

Queensland Fruit and Vegetable Growers Ltd

Constitution

November 2018

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CONSTITUTION

OF

Queensland Fruit and Vegetable Growers Ltd

(a public company limited by guarantee)

1. Preliminary

1.1 Definitions and Interpretation

In the interpretation of this Deed, unless inconsistent with the subject or context each of the expressions defined in Part 1 of Schedule 1 shall have the meaning there assigned to it and the provisions of Part 2 of Schedule 1 shall apply.

1.2 Exclusion of Replaceable Rules

The Replaceable Rules contained in the Act, except the Replaceable Rule in section 249X, do not apply to the Company and are excluded from this Constitution.

1.3 Name of Company

The name of the Company is Queensland Fruit and Vegetable Growers Ltd.

1.4 Public Company

Queensland Fruit and Vegetable Growers Ltd is a public company limited by guarantee and registered under the *Corporations Act 2001*. It is also an Industrial Union of Employers registered under the *Industrial Relations Act 1999*.

1.5 Liability of Members

The liability of the Members is limited. Every Member undertakes to contribute \$10 to the assets of the Company if it is wound up whilst a Member, or within one year afterwards.

2. Objects

2.1 Objects of Company

The objects for which the Company is established are to provide influential representation, strong leadership and smart solutions for the success of horticulture businesses.

2.2 Income and Property of Company

The income and property of the Company, however derived, shall be applied solely towards the promotion of the objects of the Company as set forth in this Constitution. Subject to clause 8, no portion of the income or property shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to the Members of the Company.

3. Membership

3.1 Classes of Membership

The classes of membership of the Company will be as determined by the Board from time to time.

3.1.1 The only membership category of the Company with voting rights shall be that of Grower Members.

3.1.2 Other categories may include, but not be limited to:

- Honorary Members;
- Subscriber Members;
- Corporate Members; and
- Affiliate Members.

3.2 Qualifications for membership

3.2.1 Grower membership will be open to all persons that:

- are commercial growers of fruit and/or vegetables or other horticultural produce; and
- grow for sale in their own name and on their own account.

3.2.2 Honorary membership may be conferred on a person who, in the opinion of the Board, is regarded as worthy of recognition by reason of their outstanding and meritorious services to the Company and its objects on the basis that:

- not less than 75% of Board members are in favour of the grant of honorary membership; and
- not more than 3 persons per calendar year are granted honorary membership.

3.2.3 Subscriber membership will be open to all persons that subscribe to F&V News.

3.2.4 Corporate membership will be open to all persons that are strategically linked with, or have a vested interest in, the Australian horticulture industry.

3.2.5 Affiliate membership will be open to:

- registered associations or bodies corporate that represent horticulture interests and share the Company's stated values; and
- have agreed to enter into a special relationship with the Company.

3.2.6 Qualifications for other membership categories shall be as determined by the Board from time to time.

3.3 Fees

3.3.1 The joining fee payable by each applicant for membership is such sum, if any, as the Directors prescribe from time to time in respect of each class of membership.

3.3.2 The annual membership fee payable by a Member (or a person wishing to become a Member) is such sum if any as the Directors prescribe from time to time in respect of each class of membership.

3.3.3 If the membership fee (or any part of it) payable by a Member remains unpaid for 60 days after it becomes payable and a notice of default is issued to that Member, the Member ceases to be entitled to any of the rights or privileges of a Member but these may be reinstated on payment of all arrears if the Directors think fit to do so.

3.4 Application for membership

A person may apply to become a Member of the Company (other than an Honorary Member) by lodging with the Company at its registered office:

- a completed application in the form and containing the information prescribed by the Board; and
- payment in full of the joining fee (if any) and membership fee; and

- satisfying any eligibility criteria determined by the Board.

3.5 Refusal of application

The Board (or any delegate of the Board) may, in its absolute discretion, refuse an application for membership of the Company on the grounds of the Applicant's ineligibility. The Board (or any delegate of the Board) need not assign any reason for that refusal and any joining fee or membership fee lodged by the applicant shall be refunded without interest within 30 days of that refusal.

3.6 Notice of approval of application

The applicant shall be notified in writing of acceptance of the application for membership.

3.7 Register of Members

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

3.7.2 Where an application for membership has been approved, the relevant details shall be entered in the Register of Members.

