



**AUSTRALIAN WAGYU ASSOCIATION  
LIMITED**

**ACN 003 700 721**

**CONSTITUTION**

**15 November 2022**

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# Constitution of

## The Australian Wagyu Association Limited

### INTRODUCTION

#### 1. Replaceable rules excluded

- 1.1 The replaceable rules contained in the Act do not apply to the Company.

#### 2. Definitions and interpretation

##### 2.1 Definitions

In this constitution:

- (1) **Act** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- (2) **AGM** means the Annual General Meeting of the Company;
- (3) **Ballot** means a ballot conducted by way of any means approved by the Board and includes an Electronic Ballot or a Postal Ballot;
- (4) **Board** means all or some of the directors acting as board of the Company;
- (5) **Board committee** means a sub-committee of the Board that powers have been delegated to by the Board;
- (6) **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;
- (7) **Company** means The Australian Wagyu Association Limited ACN 003 700 721;
- (8) **Constitution** means the constitution of the Company, as amended from time to time;
- (9) **Corporate member** means a member that is a body corporate;
- (10) **Directors** means the directors for the time being of the Company or the directors assembled as a board;
- (11) **Electronic voting platform** is a means of holding a vote or ballot on digital devices rather than on paper ballots or voting forms and includes internet-based voting platforms;



- (12) **Financial member** means a member who has paid their annual subscription and has no monies owing to the Company beyond the terms specified in this Constitution;
- (13) **Member** means a person recorded on the register of members;
- (14) **Office** and **office bearer** has the meaning set out in the Act;
- (15) **Person** and words importing '**persons**' include partnerships, associations, bodies corporate, unincorporated and incorporated by Ordinance, Act of Parliament or registration, as well as individuals;
- (16) **President** means the Director elected to chair the Board meetings in accordance with rule 39;
- (17) **Registered address** means the principle place of residence of a member as they have indicated on the membership application form and as recorded in the register of members;
- (18) **Registered Office** means the registered office from time to time of the Company;
- (19) **Rule** means the rules of the Constitution as altered or added to from time to time;
- (20) **Seal** means the common seal, if any, from time to time of the Company;
- (21) **Secretary** means the secretary referred to in rule 37 and any other person appointed to perform the duties of a secretary of the Company;
- (22) **Treasurer** means the director appointed to administer or manage the financial assets and liabilities of the Company as referred to in rule 37;
- (23) **Vice-president** means the director elected in accordance with rule 39; and
- (24) **Writing** and **written** includes printing, typing, lithography, email, computerised documents and other modes of reproduction of words in a visible form.

## 2.2 Interpretation

- (1) Reference to:
  - (a) one gender includes the others;
  - (b) the singular includes the plural and the plural includes the singular; and
  - (c) a person includes a body corporate.
- (2) Except so far as the contrary intention appears in this constitution:
  - (a) an expression has in this constitution the same meaning as in the Act; and
  - (b) 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.

- (3) "Including" and similar expressions are not words of limitation.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

## **PURPOSES, BY-LAWS AND POWERS**

### **3. Purposes**

The purposes of the Company are:

- 3.1 To advance the Wagyu Cattle breeds in Australia and internationally, including through implementation of genetic, production and meat technologies.
- 3.2 To uphold integrity in the global Herdbook on Wagyu cattle including compilation of pedigrees, genetic information and performance data including registers of Wagyu and Wagyu-based cattle.
- 3.3 Attract and retain key personnel and collaborators to enable a resilient and sustainable Wagyu sector.
- 3.4 To support and promote marketing and sale of world-leading Wagyu cattle, genetics and beef.
- 3.5 To invest in research and innovation to deliver improvements in Wagyu cattle and Wagyu products for our Members.

### **4. By-laws and regulations**

- 4.1 The Board of the Company shall have power to make, alter and repeal all By-laws of the Company and in particular, but not exclusively, it may by By-laws regulate:
  - (1) the rights and privileges that shall be accorded to honorary members and visitors.
  - (2) the rights and privileges that shall be accorded to the members of the Company.
  - (3) the use of the Company premises by members
  - (4) arrangements with any other Societies or Associations for reciprocal concessions or otherwise.
  - (5) the conduct of members of the Company in relation to one another and to the Company's employees.
  - (6) the imposition of fines for the breach of any By-law or any rule of the Constitution of the Company.

- (7) the procedure at general meetings and meetings of the members of the Board of the Company.
  - (8) and generally all other matters commonly the subject matter of Company rules.
- 4.2 All By-laws shall be binding upon members of the Company. No By-laws shall be inconsistent with or shall affect or repeal anything contained in the Constitution of the Company. Any By-law may be set aside by a special resolution of a General Meeting of the Company
- 4.3 The Board may at any time, determine the eligibility or otherwise of any Wagyu cattle in general or in particular, for registration (including under classifications according to qualifications determined by the Board) the fees, refunds and regulations applicable to registration and the transfer and de-registration, and the penalties for late lodgement of applications for registration and transfers.
- 4.4 Every member whose application for registration has been declined and every member whose registration of an animal is the subject of de-registration by the Company will indemnify the Company against all actions claims demands and proceedings whatsoever that may be brought or made against the Company by any other person claiming loss or damage by reason of the refusal or de-registration.
- 4.5 The Board may regulate the granting of approval to any member of the Company holding a sale and wishing to use the Company's sponsorship. He shall be subject to the regulations laid down by the Board.

## **5. Powers of the company**

- 5.1 The Company has all the powers of an individual and a body corporate but does not have the power to issue shares.
- 5.2 Despite rule 5.1 the powers of the Company are ancillary to and exercisable only to pursue the objects of the Company set out in rule 3.

## **6. Power to levy and prescribe fees**

- 6.1 The Board may impose levies and fees on members of the Company to the extent necessary to meet the expenses, and conduct of the affairs of the Company.
- 6.2 The Board may also impose a promotional levy upon a member in respect of all Wagyu cattle sold at an auction under to auspices of a Company sponsored sale. The levy shall not be greater than one half of the total commission paid to the commission agents conducting the sale and shall be calculated on the gross value of the sale. Any animal sold within fourteen (14) days of the sale and indicated in a catalogue or advertisement as having been offered at a Company sponsored sale shall be included in the value of the sale for the purpose of calculating the levy.

## **NON-PROFIT NATURE OF THE COMPANY**

### **7. Application of income and property**

- 7.1 The income and property of the Company, from wherever it is derived, must be applied solely towards the promotion of the objects of the Company set out in rule 3.

### **8. No distribution to members**

- 8.1 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 of the Company.

- 8.2 Rule 8.1 does not prevent:

- (1) the payment in good faith of remuneration to any officer, employee 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;
- (2) the payment of interest not exceeding five percentage points above the Reserve Bank of Australia cash rate on money borrowed from any member of the Company;
- (3) 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; or
- (4) the reimbursement of expenses incurred by any member on behalf of the Company.

### **9. Limited liability**

- 9.1 The liability of the members is limited.

