorney for a Member may do whatever the Member could do personally as a Member, but if the attorney is to vote at a meeting of Members or a class of Members, the instrument conferring the power of attorney or a certified copy of the authority must be produced to the Company at least 24 hours before the meeting.

Voting at Meetings of Members

85A Appointing a Proxy

- (a) A Member may appoint a proxy to act on their behalf at one or more general meetings.
- (b) To be valid, a proxy appointment must be:
 - (i) written and signed by the appointing Member in a form substantially similar to that prescribed by the Board from time to time; and
 - (ii) given to the Company at least 48 hours before the meeting, by delivery to the Company at its registered address or at another address (including an electronic address) specified in the notice of the meeting.

85B Voting by Proxy

- (a) A proxy may exercise any and all of the rights of the appointing Member, subject to clause 85B(b) and any directions or limitations specified in the proxy appointment.
- (b) A proxy cannot speak and vote for an appointing Member while a Representative of that Member is present at the meeting.
- (c) A proxy vote is valid even if the appointing Member revokes the appointment, provided that the chair of the meeting was not aware of the revocation or cessation of membership at the time of the meeting.

87. How voting is carried out

87.1 Show of hands unless poll demanded

A resolution put to the vote at a general meeting of Members must be decided on a show of hands unless a poll is demanded in accordance with clause 90.1.

87.2 Result of show of hands vote

On a show of hands, a declaration by the chair of the meeting is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

87.3 Exercise of Member's vote

The vote of a Member may be exercised by the Representative of that Member, by attorney, or by proxy in accordance with this Constitution.

88. Number of votes

At any general meeting:

- (a) on a show of hands, each Member (other than Associate Members) has 1 vote; and
- (b) on a poll, the votes per Member shall be in accordance with the number of votes prescribed for that Member under clauses 91, 92, 93 and 94.

89. How a resolution is passed

89.1 Majority of votes cast

Except for special resolutions (which require at least 75% of the total votes cast to be in favour) and subject to clause 89.2, a resolution before a general meeting is passed on a show of hands or a poll if a majority of the votes cast on the resolution are in favour of the resolution.

89.2 Additional requirements for poll

For any resolution (including a special resolution) to be passed on a poll, in addition to the required majority:

- (a) at least 60% of the votes of Government Members casting a vote on the resolution must be in favour of the resolution; and
- (b) at least 60% of the votes of Plant Industry Members casting a vote on the resolution must be in favour of the resolution.

90. When and how polls must be taken

90.1 May be demanded on any resolution

A poll may be demanded on any resolution at a general meeting whether or not a show of hands on the resolution has occurred.

90.2 May be demanded by Member or chair

A poll may be demanded by:

- (a) any Member (or a Member's Representative, attorney or proxy) entitled to vote on the resolution; or
- (b) the chair of the meeting.

90.3 Direction by chair

A poll on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

90.4 Immediate polls

A poll on the election of a chair or on the question of an adjournment must be taken immediately.

90.5 Result of poll

The result of the poll is the resolution of the meeting at which the poll was demanded.

91. Number of votes on poll – Plant Industry Members

The number of votes that an individual Plant Industry Member is entitled to cast on a poll is determined as follows:

- (a) first, apply the following formula to calculate TV for the Plant Industry Member:

$$TV = PISP \times 200$$

where:

TV means the threshold number of votes determined solely for the purpose of this clause 91;

- (b) if TV is less than or equal to 1 then that Plant Industry Member is entitled to cast 1 vote (a **Base Vote**);
- (c) if TV is more than 1, the number of votes that the Plant Industry Member is entitled to cast (**PIV**) is determined as follows:
 - (i) all Base Votes (if any) of Plant Industry Members are added together (such total being **TBV**); and then
 - (ii) the following formula is applied:

$$PIV = PISP \times (200 - TBV).$$

92. Number of votes on poll – Government Members

92.1 Commonwealth votes

The Commonwealth is entitled to cast 100 votes on a poll.

92.2 State/Territory Member votes

The number of votes that each State/Territory Member is entitled to cast on a poll (**STV**) is determined as follows:

$$\text{STV} = \text{STSP} \times 100.$$

92.3 State/Territory member to have minimum of 1 vote

If STV is less than or equal to 1 then the State/Territory member is entitled to cast 1 vote (a Base Vote).