3.7.3 The following details must be entered into the Register with respect to each Member:

- the Member's full name;
- the Member's address;
- in the case of a Member who is not a natural person, the full name of its corporate representative;
- the Member's telephone and facsimile number (if any) or other form of contact details including electronic means;
- the category or class of membership;
- the date of admission to and cessation of membership.

3.8 Member to notify change of details

A Member must give written notice to the Company of any change in the Member's name, address, telephone or facsimile number within one month after the change.

3.9 Becoming a Member evidence of agreement to Rules

The fact of a person becoming a Member shall be conclusive evidence that the person agrees to be bound by the Rules of the Company and any Rules which may be made under the Rules.

3.10 Rights of Financial Members

3.10.1 Every Financial Member who is a Grower Member:

- has the right to receive notices of and to attend and be heard at any general meeting of the Company; and
- has the right to vote at any general meeting, poll or ballot conducted by the Company.

3.10.2 Every Honorary Member has the right to receive notices of and to attend at any general meeting of the Company, but does not have the right to vote at any general meeting.

3.10.3 Every other Financial Member has the right to receive notices of and to attend any general meeting of the Company, but does not have the right to vote at any general meeting.

3.11 Rights of Members other than Financial Members

Every Member who is not a Financial Member has the right to receive notices of and to attend any general meeting of the Company, but shall not have the right in the case of a Grower Member:

- to be heard at any general meeting of the Company; or
- to vote at any general meeting, poll or ballot conducted by the Company.

3.12 Resignation of Membership

A Member may resign from membership of the Company by giving written notice. The resignation takes effect from the date of receipt of the notice of resignation or any later date specified in the notice. The Member will remain liable for all moneys due by him to the Company, including any sum not exceeding \$10 for which he is liable as a Member of the Company pursuant to clause 1.5.

3.13 Removal from membership

A Member may be expelled from the Company by a resolution of the Board in any of the following circumstances:

- the Member ceases to meet the eligibility criteria in clause 3.2 for membership of the class of which they are a Member, or the eligibility for other membership categories as determined by the Board under clause 3.2.6;
- the Member has failed to discharge the Member's obligations to the Company, whether under these Rules or a contract;
- membership fees and other monies payable by the Member to the Company under these Rules have not been paid within 90 days after the due date;
- the Member acts detrimentally to the interests of the Company;
- the Member acts in a way that has prevented or hindered the Company in carrying out its objects or any one or more of them;
- the Member brings the Company into disrepute; or
- in the opinion of the Board, the Member's conduct or actions have caused, or are likely to cause, harm or damage to the Company's reputation or goodwill, or to impede or interfere with the attainment of the objects of the Company.
- the member brings the reputation or standing of horticulture into disrepute. (Example: a member repeatedly does things that damage horticulture's social licence such as a breach of labour laws or crop spraying).

3.14 Pre-condition to removal

The Board must not expel a Member under clause 3.13 unless:

- it gives written notice to the Member stating the Board's intention to expel the Member and specifying the reasons. The notice must also state that the Member has a period of 28 days after receiving the notice to show cause in writing why the Member should not be expelled; and
- the Member either fails to show cause in writing within the specified time, or does show cause as required, and the Board after considering the written information submitted by the Member, is satisfied that the Member should be expelled from the Company.
- A decision of the Board is final and binding and is not subject to any further review or legal action by an affected member.

3.15 Other events to cease membership

A Member ceases to be a Member:

- in the case of a natural person - on death or bankruptcy; or
- in any other case - upon the Member being dissolved, deregistered, or otherwise ceasing to exist.

3.16 Liabilities on ceasing membership

In addition to any continuing liability under clause 1.5, a Member who resigns, is expelled or otherwise removed as a Member remains liable for all membership fees and other monies payable by the Member up to that date and must immediately pay them in full to the Company.

4. General Meetings

4.1 Convening of General Meeting

The Board and any Director may convene a general meeting of the Company at any time.

4.2 Requisition of General Meeting

The Members may requisition the holding of a general meeting as provided by section 249D of the Act, or convene a general meeting as provided by section 249F of the Act.

4.3 Period of Notice

Subject to the provisions of the Act as to agreements to short notice of meetings, at least 21 days' notice of a general meeting must be given to the persons entitled to receive that notice.