### **10. Guarantee**

- 10.1 Every member of the Company undertakes to contribute an amount not exceeding \$100 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:

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

## **MEMBERSHIP**

### **11. Number of members**

- 11.1 The maximum number of members that the Company proposes to be registered is unlimited.

### **12. Membership**

- 12.1 The members of the Company are the persons the directors admit to membership in accordance with this constitution.

### **13. Categories of membership**

- 13.1 The categories of membership are:

- (1) full members;
- (2) associate members;
- (3) honorary life members; and
- (4) honorary ordinary member.

- 13.2 Additional categories of members, if recommended by the directors, may be created from time to time by the members in general meeting.

### **14. Rights of members**

- 14.1 Financial full members are entitled to cast a single vote at general meetings of the Company and are eligible to stand for election or to be appointed as a member of the Board in accordance with this constitution.
- 14.2 Financial associate members are entitled to all the rights, privileges and obligations of membership of the Company, except that an associate member shall not be eligible to be elected as a member of the Board, nor to vote, and nor to be heard at any general meeting of the Company.

### **15. Application for full membership**

- 15.1 Any individual who:

- (1) is not less than 18 years of age at the date of application; and
- (2) is involved in the commercial breeding and/or production of Wagyu or Wagyu-cross cattle;

may apply for full membership of the Company.

- 15.2 Any body corporate that:

- (1) owns an Australian registered Wagyu animal of any grade;
  - (2) is involved in the commercial breeding and/or production of Wagyu cattle
- may apply for full membership of the Company.

## 16. Application for associate membership

16.1 Any individual who:

- (1) is not less than 18 years of age at the date of application; and
- (2) is interested in the Wagyu breed or involved in associated industries; and
- (3) is not engaged in the breeding and/or production of Wagyu or Wagyu-cross cattle

may apply for associate membership of the Company.

16.2 Any body corporate that:

- (1) is interested in the Wagyu breed or involved in associated industries; and
- (2) is not engaged in the breeding and/or production of Wagyu or Wagyu-cross cattle

may apply for associate membership of the Company.

16.3 Despite anything in this constitution to the contrary, an associate member:

- (1) has the right to receive notices of and to attend, but not be heard at any general meeting; and
- (2) has no right to vote at any general meeting; and
- (3) shall not be eligible to be elected as a member of the Board.

## 17. Form of application

17.1 An application for membership must be:

- (1) in writing in a form approved by the directors;
- (2) signed by the applicant; and
- (3) accompanied by any other documents or evidence as to qualification for the type of membership applied for that the directors require.

17.2 If the applicant is a body corporate it must nominate 1 person (**nominated representative**) to represent it in the Company. The application form must:

- (1) state the name and address of the nominated representative; and
- (2) be signed by the nominated representative.

## **18. Admission to membership**

- 18.1 The directors must consider an application for membership at a meeting or meetings duly convened as soon as practicable after its receipt and determine, in their discretion, the admission or rejection of the applicant.
- 18.2 When applications for membership come before the Board, more than three negative votes shall exclude the applicant from election.
- 18.3 The Secretary shall keep a record of the names of the persons present and voting at meetings.
- 18.4 The directors need give no reason for the rejection of an application.
- 18.5 The election of an applicant for membership shall confer the right to membership upon payment by the applicant of all money payable by the applicant for fees and subscriptions due.

## **19. Honorary life membership**

- 19.1 If, in the opinion of the directors, a member has made over a period of years, a significant contribution to the Company, the directors may nominate the member as a honorary life member of the Company.
- 19.2 A member nominated under rule 19.1 becomes a honorary life member of the Company on the nomination being approved by a two thirds majority of members at a general meeting.
- 19.3 If the honorary life member is a body corporate it must nominate in writing a nominated representative within 1 month after it becomes a life member.
- 19.4 A honorary life member has all the rights, privileges and duties of membership and is otherwise subject to this constitution without any further payment of membership, annual or otherwise.

## **20. Honorary ordinary membership**

- 20.1 If, in the opinion of the directors, a person, not being a member of the Company, has made over a period of years a significant contribution to the Company, the directors may nominate that person as an honorary ordinary member of the Company.
- 20.2 The honorary ordinary member for the time being;
- (1) A visiting member of another Company or company affiliated with the Company;
  - (2) Any prominent citizen visiting the Company for some special occasion; or
  - (3) Any person who in the opinion of the directors is considered to have advanced the interests of Wagyu cattle.
- 20.3 A person nominated under rule 20.1 becomes an honorary ordinary member of the Company on the later to occur of:

- (1) the person consenting in writing to be an honorary ordinary member; and
  - (2) the nomination being approved by an ordinary resolution of members at a general meeting.
- 20.4 An honorary ordinary member that is a body corporate may, but need not, nominate a nominated representative.
- 20.5 An honorary ordinary member has no rights and privileges of membership, other than social privileges of the Company, and is otherwise subject to this constitution.

## **21. Register of members**

- 21.1 A register of members of the Company must be kept in accordance with the Act.
- 21.2 The following may be entered in the register of members in respect of each member:
- (1) the full name of the member;
  - (2) the residential address, telephone number and electronic mail address of the member;
  - (3) the category of membership;
  - (4) the date of admission to and cessation of membership;
  - (5) the date of last payment of the member's annual subscription;
  - (6) in the case of a corporate member, the full name, address, telephone number and electronic mail address, if any, of its nominated representative; and
  - (7) such other information as the directors require.
- 21.3 Each member and nominated representative must notify the secretary in writing of any change in that person's name, address, telephone number or electronic mail address within 1 month after the change.

## **MEMBERSHIP AND FEES**

### **22. Application fee**

- 22.1 The application fee payable by each applicant for membership is the sum the directors determine for each category of membership.
- 22.2 No application fee is payable by any honorary member.
- 22.3 Every member shall be deemed to have agreed to pay any application fee and all annual subscriptions and other fees and charges that may, from time to time, be properly payable by him, pursuant to the Constitution or the By-Laws of the Company.



## **23. Annual subscription**

- 23.1 The annual subscription payable by a member of the Company is the sum the directors determine for each category of membership.
- 23.2 All annual subscriptions are due and payable in advance on 1 July in each year.
- 23.3 If a person is admitted to membership of the Company during the months of January to June inclusive the directors may reduce the annual subscription payable by the applicant in any manner they see fit.
- 23.4 No annual subscription is payable by any life member or honorary member.

## **24. Unpaid fees**

- 24.1 If any money payable by any member to the Company shall remain unpaid for a period of one (1) month after becoming due and payable, the member concerned shall as soon as possible be notified by the Secretary in writing of the default.
- 24.2 The Board may in its absolute discretion waive or suspend the payment of any money to the Company by any member or class of members on any account whatsoever, either generally or in any particular case.

## **CESSATION OF MEMBERSHIP**

### **25. Resignation**

- 25.1 A member may resign from membership of the Company by giving written notice to the secretary.
- 25.2 The resignation of a member takes effect on the date of receipt of the notice of resignation or any later date provided in the notice.
- 25.3 If a member does not resign before the members annual subscription falls due, the member will be liable to pay the next annual subscription.