93. Associate Members not entitled to vote

93.1 Not entitled to vote

Associate Members are not entitled to vote in relation to any resolution on a show of hands or a poll.

93.2 Right to attend meetings

Associate Members have the right to receive notices of and to attend and be heard at any general meeting.

94. Fractions of votes

94.1 Fractions only counted for rounding

Fractions of votes must only be counted on a poll for the sole purpose of rounding out the number of votes which a Member is entitled to cast to a whole number.

94.2 Method of rounding fractions

Any fraction of a vote must be rounded out by either:

if the fraction to the first decimal point is 5 or more, rounding up to the next whole number; or

if the fraction to the first decimal point is less than 5, rounding down to the next whole number.

95. Multiple votes

If:

- (a) a Member is entitled to cast more than 1 vote on a poll; and
- (b) that Member casts a vote in relation to a resolution on a poll,

then all of the votes that the Member is entitled to cast are deemed to be cast in the same manner, unless otherwise specified by the Member.

96. Objections to right to vote

96.1 Challenge to right to vote

A challenge to a right to vote at a general meeting:

- (a) may only be made at the meeting; and
- (b) must be determined by the chair of the meeting, whose decision is final.

96.2 Validity of vote not disallowed

A vote not disallowed following the challenge is valid for all purposes.

97. Chair's casting vote

In the case of an equality of votes, the chair of the meeting has a casting vote. The chair has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.

98. Resolutions proposed by Members

98.1 Moving a resolution

No Member may at any meeting move any resolution relating to ordinary or special business unless:

- (a) the Member has given not less than 30 Business Days' previous notice in writing of the Member's intention to move an ordinary resolution or 2 months' notice in writing of the Member's intention to move a special resolution at the meeting by leaving the notice and a signed copy of the resolution at the registered office of the Company; or
- (b) the resolution has previously been approved by the Directors and notified to Members.

98.2 Notice of proposed resolution

Upon receiving a notice referred to in clause 98.1(a) the Secretary must, subject to the notice requirements under this Constitution:

- (a) if the notice convening the meeting has already been dispatched, immediately notify the Members of the proposed resolution; or
- (b) otherwise include notice of the proposed resolution in the notice convening the meeting.

99. Variation or cancellation of rights

99.1 Variation or cancellation

Except as otherwise provided in this Constitution, rights attached to a Member's entitlement may be varied or cancelled only:

- (a) by special resolution of the Company; and
- (b) either:
 - (i) by special resolution passed at a meeting of the Members holding rights in the same class or category of Membership; or
 - (ii) with the written consent of Members with at least 75% of the votes in the same class or category of Membership.

99.2 Applies whether or not winding up

Clause 99.1 applies whether or not the Company is being wound up.

99.3 Notice of variation or cancellation

The Company must give a notice in writing of the variation or cancellation of entitlements to Members of the class or category of Membership affected within 7 days after variation or cancellation of the entitlement.

100. Application of meetings provisions

The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with the necessary changes to every meeting of Members holding rights in a class or category of Membership.

Minutes

101. Minutes to be kept

101.1 Required minute books

The Company must ensure that minute books are kept in which it records within one month:

- (a) proceedings and resolutions of meetings of Members;
- (b) proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);
- (c) resolutions passed by Members without a meeting; and
- (d) resolutions passed by Directors without a meeting.

101.2 Minutes of meeting to be signed

The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:

- (a) the chair of the meeting; or
- (b) the chair of the next meeting.

101.3 Minutes of resolution to be signed

The Company must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

101.4 Required information

Without limiting clause 101.1, the Directors must ensure that the following information is recorded in the minute books:

- (a) all appointments of Directors, Secretaries and executive officers;
- (b) the names of the Directors present at all meetings of Directors; and
- (c) the method by which a meeting of Directors was held.