4.4 Notice of Meeting

A notice of a general meeting must specify:

- the place, date and time of the meeting;
- the general nature of the business to be transacted, except that, if a meeting is convened as the annual general meeting of the Company, the notice of the meeting need not state that the business to be transacted includes:
 - the consideration of the accounts and the reports of the Directors and Auditors; or
 - the appointment of and fixing of the remuneration of the Auditor;
- if a Special Resolution is to be proposed at the meeting - the terms of the resolution;
- information regarding the right to appoint a proxy; and
- if a mode of meeting other than meeting in person is by reason of clause 4.6 to apply to the meeting, that mode of meeting and any details required to enable a Member to attend that meeting.

4.5 Agenda Items

The Members may require the Company to place a proposed resolution on the agenda of a general meeting, in accordance with the procedure set out in section 249N of the Act.

4.6 Mode of Meeting

The Company may meet in general meeting in person or, if the Board determines either generally or in any specified case, by telephone, or other instantaneous means of conferring for the dispatch of business (or

by any combination of those means) which allows each Member (or Member's representative, proxy or attorney) to hear and be heard by each other person at the meeting, and a person entitled to be present at the meeting who can so hear and be heard is present at that meeting.

4.7 Omission to Give Notice

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

4.8 Cancellation or Postponement of Meeting

Where notice of a general meeting has been given, the Board may by notice given to all persons entitled to be given notice of the general meeting, postpone or cancel the general meeting.

4.9 Adjournment of Meetings

The chairman of a general meeting at which a quorum is present:

- may with the consent of the meeting by Ordinary Resolution; and
- must, if so directed by the meeting by Ordinary Resolution,

adjourn the meeting from time to time and from place to place.

4.10 Business at Adjourned Meeting

The only business which an adjourned general meeting may deal with is business which was left unfinished from the general meeting which was adjourned.

4.11 Notice of Adjourned Meeting

No notice need be given of an adjourned general meeting (or of the business to be transacted at it) except if a general meeting is adjourned for more than 20 Business Days, in which case, notice of the adjourned meeting must be given as if it were notice of the original meeting.

5. Proceedings at General Meetings

5.1 Representation of Members

A Member may attend a general meeting at which he is entitled to be present in any of the following ways (if applicable to the Member):

- in person;
- by proxy;
- by attorney; or
- in the case of a Member which is a body corporate, by a representative appointed in respect of the general meeting under section 250D of the Act.

5.2 Quorum

5.2.1 Business may not be transacted at a general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.

5.2.2 15 Members who are Financial Members present in person, by proxy, representative or attorney form a quorum.

- 5.2.3 If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chairman, then:
- if the meeting was convened by or on the requisition of Members, it must be dissolved; or
 - it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Board.
- 5.2.4 At an adjourned meeting, 15 Members who are Financial Members present in person, by proxy, representative or attorney form a quorum but if a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved

5.3 Chairman

The Chairman of the Board of Directors shall be entitled to take the chair at every general meeting of the Company.

5.4 Chairman Absent

Where a general meeting is held and:

- 5.4.1 a chairman has not been elected by the Board; or
- 5.4.2 the chairman elected by the Board is not present within 15 minutes after the time appointed for the holding of the meeting or, being present, is unwilling or unable to act,

the Voting Members present must elect one of their number to be chairman of the meeting.

5.5 Method of Voting

Every resolution put to a vote at a general meeting must be determined by a show of hands unless a poll is properly demanded either before or on declaration of the result of the vote on a show of hands.

5.6 Votes on Show of Hands

Where a resolution is determined by a show of hands:

- 5.6.1 a declaration by the chairman of the general meeting that the resolution has been carried, carried unanimously, carried without dissent, carried by a particular majority or lost is conclusive evidence of the fact so declared without proof of the number or proportion of votes cast for or against that resolution; and
- 5.6.2 an entry in the book containing the minutes of that general meeting recording that declaration is conclusive evidence of the fact that the declaration was made as so recorded.

5.7 Demand for Poll

A demand for a poll may be made by:

- 5.7.1 the chairman of the general meeting; or
- 5.7.2 at least 5 members entitled to vote on the resolution.