### **26. Failure to pay**

- 26.1 If a member has not paid all arrears of annual subscriptions under rule 23 or, if paid, the member's rights and privileges are not reinstated, subject to any action under rule 24:
- (1) the member remains liable for all the obligations and responsibilities of membership until the expiration of 6 months after the date of notification under rule 24.1; and
  - (2) the member ceases to be a member and the member's name must be removed from the register of members at the expiration of the 6 month period; and

- (3) the member remains liable for all moneys owed to the company under rule 29.

## **27. Cessation of membership**

27.1 A member who is an individual ceases to be a member:

- (1) on the death of the member; or
- (2) if the member is expelled under rule 28.

27.2 A corporate member ceases to be a member:

- (1) if it is wound up or is otherwise dissolved or deregistered; or
- (2) if it is expelled under rule 28.

27.3 A honorary life member or an honorary ordinary member ceases to be a member:

- (1) if the member is an individual, in accordance with rule 27.1;
- (2) if the member is a corporate member, in accordance with rule 27.2; or
- (3) if the directors, for any reason, request in writing the resignation of the member and the member does not resign within 2 months after the request is sent.

## **28. Disciplining members**

28.1 If any member:

- (1) wilfully refuses or neglects to comply with the provisions of this Constitution and any of the by-laws of the Company; or
- (2) is guilty of any conduct that, in the opinion of the directors, is unbecoming of a member or prejudicial to the interest of the Company;

the directors may resolve to censure, direct a member to rectify a breach of their compliance with the provisions of the constitution and any of the by-laws of the Company, fine, suspend or expel the member from the Company and, in the case of expulsion, to remove the member's name from the register of members.

28.2 In exercising their powers under rule 28.1 the directors must not fine a member an amount exceeding the annual subscription of a full member, being an individual (whether or not the member is an individual or a body corporate, or is liable to pay an annual subscription).

28.3 At least 1 week before the meeting of the directors that a resolution of the nature referred to in rule 28.1 is passed (excepting warnings and directions to comply with this constitution or a by-law), the directors must give to the member notice of:

- (1) the meeting;
- (2) what is alleged against the member; and

(3) the intended resolution.

- 28.4 At the meeting and before the passing of the resolution, the member must have an opportunity of giving orally or in writing, any explanation or defence the member sees fit.
- 28.5 A member may, by notice in writing lodged with the secretary at least 24 hours before the time for holding the meeting that the resolution is to be considered by the directors, elect to have the question dealt with by the Company in general meeting and in that event, a general meeting of the Company must be called for that purpose.
- 28.6 If at the meeting a resolution to the same effect as the resolution that was to be considered by the directors is passed by a majority of 2/3<sup>ds</sup> of those present and voting (and the vote must be taken by secret ballot), the member concerned must be punished in the manner resolved and in the case of a resolution for expulsion the member is expelled and the member's name must be removed from the register of members.
- 28.7 If any member ceases to be a member under rule 28.6, the directors may reinstate the member and restore the name of that member to the register of members upon and subject to any terms and conditions they see fit.

## **29. Effect of cessation of membership**

- 29.1 If any member ceases to be a member under this constitution, the member remains liable to pay to the Company, any money that, at the time of the member ceasing to be a member:
- (1) the member owes to the Company on any account; and
  - (2) for any sum not exceeding \$100 that the member is liable under rule 10 of this constitution.

## **30. Dispute resolution**

- 30.1 The dispute resolution procedure in this clause applies to disputes (disagreements) between a member or director and:

- (1) one or more members;
- (2) one or more directors; or
- (3) the Company,

where such dispute relates to this Constitution, the exercise by the Company of its powers or matters related to the Herd Book, by-laws or regulations.

- 30.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 30 until the disciplinary procedure is completed, except with the agreement of all parties to the dispute.
- 30.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

- 30.4 If those involved in the dispute do not resolve it under clause 30.3, they must within 10 days:
- (1) tell the directors about the dispute in writing
  - (2) agree or request that a mediator be appointed, and
  - (3) attempt in good faith to settle the dispute by mediation.
- 30.5 The mediator must:
- (1) be chosen by agreement of those involved, or
  - (2) where those involved do not agree:
  - (3) for disputes between members, a person chosen by the directors, or
  - (4) for other disputes, a person chosen by the president or chief executive officer of the law institute or society in the state or territory in which the Company has its registered office.
- 30.6 A mediator chosen by the directors:
- (1) may be a member or former member of the Company;
  - (2) must not have a personal interest in the dispute; and
  - (3) must not be biased towards or against anyone involved in the dispute.
- 30.7 When conducting the mediation, the mediator must:
- (1) allow those involved a reasonable chance to be heard;
  - (2) allow those involved a reasonable chance to review any written statements;
  - (3) ensure that those involved are given natural justice; and
  - (4) not make a decision on the dispute.
- 30.8 The mediator may set rules for the conduct of the mediation within the parameters of this clause 30.

## **APPOINTMENT OF DIRECTORS**

### **31. Number of directors**

- 31.1 The number of the directors must be not less than 3 nor more than 10. Up to 9 directors will be elected (**elected directors**) and one director may be appointed by the board (**appointed director**).
- 31.2 The Company in general meeting may by resolution increase or reduce the number of directors referred to in rule 31.1 but the number may not be reduced below 3.

### **32. Directors' qualifications**

- 32.1 No person may be an elected director unless that person is a financial full member of the Company or is the nominated representative of a financial corporate full member.
- 32.2 An appointed director is not required to be a member of the Company or be nominated by a member of the Company.

### **33. Nomination for election**

- 33.1 Each candidate for election as a director must:
- (1) be proposed by a financial full member or the nominated representative of a financial full corporate member; and
  - (2) be seconded by another financial full member or the nominated representative of another financial full corporate member;
- both of which members must be current financial full members of the Company at the time of nomination.
- 33.2 No full member or nominated representative of a full member may propose more than 1 person as a candidate at any one election but may second more than 1 nomination.
- 33.3 A nomination of a candidate for election must:
- (1) be in writing;
  - (2) be signed by the candidate; and
  - (3) be signed by the proposer and seconder.
- 33.4 A nomination of a candidate for election must be received at the registered office of the Company not later than 5pm on the day that is 42 days prior to the annual general meeting at which the candidate seeks election.
- 33.5 A list of the candidates' names in alphabetical order together with the proposers' and seconders' names must be sent to members with 21 days the notice of the annual general meeting.
- 33.6 The list may be accompanied by personal details of not more than 50 words in length submitted by any nominee.

### **34. Election procedure – directors**

- 34.1 If the number of candidates for election as directors is equal to or less than the number of vacancies of elected directors on the board, the chair of the annual general meeting must declare those candidates to be duly elected as directors.
- 34.2 If the number of candidates for election as directors is greater than the number of vacancies on the board, a ballot must be held for the election of the candidates.