Accounts, audit and records

102. Accounts

102.1 Accounting and other records

- (a) The Board must:
 - (i) keep written financial records that enable true and fair financial statements to be prepared and to be audited;
 - (ii) ensure that proper financial records are kept that correctly record and explain its transactions and financial position and performance in accordance with all legal and regulatory requirements;
 - (iii) ensure that records of its operations are kept; and
 - (iv) take reasonable steps to ensure that the Company's records are kept safe.
- (b) The Company must retain its records for at least seven years.

103. Audit

If required by law, the Company must appoint and remunerate a registered company auditor.

Execution of documents and negotiable instruments

104. Execution of documents

The Company may execute a document if the document is signed by:

- (a) 2 Directors;
- (b) a Director and the Secretary; or
- (c) another person or persons authorised by the board of Directors.

105. Execution of document as a deed

The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with clause 104.

106. Execution – general

106.1 Dual capacities

The same person may not sign in the dual capacities of Director and Secretary.

106.2 Interested Director

A Director may sign any document as Director although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested, and his or her signature complies with the requirements of this Constitution as to execution despite his or her interest.

106.3 No limitation

Clause 104 does not limit the ways in which the Directors may authorise documents (including deeds) to be executed on behalf of the Company.

107. Negotiable instruments

All cheques and other negotiable instruments may only be signed, drawn, accepted, endorsed or otherwise executed by any 2 Directors, or any 1 Director and the Secretary, unless otherwise determined by the Directors.

Inadvertent omissions

108. Formalities omitted

If some formality required by this Constitution is inadvertently omitted or is not carried out, the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the Directors that the omission has directly prejudiced any Member financially. The decision of the Directors is final and binding on all Members.

Winding Up

109. Winding up

109.1 Distribution of surplus

If upon the winding up or dissolution of the Company any property remains, after satisfaction of all its debts and liabilities, that property must not be paid to or distributed among the Members but must be given or transferred to some other institution or institutions determined by the Members at or before the time of dissolution.

109.2 Application to Supreme Court

If the Members do not make the necessary determination under clause 109.1, the Company may apply to the Supreme Court to determine the institution or institutions.

109.3 Eligibility of institutions

No institution is eligible to receive property under this clause 109 unless:

- (a) it has objects similar to the Objects;
- (b) its constitution prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under clause 6 and this clause 109; and
- (c) its income is exempt from income tax under the Tax Act.

Alteration of Constitution

110. Alteration of Constitution

- (a) This Constitution may be amended by special resolution in accordance with the Act.
- (b) The Members must not pass a special resolution that amends this Constitution if passing it causes the Company to no longer be a Charity.

Dispute Resolution

111. Dispute resolution

- (a) The parties to a dispute under this Constitution, being a Member or Director and:
 - (i) one or more Members;
 - (ii) one or more Directors; or
 - (iii) the Company,must attempt to resolve the matter between themselves within 14 days of being made aware of the dispute.
- (b) The Company, a Member or Director must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 21 until the disciplinary procedure is completed.
- (c) If the parties cannot resolve the dispute within 14 days, they must:

- (i) notify the Company;
 - (ii) agree or request that a mediator be appointed; and
 - (iii) attempt in good faith to settle the dispute by mediation.
- (d) The mediator must:
 - (i) be a person chosen by agreement between the parties; or
 - (ii) in the absence of agreement:
 - (A) for disputes between Members – a person chosen by the Board; and
 - (B) for all other disputes – a person chosen by the Chair of the Resolution Institute, or the Chair's designated representative.
- (e) A mediator chosen pursuant to clause 7(d)(ii):
 - (i) must be a professionally accredited mediator;
 - (ii) must not have a personal interest in the dispute; and
 - (iii) must not be biased towards or against anyone involved in the dispute.
- (f) When conducting the mediation, the mediator must allow those involved a reasonable chance to be heard and to review any written statements.
- (g) The mediator must not determine the dispute.
- (h) A Member or a Director must not commence a formal legal proceeding (except for interlocutory relief) in relation to a dispute under this Constitution unless and until they have complied with this dispute resolution procedure.

ACNC Notification

112. ACNC notification

The Company must notify the ACNC within 28 days if it:

- (a) changes its company name;
- (b) changes its address for services;
- (c) adds or removes Directors, the Chairperson or the Deputy Chairperson; or
- (d) amends this Constitution.