5.8 Conduct of Poll

If a poll is properly demanded for a resolution:

- 5.8.1 if the resolution is for the adjournment of the general meeting, the poll must be taken immediately at the place and in the manner that the chairman of the meeting determines and declares to the meeting;

- 5.8.2 in all other cases, the poll must be taken at the time and place and in the manner that the chairman of the general meeting determines and declares to the meeting;
- 5.8.3 the result of the poll, as disclosed by the chairman of the general meeting at which the result is declared, is a resolution of the general meeting at which the poll is demanded;
- 5.8.4 the demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded; and
- 5.8.5 an entry in the book containing the minutes of the general meeting at which the result is declared recording that declaration is conclusive evidence of the fact that the declaration was made as so recorded.

5.9 No Poll on Election of Chairman

A demand for a poll may not be made in respect of the election by the general meeting of the chairman of the meeting.

5.10 Casting Vote of Chairman

If on a resolution proposed as an Ordinary Resolution at a general meeting there is an equality of votes (whether on a show of hands or on the poll), the chairman of the meeting may exercise a casting vote in addition to all other votes which he may have (unless the chairman is not entitled for some reason to cast a vote, in which case the resolution is not passed).

5.11 Circular Resolutions

A document setting out a resolution, signed by each Member for the time being entitled to receive notice of and attend and vote at general meetings or by that Member's duly appointed attorney (or if it is a corporation its duly authorised representative) and stating that each Member is in favour of that resolution has effect as if that resolution had been passed at a general meeting of the Company and takes effects as an Ordinary Resolution or Special Resolution, as the case may be. Despite the previous sentence, the Members cannot remove the Auditor of the Company by a circular resolution.

5.12 Several Documents Suffice

For the purposes of clause 5.11, 2 or more documents in identical terms, each signed by 1 or more Members (or such Members' attorneys or representatives, as the case may be) are to be treated as 1 document provided that:

- 5.12.1 each document is delivered to the registered office of the Company or a legible copy of it is received there by facsimile transmission; and
- 5.12.2 when more than 1 Member, representative or attorney signs the document the date of signing the document by each Member, the attorney or representative is set out;

and the date of the resolution is the last date on which those documents were signed by a Member or its attorney or representative.

5.13 Powers of Chairman

Subject to the terms of these Rules dealing with adjournment of meetings:

- 5.13.1 the ruling of the chairman on all matters relating to the order of business, procedure and conduct of the general meeting is final and no motion of dissent from a ruling of the chairman may be accepted; and
- 5.13.2 the chairman may, in his discretion, expel any Member or director from a general meeting if the chairman reasonably considers that the Member or director's conduct is inappropriate behaviour such as (by way of example only):
 - the use of offensive or abusive language which is directed to any person, object or thing;

- attendance at the meeting while under the influence of any kind of drug including but not limited to any alcoholic substance; and
- the use or consumption of any drug by a person at the meeting.

5.14 Objections to voter qualification

Only a Financial Member may raise an objection to the qualification of a person to vote at the meeting or adjourned meeting at which the vote objected to is given or tendered and:

- an objection to the qualification of a person to vote must be referred to the chairman, whose decision is final; and
- a vote not disallowed according to an objection is valid for all purposes.

6. Entitlements to Attend and Vote

6.1 Entitlement to Notice and to Attend

Subject to this Constitution, each Member and each Director is entitled to notice of each general meeting and to be present and to speak at that general meeting.

6.2 Entitlement to Vote

Subject to this Constitution, each Grower Member present at a general meeting who is a Voting Member or a proxy, representative or attorney appointed by a Voting Member has one vote on a show of hands or on a poll.

6.3 Vote of Member of Unsound Mind

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under a law relating to mental health, that Member's committee or trustee or other person who properly has the management of the Member's estate may, if that person has at least 48 hours before the time notified for a general meeting (or an adjourned meeting) satisfied the Board of his relationship to the Member or the Member's estate, exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.

6.4 Appointment of Proxy

A Member may appoint a proxy (who need not be a Member) to attend, speak and vote at a general meeting in his place only by an instrument of proxy in any form that the Board may from time to time prescribe or accept which is executed:

- 6.4.1 in the case of a Member who is a natural person, under the hand of the Member, or of an attorney appointed in writing by the Member; or
- 6.4.2 in the case of a Member which is a body corporate, under its common seal, under hand by 2 Directors or a Director and Secretary or a Sole Director and Sole Secretary in accordance with section 127 of the Act, or under the hand of an attorney appointed in writing by the Member.