- 34.3 If a ballot is required, balloting lists must be prepared listing the names of the candidates only in alphabetical order. A ballot may be conducted using an electronic voting platform or by other means.
- 34.4 Each person entitled to vote and voting on the ballot may vote for a number of candidates equal to the number of vacancies.
- 34.5 A Returning Officer and if the ballot is not electronic, a scrutineer, may be appointed by the Board. A Returning Officer must not be a full member of the Company. A Returning Officer may be an independent person or may be selected from representatives of the auditors or solicitors of the Company.
- 34.6 The result of all ballots shall be announced at the Annual General Meeting and recorded in the minutes.
- 34.7 The decision of the Returning Officer as to formality or informality of any vote shall be final.
- 34.8 The candidates receiving the greatest number of votes cast in their favour must be declared by the chair of the meeting to be elected as directors.
- 34.9 If an equal number of votes would otherwise prevent the successful candidate for a vacancy from being determined, the chair prior to the declaration of the result of the ballot, in addition to his or her deliberative vote (if any) is entitled to a casting vote, except that if the chair:
- (1) does not exercise a casting vote; or
  - (2) is one of the candidates who received the same number of votes;
- then the names of the candidates who received the same number of votes who must be put to a further ballot immediately.
- 34.10 There is not a vacancy for the purpose of this rule 34 (or rules 40 or 40) because the number of directors is less than the maximum allowed under rule 31.1. There is a vacancy only if the number of directors is less than the number elected at the previous annual general meeting (adjusted for any increase under clause 40.1).

### **35. Time appointment or retirement takes effect**

- 35.1 Directors who are elected at a meeting of members take office immediately after the end of the meeting.
- 35.2 Directors who retire at a meeting of members continue to hold office until the end of the meeting.
- 35.3 An appointed director takes office on the day set out in their letter of appointment.

### **36. Election and appointment of directors**

- 36.1 The directors are elected at the annual general meeting of the Company as follows:

- (1) at each annual general meeting of the company, a minimum of three directors shall retire from office, but shall be eligible for re-election;
  - (2) the directors to retire, shall be those who have been longest in office since their last election;
  - (3) an elected director, subject to the members' ability to remove a director and the director's ability to resign, holds an office for the maximum term of three years and may nominate for re-election;
  - (4) should the number of directors to retire as a result of holding office for the maximum term of three years exceed three directors, the three directors to retire shall be the longest serving directors provided that if they were appointed on the same day the retiring director will be decided by lot; and
  - (5) for directors decided by lot not to retire under 36.1(4) whose term of office would then exceed three years, these directors shall be permitted to serve for a maximum term of four years and shall be first to retire immediately prior to the following years election.
- 36.2 Directors must not serve more than 9 consecutive years, and after 9 consecutive years of service, are not eligible for appointment or election until they have served three years out of office.
- 36.3 The directors may appoint a person as a director who they consider has the relevant skills and experience to support the board and the Company as a whole. The appointment may be at any time that there is not already an appointed director.
- 36.4 The appointment may be for a fixed term that does not exceed 3 years. An appointed director is subject to the same term limits as elected directors.
- 36.5 If the board does determine to appoint a director (for any reason) then the board will act to appoint the director within a reasonable time.
- 36.6 If the number of permissible directors is reduced by amendment of this Constitution, and if there have been more directors elected than permissible under this Constitution, the elected director with the least votes at the last ballot is automatically removed as a director (or as many directors as necessary to reach the permissible number of directors).

## **37. Office bearers**

- 37.1 The office bearers of the Company are:
- (1) the president;
  - (2) the vice-president;
  - (3) the junior vice president;
  - (4) the treasurer; and
  - (5) the secretary.

37.2 No director shall hold the office of president for more than three years in succession. Any director who holds office for three years in succession shall be eligible to be re-elected to office at the expiration of one year of being out of office.

### **38. Eligibility and nomination**

38.1 Except for the secretary, only directors may be office bearers. Any director is eligible for election to any office bearer position.

38.2 Each director standing for election as an office bearer must be proposed by another director.

38.3 If a director stands for election for more than 1 position as an office bearer, separate nominations must be received in respect of each position.

38.4 A nomination may be:

- (1) in writing, received by the secretary not less than 24 hours prior to the board meeting that the election is to take place and signed by the candidate and the proposer; or
- (2) made orally at the meeting, provided that the candidate is present and consents to the nomination.

### **39. Election procedure – office bearers**

39.1 The election of the office bearers is held in the order that the positions are listed in rule 37.

39.2 If there is only 1 candidate for election to any office bearer position, that person is declared elected to that position.

39.3 If there is more than 1 candidate for election to any office bearer position, a ballot must be held among the Board members. The candidate receiving the greatest number of votes cast in his or her favour is declared elected to that position. In the case of an equality of votes in respect of any position, a further ballot must be held immediately. If there is then still an equality of votes, the successful candidate must be determined by lot.

39.4 If a director is elected to a position as office bearer, then his or her nomination, if any, for any other position must be treated as withdrawn before the election is held in respect of the other position or positions.

39.5 Subject to this rule 39, a ballot is conducted in the manner the directors determine.

## **APPOINTMENT OF DIRECTORS BETWEEN AGMS**

### **40. Casual vacancies and additional directors**

40.1 The Company in general meeting may by resolution, and the directors may at any time, appoint a person qualified to be a director, either to fill a casual vacancy, or as



an addition to the existing directors, but so that the total number of directors does not at any time exceed the number fixed in accordance with this constitution.

- 40.2 Any director appointed under rule 40.1 holds office until the termination of the next annual general meeting of the Company, but is eligible for election at that annual general meeting.

#### **41. Insufficient directors**

- 41.1 In the event of a vacancy in the office of a director, 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 for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or convening a general meeting of the Company.

### **POWERS AND DUTIES OF DIRECTORS**

#### **42. Validation of acts of directors and secretaries**

- 42.1 The acts of a director or secretary of the Company are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.

#### **43. General business management**

- 43.1 The business of the Company is to be managed by or under the direction of the directors.
- 43.2 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 general meeting.
- 43.3 A rule made or resolution passed by the Company in general meeting does not invalidate any prior act of the directors that would have been valid if that rule or resolution had not been made or passed.
- 43.4 The directors may pay all expenses incurred in promoting and forming the Company.

#### **44. Borrowing powers**

- 44.1 Without limiting the generality of rule 43, but subject to rule 8, 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.

#### **45. Appointment of attorney**

- 45.1 The directors may appoint any person or persons to be the attorney or attorneys of the Company 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 they see fit.

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

## **46. Negotiable instruments**

46.1 Any 2 directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

46.2 The directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

## **47. Duties of directors**

47.1 The directors must comply with their duties as directors under legislation and common law:

- (1) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
- (2) to act in good faith in the best interests of the Company and to further the purposes of the Company;
- (3) not to misuse their position as a director;
- (4) not to misuse information they gain in their role as a director;
- (5) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 58;
- (6) to ensure that the financial affairs of the Company are managed responsibly; and
- (7) not to allow the Company to operate while it is insolvent.

47.2 Directors have a duty under this constitution to comply with the Directors' and Officers' Code of Conduct approved by the board, and any further codes of conduct, board charters and policies of the Company.

47.3 If the board, or a Board committee, after appropriate investigation, considers on the balance of probabilities that a director has breached a board charter, code of conduct or a policy of the Company in a material way, the board must disclose the breach prior to the next annual general meeting, including enough details of the breach to allow members an informed ability to direct their votes prior to the meeting (notwithstanding whether the relevant director is due to retire or not at the general meeting). This duty to disclose prevails over any rights or duties of confidentiality, except to the extent required by law or by an order of a Court.

47.4 The board must publish to the members the terms of all policies, codes of conduct board charters or similar, as soon as practicable after the document is established or updated.

## **CHIEF EXECUTIVE OFFICER**

### **48. Power to appoint**

48.1 The directors may appoint any person, not being a director, to the position of Chief Executive Officer for the period and on the terms (including as to remuneration) the directors see fit.

### **49. Not a member of the board**

49.1 The Chief Executive Officer is not a member of the board of the Company but may attend meetings of the directors except where the directors otherwise request.

### **50. Powers**

50.1 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.

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

### **51. Withdrawal of appointment or powers**

51.1 The directors may revoke or vary:

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

### **52. Temporary appointments**

52.1 If a Chief Executive Officer becomes incapable of acting in that capacity the directors may appoint any other person, not being a director, to act temporarily as Chief Executive Officer.

## **COMMITTEES OF DIRECTORS**

### **53. Committees of directors**

53.1 The president, the two vice-presidents and the treasurer and such other member or members of the Board, as they may from time to time by unanimous resolution determine, shall constitute an Executive Committee. The Executive Committee, subject to restrictions and limitations the Board may impose, shall be entitled to exercise all the powers for the time being of the Board subject to rule 53.4.

53.2 The directors may delegate any of their powers to a committee of directors.

- 53.3 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.
- 53.4 The meetings and proceedings of any committee consisting of 3 or more people are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.
- 53.5 The president is ex officio Chair of every committee and if they may desire, appoint a nominee as the Chair of a committee. If no Chair is appointed, or if at any meeting the Chair is not present within 10 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be Chair of the meeting.
- 53.6 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority votes of the members present and in the case of an equality of votes the Chair shall have a second or casting vote.
- 53.7 The directors may establish a nominations committee, on such terms as the directors think fit within the parameters set by this constitution, for the purpose of assessing how the candidates for election or appointment as directors meet the board's targeted skillsets. The board may publish to the members any assessment or recommendation of the committee.

## **REMOVAL AND RESIGNATION OF DIRECTORS**

### **54. Removal of directors**

- 54.1 Subject to the Act the Company may by resolution remove a director from office.

### **55. Resignation of director**

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

### **56. Vacation of office of director**

- 56.1 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:
- (1) reaches the expiry of the fixed term appointment for an appointed director;
  - (2) becomes bankrupt or suspends payment or compounds with his or her creditors;
  - (3) 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;

- (4) is not present at three consecutive Board meetings of directors without special leave of absence from the directors. The directors then may declare his or her seat to be vacant;
- (5) ceases to be qualified as a director under rule 32;
- (6) becomes disqualified from being a director under the Act;
- (7) is removed from office in accordance with rule 54; or
- (8) resigns from office in accordance with rule 55.

## **DIRECTORS' INTERESTS**

### **57. Prohibition on being present or voting**

57.1 Except where permitted by the Act a director who has a material personal interest in a matter that is being considered at a meeting of directors:

- (1) must not be counted in a quorum;
- (2) must not vote on the matter; and
- (3) must not be present while the matter is being considered at the meeting.

57.2 A director who has a material personal interest in a matter that is being considered at a meeting of the directors, is not prohibited by the Act from being present at the meeting and voting process. The director may be present, be counted in the quorum and may be heard but may not vote on the matter.

### **58. Director to disclose interests**

58.1 A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company must, as soon as practicable after the relevant facts have come to the director's knowledge, declare the nature of the interest at a meeting of the directors or by written notice to the secretary of the Company.

58.2 A director who holds any office or possesses any property that, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as director must declare at a meeting of the directors of the Company or by written notice to the secretary of the Company the fact and the nature, character and extent of the conflict.

58.3 For the purposes of rules 58.1 and 58.2, a director's interest or any conflict must be disregarded if it arises from or relates solely to:

- (1) a guarantee to be given by the director (or by persons including the director or by a body corporate that the director is a member or officer) in respect of a loan to the Company; or
- (2) the position of the director as a director of a related body corporate.

## **59. Effect of interest in contract**

59.1 If a director has an interest in a contract or proposed contract with the Company (other than as a member), or a conflicting interest or duty in relation to any other matter being considered by the directors, and the director discloses the nature and extent of the interest or duty at a meeting of the directors or by written notice to the secretary of the Company:

- (1) the contract may be entered into; and
- (2) if the disclosure is made before the contract is entered into:
  - (a) the director may retain benefits under the contract even though the director has an interest in the contract;
  - (b) the Company cannot avoid the contract merely because of the existence of the interest; and
  - (c) the director is not disqualified from the office of director.

59.2 For the purposes of rule 59.1, **contract** includes an arrangement, dealing or other transaction.

## **60. Other interests**

60.1 Without limiting rule 62 or rule 59 a director may to the extent permitted by the Act:

- (1) hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of director;
- (2) be interested in any operation, undertaking or business undertaken or assisted by the Company or in which the Company is or may be interested.

## **61. Extension of meaning of "Company"**

61.1 For the purposes of rules 62, 63 and 64, **Company** includes any subsidiary of the Company and any other company that the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

## **62. Other directorships and shareholdings**

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

62.2 Subject to the Act:

- (1) the directors of the Company 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;

- (2) a director may vote at a meeting of directors of the Company, in favour of a resolution whereby that director is elected or appointed as director or other officer of another company.
- (3) any director of the Company may be appointed as representative of 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
- (4) a director of the Company 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 of the Company as directors or other officers of the other company.

## **REMUNERATION OF DIRECTORS**

### **63. Directors' remuneration**

- 63.1 Despite rule 8.2 elected directors may not receive any remuneration for his or her services in his or her capacity as a director of the Company.
- 63.2 An appointed director may be remunerated at rates approved by the directors. All fees paid to an appointed director must be disclosed to the members in the annual report to the members.

### **64. Directors' expenses**

- 64.1 Despite rule 63 the Company may pay the directors' travelling and other expenses that they properly incur:
- (1) in attending directors' meetings or any meetings of committees of directors;
  - (2) in attending any general meetings of the Company; and
  - (3) in connection with the Company's business.
- 64.2 To the extent, if any, required by the Act, a director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the director or to any other related party of the director.

## **SECRETARY**

### **65. Terms of office of secretary**

- 65.1 A secretary of the Company holds office on the terms and conditions (including as to remuneration) that the directors determine.

## INDEMNITY AND INSURANCE

### 66. Indemnity

66.1 To the extent permitted by the Act, the Company indemnifies:

- (1) every person who is or has been an officer of the Company; and
- (2) where the board of directors considers 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).