6.5 Corporate Representatives

Where a body corporate authorises a person to act as its representative in respect of the Company under section 250D of the Act, that appointment is only effective where the Company receives a copy of the instrument appointing the representative.

6.6 Deposit of Instruments

Any appointment of a proxy, attorney or representative is effective in respect of a particular general meeting if, and only if, the following instruments are actually received (which includes receipt of a copy of

those instruments by legible facsimile transmission) by the Company at its registered office (or another place notified by the Board) at any time prior to the time notified for that meeting:

- 6.6.1 in the case of a proxy, the instrument of proxy and, if it is executed by an attorney, the relevant power of attorney or an office copy or notarially certified copy of the power of attorney;
- 6.6.2 in the case of an attorney, the power of attorney or an office copy or notarially certified copy of the power of attorney; and
- 6.6.3 In the case of a representative, a copy of a certificate signed by authorised officers of the body corporate (in accordance with its constitution) evidencing the appointment of the representative.

6.7 Multiple Appointments

Where the Company has received an instrument of proxy from a Member the appointment made by that instrument is and remains valid and effective, except that where the Company subsequently receives:

- 6.7.1 a power of attorney or office copy or notarially certified copy of a power of attorney entitling the attorney to attend and vote at the meeting, the appointment is revoked;
- 6.7.2 intimation in writing either of the revocation of the appointment under the instrument of proxy or of the death of the Member, the appointment is revoked; and
- 6.7.3 another instrument of proxy from the Member, the instrument of proxy bearing the later date (or if the instruments bear the same date, the instrument later received by the Company) is an intimation in writing of the revocation of the appointment under the other instrument.

6.8 Presence of Member

If a Member is present at a general meeting in either of the ways specified in clause 5.1 and a person appointed by the Member as a proxy or attorney is also present at that meeting, that person may not exercise the rights conferred by the instrument of proxy or power of attorney while the Member is present.

6.9 Directions to Proxy

If the appointment of a proxy specifies the way in which the proxy is to vote on a particular resolution:

- 6.9.1 the proxy need not vote on a show of hands;
- 6.9.2 if a proxy has 2 or more appointments that specify different ways to vote on a resolution, the proxy must not vote on a show of hands;
- 6.9.3 if the proxy is the chairman, the proxy must vote on a poll; and
- 6.9.4 if the proxy is not the chairman, the proxy need not vote on a poll.

6.10 Ruling on Entitlements to Vote

An objection may be raised with the chairman of a general meeting as to the qualification of a purported voter or the admission or rejection of a vote by any person present and entitled (or claiming to be entitled) to vote but that objection may be made only at the general meeting or adjourned meeting at which the purported voter wishes to vote or the vote objected to is given or tendered and, in relation to that objective:

- 6.10.1 the decision of the chairman is final and conclusive; and
- 6.10.2 a vote not disallowed as a result is valid and effective for all purposes.

7. Directors

7.1 Constitution of Board

Unless otherwise determined by the Company in general meeting, the Board of Directors shall consist of not less than 4 nor more than 9 directors who comprise:

- 7.1.1 Up to 7 Grower Members or Eligible Persons of Grower Members, provided that the membership of the Board shall not at any time consist of more independent directors than Grower Members. There needs to be at least 1 more Grower Member (or Eligible Persons of Grower Members) than independent directors; and
- 7.1.2 Independent directors who shall be selected (and appointed) by the Board from business, industry and the professions who in the opinion of the Board shall offer such experience and skills as shall be beneficial to the growth, development and operation of the Company.

7.2 Term of office – directors (other than independent directors)

- 7.2.1 Subject to the provisions of this Constitution, a director (other than an Independent Director) shall hold office for a term expiring no later than the fourth annual general meeting following his appointment without submitting himself for re-election, or until the director earlier vacates the office.
- 7.2.2 Subject to clause 7.2.3, a director (other than an Independent Director) shall not hold office for more than 2 consecutive terms.
- 7.2.3 A director who is chairman at the expiration of his second term as director, may hold office for a third term if his term as chairman has not expired.