66.2 In accordance with section 199A of the Act, the Company must not indemnify a person against:

- (1) any of the following liabilities incurred as an officer of the Company:
  - (a) a liability owed to the Company or a related body corporate;
  - (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
  - (c) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or
- (2) legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:
  - (a) in defending or resisting proceedings in which the person is found to have a liability for that they could not be indemnified under rule 66.2(1);
  - (b) in defending or resisting criminal proceedings in which the person is found guilty;
  - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; or
  - (d) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

Rule 66.2(2)(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for a court order.

- (3) For the purposes of rule 66.2(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

66.3 An officer must:

- (1) give notice to the Company promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified under rule 66.1;



- (2) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
- (3) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company;
- (4) allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Company, render all reasonable assistance and co-operation to the Company or its insurers in the conduct of any Claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
- (5) on request by the Company or its insurers, do everything necessary or desirable that the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and
- (6) notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.

66.4 In rule 66.3 **Claim** means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;
- (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
- (3) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in rule 66.4(1) or 66.4(2) may be initiated.

## **67. Insurance**

67.1 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 any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:

- (1) conduct involving a wilful breach of duty in relation to the Company; or
- (2) a contravention of section 182 or 183 of the Act.

67.2 In the case of a director, any premium paid under this rule is not remuneration for the purpose of rule 63.

## **68. Director voting on contract of insurance**

- 68.1 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.

## **69. Liability**

- 69.1 An officer of the Company is not liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage that arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

## **INSPECTION OF RECORDS**

### **70. Rights of inspection**

- 70.1 The directors of the Company, or the Company by a resolution passed at a general meeting, may authorise a member to inspect books of the Company.
- 70.2 A member other than a director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its members and for resolution of members passed without meetings, except as provided by law or authorised by the directors or by the Company in general meeting.
- 70.3 Directors have the rights of inspection and access provided by section 198F of the Act.

### **71. Confidential information**

- 71.1 Except as provided by the Act, no member (not being a director) 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**

### **72. Circulating resolutions**

- 72.1 The directors may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution (except a director absent from Australia who has not left an email address that he or she may be given notice at) sign a document containing a statement that he or she is in favour of the resolution set out in the document.
- 72.2 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.

72.3 The resolution is passed when the last director signs.

72.4 An email to or received by the Company and purporting to be a scanned copy of an email that has been signed originally by a director (and not by way of electronic signature) for the purpose of this rule 72 must be treated as a document in writing signed by that director.

### **73. Meetings of directors**

73.1 The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they see fit.

### **74. Calling directors' meetings**

74.1 The secretary must call a meeting of the directors at any time as directed by the president, or by three directors.

### **75. Notice of meeting**

75.1 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:

- (1) has been given special leave of absence; or
- (2) is absent from Australia and has not left a email address at that he or she may be given notice.

75.2 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.

### **76. Technology meeting of directors**

76.1 A directors' meeting may be held using telephone or, if consented to by all directors, other technology. The consent may be a standing one. A director may only withdraw the consent within a reasonable period before the meeting.

76.2 If a directors' meeting is held using any technology 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.

76.3 The following provisions apply to a technology meeting:

- (1) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part in the meeting; and
- (2) at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.

76.4 If the secretary is not present at a technology meeting 1 of the directors present must take minutes of the meeting.

76.5 A director may not leave a technology meeting by disconnecting his or her link to the meeting unless that director has previously notified the chair of the meeting.

76.6 A director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that director has previously obtained the express consent of the chair to leave the meeting.

## **77. Chairing directors' meetings**

77.1 The president is the chair of all meetings of the directors.

77.2 At a meeting of directors if:

- (1) no president has been elected as provided by rule 39; or
- (2) the president is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the vice-president is the chair of the meeting, but if:

- (3) no vice-president has been elected as provided by rule 39; or
- (4) the vice-president is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the directors present must elect a director present to chair the meeting.

## **78. Quorum**

78.1 The quorum for a directors' meeting is 3 directors entitled to vote or a greater number determined by the directors. The quorum must be present at all times during the meeting.

## **79. Passing of directors' resolutions**

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

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

## **MEETINGS OF MEMBERS**

### **80. Calling of general meeting**

80.1 A majority of directors may call a general meeting whenever they see fit.

80.2 Except as permitted by law, a general meeting, to be called the **annual general meeting (AGM)**, must be held at least once in every calendar year.

- 80.3 On there being deposited at the registered office of the Company a requisition from members holding not less than one-tenth of the total voting rights of all the members having at the date of the deposit the right to vote at general meetings of the Company, the Company will without delay proceed to convene a general meeting of the Company. In the case of such requisition, the following provisions apply:
- (1) The requisition must state the purpose of the general meeting and must be signed by the requisitionists and deposited at the office and may consist of several documents in like form each signed by one or more of the requisitionists.
  - (2) If the Company does not, within twenty-one days from the date of the deposit of requisition proceed to convene a meeting, the requisitionists or any of them representing more than one-half of the voting rights of all of them may themselves convene the meeting. Any meeting so convened shall not be held after three months from the date of deposit of the requisition.
  - (3) In the case of a meeting that a resolution is to be proposed as a special resolution, the Company shall be deemed not to have duly convened the meeting if it does not give notice as required by the Act.
  - (4) Any requisitioned meeting shall be convened in the same manner as nearly as possible as a directors' meeting.

## **81. Amount of notice of meeting**

- 81.1 Subject to the provisions of the Act as to short notice, 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.

## **82. Persons entitled to notice of general meeting**

- 82.1 Written notice of a meeting of the Company's members must be given individually to:

- (1) each member entitled to vote at the meeting;
- (2) each director; and
- (3) the Company's auditor.

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

## **83. How notice is given**

- 83.1 The Company may give the notice of meeting to a member:

- (1) personally;
- (2) 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;
- (3) by sending it to the electronic address (if any) nominated by the member;

- (4) by sending it by other electronic means (if any) nominated by the member; or
- (5) by notifying the member in accordance with rule 89.2.

83.2 If the member nominates:

- (1) an electronic means (**nominated notification means**) by which the member may be notified that notices of meeting are available; and
- (2) an electronic means (**nominated access means**) the member may use to access notices of meeting;

the Company may give the member notice of the meeting by notifying the member (using the nominated notification means):

- (3) that the notice of meeting is available; and
- (4) how the member may use the nominated access means to access the notice of meeting.

## **84. When notice is given**

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

84.2 Except as provided by rule 85.3, a notice of meeting given to a member under rule 84.1(3) is taken to be given on the Business Day after it is sent.

84.3 A notice of meeting given to a member under rule 84.1(3) is not effective if:

- (1) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
- (2) in any case, the addressee notifies the Company immediately that the notice was not fully received in a legible form.

84.4 A notice of meeting given to a member under rule 84.1(5) is taken to be given on the business day after the day that the member is notified that the notice of meeting is available.

84.5 A certificate signed by a manager, secretary or other officer of the Company that the notice was posted or given in accordance with this rule 85 is conclusive evidence of the matter.

## **85. Period of notice**

85.1 Subject to the Act and this constitution where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day that the notice expires is included.

## **86. Contents of notice**

86.1 A notice of a general meeting must:

- (1) 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);
- (2) state the general nature of the meeting's business;
- (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
- (4) be worded and presented in a clear, concise and effective manner; and
- (5) contain a statement setting out the following information:
  - (a) that the member has a right to appoint a proxy; and
  - (b) that the proxy need not be a member of the Company.

## **87. Notice of adjourned meeting**

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

## **88. Accidental omission to give notice**

- 88.1 The accidental omission to give notice of any general meeting, 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.

## **89. Postponement of general meeting**

- 89.1 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 that it was originally called.
- 89.2 Whenever any meeting is postponed (as distinct from being adjourned under rule 92.3 or rule 93.3) 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 that the original meeting is postponed.

## **90. Technology**

- 90.1 The Company may hold a meeting of its members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

## **91. Quorum**

- 91.1 The quorum for a meeting of the Company's members is 4 persons entitled to vote and the quorum must be present at all times during the meeting.

- 91.2 In determining whether a quorum is present, individuals attending as proxies, attorneys or body corporate representatives are counted. If an individual is attending both as a member and as a proxy, attorney or body corporate representative, the individual is counted only once.
- 91.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
- (1) where the meeting was called by the members or upon the requisition of members, the meeting is dissolved; or
  - (2) 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:
    - (a) if the date is not specified – the same day in the next week;
    - (b) if the time is not specified – the same time; and
    - (c) if the place is not specified – the same place.
- 91.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

## **92. Chair at general meetings**

- 92.1 The president of the Company, if present, presides as chair at every general meeting.
- 92.2 Where a general meeting is held and:
- (1) there is no president of the Company; or
  - (2) the president is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act;
- the vice-president of the Company if present presides as chair of the meeting or, if the vice-president is not present or is unwilling to act, the directors present may appoint 1 of their number to be chair of the meeting and in default of their doing so the members present may appoint any 1 of their number to be chair of the meeting.
- 92.3 The chair must adjourn a meeting of the Company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

## **93. Business at adjourned meetings**

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



## **PROXIES AND BODY CORPORATE REPRESENTATIVES**

### **94. Who can appoint a proxy**

94.1 A member who is entitled to attend and cast a vote at a meeting of the Company's members may appoint an individual or a body corporate as the member's proxy to attend and vote for the member at the meeting. The proxy must be a member or a member's attorney.

### **95. Rights of proxies**

95.1 A proxy appointed to attend and vote for a member has the same rights as the member:

- (1) to speak at the meeting;
- (2) to vote (but only to the extent allowed by the appointment); and
- (3) to join in a demand for a poll.

95.2 If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.

95.3 A proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.

95.4 A proxy may be revoked at any time by notice in writing to the Company.

### **96. When proxy form must be sent to all members**

96.1 If the Company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (1) if the member requested the form or list – the Company must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (2) otherwise – the Company must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

### **97. Appointing a proxy**

97.1 An appointment of a proxy is valid if it is signed or otherwise electronically authenticated (as referred to in regulation 2G.2.01 of the *Corporations Regulations 2001* and in rules 98.2 and 98.3) by the member making the appointment and contains the following information:

- (1) the member's name, herd identifier and address;
- (2) the Company's name;

- (3) the proxy's name or the name of the office held by the proxy, the proxy's herd identifier; and
- (4) the meetings that the appointment may be used.

An appointment may be a standing one.

97.2 An electronically authenticated appointment of a proxy must in addition to rule 102.1:

- (1) include a method of identifying the member; and
- (2) include an indication of the member's approval of the information communicated.

97.3 If the electronically authenticated appointment of a proxy is done through either email or internet-based voting:

- (1) the member must be identified by personal details such as the member's name, personal address and date of birth; and
- (2) the member's approval must be communicated by a form of security protection (for example, the entering of a confidential identification number such as a shareholder registration number or holder identification number).

97.4 An undated appointment is taken to have been dated on the day it is given to the Company.

97.5 An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- (1) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (2) if the proxy has 2 or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands;
- (3) if the proxy is the chair – the proxy must vote on a poll, and must vote that way; and
- (4) if the proxy is not the chair – the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a member, this rule 98.5 does not affect the way that the person can cast any votes the person holds as a member.

97.6 An appointment does not have to be witnessed.

97.7 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

## **98. Form of proxy sent out by Company**

98.1 A form of proxy sent out by the Company may be in a form determined by the directors but must:

- (1) enable the member to specify the manner that the proxy must vote in respect of a particular resolution; and
  - (2) leave a blank for the member to fill in the name of the person primarily appointed as proxy.
- 98.2 The form may provide that if the member leaves it blank as to the person primarily appointed as proxy or if the person or persons named as proxy fails or fail to attend, the chair of the meeting is appointed proxy.
- 98.3 Despite rule 99.1 an instrument appointing a proxy may be in the following form or in a form that is as similar to the following form as the circumstances allow:

**Australian Wagyu Association Limited**

ACN 003 700 721.

I/We, \_\_\_\_\_ of \_\_\_\_\_, being a member/members of the abovenamed company, appoint \_\_\_\_\_ of \_\_\_\_\_ or, in his or her absence, \_\_\_\_\_ of \_\_\_\_\_ as my/our proxy to vote for me/us on my/our behalf at the \*annual general/\*general meeting of the company to be held on \_\_\_\_\_ and at any adjournment of that meeting.

† This form is to be used \*in favour of/\*against the resolution.

Signed on \_\_\_\_\_ .

\* Strike out whichever is not desired.

† To be inserted if desired.

## **99. Receipt of proxy documents**

- 99.1 For an appointment of a proxy for a meeting of the Company's members to be effective, the following documents must be received by the Company at least 48 hours before the meeting:
- (1) the proxy's appointment; and
  - (2) if the appointment is signed or otherwise authenticated by the appointor's attorney – the authority under which the appointment was signed or authenticated or a certified copy of the authority.
- 99.2 If a meeting of the Company's members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- 99.3 The Company receives an appointment or authority:
- (1) when it is received at any of the following:
    - (a) the Company's registered office; or

- (b) a place or electronic mail address specified for the purpose in the notice of meeting; or
  - (2) if the notice of meeting specifies other electronic means that a member may give the document – when the document given by those means is received by the Company and complies with rules 98.2 and 98.3.
- 99.4 An appointment of a proxy is ineffective if there is a requirement in the notice of meeting that:
- (a) the transmission be verified in a way specified in the notice; or
  - (b) the proxy produce the appointment and authority (if any) at the meeting;
- and this requirement is not complied with.

## **100. Validity of proxy vote**

100.1 A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

100.2 A vote cast by a proxy is valid although, before the proxy votes:

- (1) the appointing member dies;
- (2) the member is mentally incapacitated;
- (3) the member revokes the proxy's appointment; or
- (4) the member revokes the authority under which the proxy was appointed by a 3<sup>rd</sup> party;

unless the Company receives written notice of that event before the start or resumption of the meeting at which the proxy votes.