7.3 Term of office - independent directors

- 7.3.1 An Independent Director shall be appointed by the Board for a term of 1 year.
- 7.3.2 Subject to the provisions of this Constitution, an Independent Director may hold office for a period not exceeding 4 consecutive terms, or until the Independent Director earlier vacates the office.

7.4 Director eligible for reappointment

Subject to the provisions of this Constitution, a retiring director is eligible for reappointment to the Board.

7.5 Chairman and vice chairman

- 7.5.1 The Board must have a chairman and vice chairman, each of whom can be appointed by resolution of the Board from time to time.
- 7.5.2 Election must be by simple majority of the directors present and voting at the meeting.
- 7.5.3 The chairman holds office for 2 years or until in either case:
- he is removed as a director or vacates the office of director; or
 - he is removed as chairman or vacates the office of chairman,
- whichever occurs first, but a person cannot hold office as the chairman for more than 6 consecutive years.

7.6 Qualification of Directors

An independent director need not be a Member.

7.7 Casual Vacancy

The Board may at any time (except during the period from the opening to the closing of a general meeting) appoint any person as a Director to fill a casual vacancy or as an addition to the Board but so that the number of those Directors does not any time exceed the maximum number set under clause 7.1. Unless appointed as an Independent Director, a person appointed to fill a casual vacancy shall hold office until the next general meeting of the Company at which that person may stand for election.

7.8 Vacation of Office

The office of a Director automatically becomes vacant if the Director:

- 7.8.1 becomes an insolvent under administration;
- 7.8.2 is not permitted by the Act (or an order made under the Act) to be a Director;
- 7.8.3 becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- 7.8.4 is removed as a Director under the Act or this Constitution;
- 7.8.5 is absent from three consecutive meetings without the leave of the chairman of the Board or reasonable excuse, or in the case of the Chairman, without the leave of the Board;
- 7.8.6 resigns by notice in writing to the Company; or
- 7.8.7 dies.

7.9 Removal of director by members

The Company may by ordinary resolution remove any or every director from office before the expiration of his or their period of office. The Company may by ordinary resolution appoint a person in the place of a director removed under this clause.

7.10 Retirement of director

A director may retire from office by giving notice in writing to the Company of that director's intention to retire. A notice of resignation takes effect at the time which is the later of:

- the time of giving notice to the Company; or
- the expiration of the period, if any, specified in the notice.

7.11 Removal of chairman or vice chairman

7.11.1 The Board may, at any time, by a resolution at a meeting of directors, remove the chairman or vice chairman only if before a vote is taken on the resolution, the secretary gives each director notice of the resolution proposing to remove the chairman or vice chairman and the notice:

- states the day, time and place of the meeting;
- states the purpose of the meeting;
- is given to each director at least 7 days before the day of the meeting;
- is signed by at least half the number of directors;
- at least three quarters of the number of directors vote on the resolution; and
- at least three quarters of the number of directors who voted are in favour of the resolution.

7.11.2 If at any time the office of chairperson or vice chairperson becomes vacant, the Board must elect another director to fill the vacancy. The election must be by simple majority of the directors present and voting at a meeting of directors.

7.12 Additions to Board

Subject to clause 7.1, the Board may at any time appoint a person to be a director, in addition to the existing directors. If not appointed as an Independent Director, such person shall hold office until the next annual general meeting at which directors are to retire under clause 7.14, and shall be eligible for election.

7.13 Deleted at November 2018 AGM

7.14 Rotation of directors

7.14.1 A retiring director may act until the conclusion of the meeting at which he or she retires and, subject to clause 7.2, is eligible for re-election;

7.14.2 Subject to this Constitution, the directors to retire by rotation at an annual general meeting are those who have been longest in office and the length of time a director has been in office shall be computed from his or her last election. As between directors who have been in office an equal length of time, the director to retire shall, in default of agreement between them, be determined by drawing lots in any manner determined by the chairperson or if he or she is not able and willing to act, by the vice chairperson.

7.15 Election of directors

7.15.1 The directors of the Board (other than Independent Directors) shall be elected by postal vote.

7.15.2 Subject to clause 7.15.1, the process for election of directors (other than Independent Directors) shall be as determined by the Board from time to time.