## **101. Body corporate representative**

101.1 A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:

- (1) at meetings of the Company's members;
- (2) at meetings of creditors or debenture holders;
- (3) relating to resolutions to be passed without meetings; or
- (4) in the capacity of a member's proxy appointed under rule 98.

The appointment may be a standing one.

101.2 The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.

101.3 A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.

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

## **102. Attorney of member**

102.1 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 it must be produced to the Company at least 48 hours before the meeting, in the same way as the appointment of a proxy.

## **VOTING AT MEETINGS OF MEMBERS**

### **103. How a vote may be exercised**

103.1 Subject to rules 105 and 106 at any general meeting of members, each full member and each honorary life member present has one vote on a show of hands and on a poll.

103.2 The vote may be exercised in person or by proxy, body corporate representative or attorney.

### **104. Voting disqualification**

104.1 A member is not entitled to vote at a general meeting if:

- (1) the annual subscription of the member; or
- (2) in the case of a person who is a nominated representative, the annual subscription of the corporate member for which he or she is the nominated representative;

is more than one month in arrears at the date of the meeting or the postponed or adjourned meeting.

### **105. Objections to right to vote**

105.1 A challenge to a right to vote at a meeting of members:

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

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

## **106. How voting is carried out**

106.1 On a show of hands, a declaration by the chair 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. Voting may be conducted by electronic voting (which is also a voting in writing / poll).

106.2 An entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour or against the resolution.

106.3 Unless otherwise required by this constitution or the Act, all resolutions of the Company are ordinary resolutions that are resolutions passed by more than 50% of the votes cast by members entitled to vote on the resolutions.

106.4 For electronic voting, the directors must be satisfied it is reasonably practical and secure. An electronic ballot, election or resolution is not invalidated by technical difficulties or lack of access to appropriate technology which prevents less than 5% of members who tried to cast their votes electronically, from successfully voting.

106.5 If technology failure for some or all of the voting members prevents a directors' election or vote in writing from being completed, the Chair may if they think necessary, adjourn the meeting, extend the voting period or hold a new voting period in a manner so that the Chair considers members have had a reasonable opportunity to vote.

## **107. Matters that a poll may be demanded for**

107.1 A poll may be demanded on any resolution.

107.2 A demand for a poll may be withdrawn.

## **108. When a poll is effectively demanded**

108.1 At a meeting of the Company's members, a poll may be demanded by:

- (1) at least 3 members entitled to vote on the resolution; or
- (2) the chair.

108.2 The poll may be demanded:

- (1) before a vote is taken;
- (2) before the voting results on a show of hands are declared; or
- (3) immediately after the voting results on a show of hands are declared.

## **109. When and how polls must be taken**

- 109.1 A poll demanded 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.
- 109.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- 109.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question that the poll has been demanded.
- 109.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

## **110. Chair's casting vote**

- 110.1 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any vote he or she may have in his or her capacity as a member or proxy.
- 110.2 The chair has a discretion both as to use of the casting vote and as to the way in that it is used.

## **ANNUAL GENERAL MEETING**

### **111. Business of an annual general meeting**

- 111.1 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:
- (1) the consideration of the annual financial report, directors' report and auditor's report;
  - (2) the election of directors;
  - (3) the appointment of the auditor; and
  - (4) the fixing of the auditor's remuneration.
- All other business transacted at an annual general meeting and all business transacted at any other general meeting is special business.
- 111.2 The business of the annual general meeting also includes any other business that under this constitution or the Act ought to be transacted at an annual general meeting.
- 111.3 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.
- 111.4 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.

## **112. Resolutions proposed by members**

112.1 A member may not at any meeting move any resolution relating to special business unless:

- (1) members with at least 5% of the votes that may be cast on the resolution have given the Company notice of the resolution, or the requirements of section 249N of the Act, have otherwise been satisfied, and 2 months' notice has elapsed since the notice was given; or
- (2) the resolution has previously been approved by the directors.

## **MINUTES**

### **113. Minutes to be kept**

113.1 The directors must keep minute books in that they record within 1 month:

- (1) proceedings and resolutions of meetings of the Company's members;
- (2) proceedings and resolutions of directors' meetings (including meetings of a committee of directors);
- (3) resolutions passed by members without a meeting; and
- (4) resolutions passed by directors without a meeting.

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

- (1) the chair of the meeting; or
- (2) the chair of the next meeting.

113.3 The directors 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.

113.4 Without limiting rule 113.1 the directors must record in the minute books:

- (1) all appointments of officers;
- (2) the names of the directors present at all meetings of directors and the Company;
- (3) in the case of a technology meeting, the nature of the technology; and



- (4) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest.

## **ACCOUNTS, AUDIT AND RECORDS**

### **114. Accounts**

- 114.1 The directors must cause proper accounting and other records to be kept showing the financial affairs of the Company in accordance with the Act .
- 114.2 The Board shall from time to time determine at what times and places and under what conditions and regulations, the accounting and other records of the Company shall be open to the inspection of members not being members of the Board.
- 114.3 The directors must distribute copies of the Auditor's report, statement of profit or loss and other comprehensive income, statement of financial position and statement of cash flows (including every document required by law to be attached to them) as required by the Act.
- 114.4 The Companies accounts shall be made up to a date not more than three months before the date of the Annual General Meeting.
- 114.5 No member (not being a member of the Board) shall have any right of inspecting any account or book or paper of the Company except as authorised by the Board or by the Company in General Meeting.

### **115. Audit**

- 115.1 A registered company auditor must be appointed if required by the Act.
- 115.2 The remuneration of the auditor must be agreed and the auditor's duties regulated in accordance with the Act.

## **EXECUTION OF DOCUMENTS**

### **116. Common seal**

- 116.1 The Company may, but need not, have a common seal.

### **117. Use of common seal**

- 117.1 If the Company has a common seal the directors must provide for its safe custody.
- 117.2 The common seal may not be fixed to any document except by the authority of a resolution of the directors or of a committee of the directors duly authorised by the directors.

117.3 The Company executes a document with its common seal if the fixing of the seal is witnessed by:

- (1) 2 directors of the Company; or
- (2) a director and a company secretary of the Company.

### **118. Execution of documents without common seal**

118.1 The Company may execute a document without using a common seal if the document is signed by:

- (1) 2 directors of the Company; or
- (2) a director and a company secretary of the Company.

### **119. Execution of document as a deed**

119.1 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 rule 121 or rule 122.

### **120. Execution – general**

120.1 The same person may not sign in the dual capacities of director and secretary.

120.2 A director may sign any document as director, with or without the common seal, 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.

120.3 Rules 118 and 119 do not limit the ways that the directors may authorise documents (including deeds) to be executed on behalf of the Company.

## **INADVERTENT OMISSIONS**

### **121. Formalities omitted**

121.1 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**

### **122. Winding up**

- 122.1 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 of the Company, but must be given or transferred to some other institution or institutions determined by the members of the Company at or before the time of dissolution that has similar objects to the Company.
- 122.2 If the members do not make the necessary determination under rule 123.1, the Company may apply to the Supreme Court to determine the institution or institutions.

End of document