7.16 Less than minimum number of directors

Where the office of a Director becomes vacant, the continuing Directors may continue to act except where the number of Directors falls below the minimum number set under clause 7.1, in which case the continuing Directors may act as the Board only:

- to appoint Directors up to that minimum number;
- to convene a general meeting; or
- in emergencies.

7.17 Alteration of maximum and minimum number of directors

The Company may, by Ordinary Resolution, increase or reduce either or both:

7.17.1 the maximum number of Directors specified in clause 7.1; and

7.17.2 the minimum number of Directors specified in clause 7.1 (but not so that it is less than 4).

8. Directors' Remuneration

8.1 Remuneration of Directors

The remuneration of the directors:

8.1.1 may not in any year exceed in aggregate the amount last fixed for them by Ordinary Resolution before the end of that year; and

8.1.2 is to be allocated to those Directors as determined by the Board (including those Directors), or, if there is no such determination in any year, equally between them; and

8.1.3 in any case, accrues from day to day.

8.2 Additional Remuneration for Extra Services

If a Director, having been requested to do so by the Board, either performs extra services or makes any special exertions for the Company the Company may remunerate that Director by the payment of a fixed sum determined by the Board and that Remuneration may be either in addition to or in substitution for any Remuneration to which that Director may be entitled under clause 8.1.

8.3 Expenses of Directors

8.3.1 The Company must pay a Director (in addition to any other remuneration) all reasonable expenses including, without limitation, any travelling and accommodation expenses incurred by the Director:

- in attending meetings of the Board or a committee of the Board;
- on the business of the Company;
- in carrying out that Director's duties as a Director;

8.3.2 Nothing in these Rules prevents:

- the distribution of government grant monies to Members where the grant is made on the basis that the monies be used for the benefit of persons including Members; or
- the Company from providing services or information to the Members or classes of Members on terms which are different from the terms on which services or information are provided to other classes of Members or persons who are not Members.

9. Directors' Duties and Interests

9.1 Disclosure of Material Personal Interest

A Director who has a material personal interest in a matter that relates to the affairs of the Company must give Directors notice of the interest unless the Act does not require the Director to give notice of an interest.

9.2 Details of Notice

A notice required by clause 9.1 must:

9.2.1 give details of the interest, and the relation of the interest to the affairs of the Company; and

9.2.2 be given at a Directors' meeting as soon as practicable after the Director becomes aware of his interest in the matter.

9.3 Manner of Details

A Director may provide details of a material personal interest either orally or in writing.

9.4 Recording of Details

Details provided by a Director under clause 9.3 must be recorded in the Minutes of the Directors' meeting.

9.5 Restriction on Voting

A Director who has a material personal interest in a matter that is being considered at a meeting of the Board must not:

9.5.1 be present while the matter is being considered at the meeting; or

9.5.2 vote on the matter;

Unless:

9.5.3 clauses 9.6 or 9.7 apply; or

9.5.4 the interest does not need to be disclosed under the Act.

9.6 Participation with approval of other Directors

A Director may be present and vote if the Directors who do not have a material personal interest in the matter pass a resolution that:

9.6.1 identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Company; and

9.6.2 states that those Directors are satisfied the interest should not disqualify the director from voting or being present.

9.7 Participation with approval of ASIC

A Director may be present and vote if the Director is so entitled under a declaration or order made by the Australian Securities and Investments Commission under the Act.

9.8 Execution of instruments

Provided the provisions of this clause 9 are otherwise complied with, a Director who has a material personal interest in a matter may participate in the signing of any instrument by or on behalf of the Company and whether by signing of by affixing or witnessing the affixing of the Common Seal.

10. Powers of the Board

Except as otherwise required by the Act or any other applicable law or another provision of this Constitution:

- the Board is to manage the business of the Company; and
- the Board may exercise each and every right, power or capacity of the Company,

to the exclusion of the Company in general meeting and the Members.

11. Proceedings of the Board

11.1 Mode of Meeting

The Board may meet in person or by telephone or other instantaneous means of conferring for the dispatch of business (or by any combination of those means) which allows each person present to hear and be heard by each other person present, and adjourn and otherwise regulate its meetings as it determines.

11.2 Quorum

11.2.1 At a meeting of directors a quorum shall be constituted by the whole number that is nearest to and greater than half the number of directors; and

11.2.2 for the purposes of these Rules, a Director is treated as present at the meeting by telephone or other instantaneous means of conferring if the Director is able to hear the entire meeting and be heard by all others attending the meeting.

11.3 Notice of Meeting

11.3.1 Notice of each meeting of the directors must be given to each director at least 24 hours before the meeting or at another time determined by resolution of the directors but the non-receipt of any notice of a Board meeting by a Director does not affect the validity of the convening of the meeting.

11.3.2 Notwithstanding clause 11.3.1:

- all directors may waive the required period of notice for a particular meeting; and
- it is not necessary to give a notice of a meeting of directors to a director who is out of Australia or who has been given leave of absence.

11.4 Place of Meeting

Where the Board holds a meeting solely or partly by telephone or other instantaneous means of conferring, the meeting is to be treated as held at the place at which at least one of the Directors present at the meeting is physically located as is agreed by those Directors present at the meeting.

11.5 Convening of Board Meeting

A Director may at any time, and the Secretary must on request from a Director, convene a meeting of the Board.

11.6 Chairman of Board Meetings

Where the Board holds a meeting and:

11.6.1 has not appointed a chairman under clause 7.5 or the chairman is not present within 10 minutes of the time appointed for the holding of the meeting or is unwilling to act; and

11.6.2 has not appointed a vice chairman under clause 7.5 or the vice chairman is not present within 10 minutes of the time appointed for the holding of the meeting or is unwilling to act,

the Directors present at the meeting may choose one of their number to be chairman of that meeting.

11.7 Votes of Directors

11.7.1 At a meeting of directors:

- a question shall be decided by a show of hands, unless at least 3 directors demand a ballot;
- if a question has been decided by a show of hands, a director may require the votes to be given orally and recorded in detail in the minutes;
- if a ballot is required, it may be held in the way and at the time and place decided by the chairman of the meeting;
- the result of the ballot is a resolution of the meeting at which the ballot was demanded; and
- a demand for a ballot may be withdrawn by the directors who demanded the ballot.

11.7.2 If there is an equality of votes on any question or resolution, the chairman of the meeting, if he is entitled to vote on the question or resolution, has the power to exercise a casting vote in addition to any other vote he may have.

11.8 Exercise of Powers by Board

A power of the Board, unless it has been delegated exclusively to a committee of the Board under clause 11.9, is exercisable only:

11.8.1 by resolution at a meeting of the Board at which a quorum is present; or

11.8.2 by a resolution of the Directors under clause 11.11.

11.9 Delegation to Committee

11.9.1 The Board may delegate any of its powers (which powers may be delegated so as to be concurrent with, or to the exclusion of, the powers of the Board) to a committee consisting of not less than one Director, and which may also include any other persons, determined by the Board.

11.9.2 The Board shall make such rules (and may amend, repeal or substitute such rules from time to time) as it considers appropriate in relation to a committee or subcommittee, including, but not limited to:

- the functions and powers of a committee or subcommittee;
- the tenure of representatives on a committee or subcommittee; and
- the conduct of meetings (including how meetings are called).

11.10 Committee Powers and Meetings

Where the Board has appointed a committee under clause 11.9:

11.10.1 that committee must exercise the powers delegated to it under clause 11.9 in accordance with any directions of the Board;

11.10.2 a power so delegated when exercised by the committee in accordance with clause 11.10.1 is treated as exercised by the Board;

11.10.3 the members of the committee may elect a chairman from among the members;

11.10.4 where a committee holds a meeting and has not elected a chairman, or the chairman so elected is not present at the meeting within 10 minutes of the time appointed for the holding of the meeting or is unwilling or unable to act the members of the committee present at the meeting may choose one of their number to be chairman of the meeting;

11.10.5 the committee may meet in person or by telephone or other instantaneous means of conferring for the dispatch of business (or by any combination of those means) and adjourn and otherwise regulate its meetings as it may determine; and

11.10.6 the committee meetings are otherwise governed by the provisions of this Constitution which regulate the meetings and procedures of the Board to the greatest extent practicable.

11.11 Written Resolution of Directors

If all the Directors entitled to receive notice of a meeting of the Board and to vote on a resolution sign a document to the effect that they support the resolution (the terms of which are set out in the document), a resolution in those terms is for all purposes to be treated as having been passed at a duly convened meeting of the Board held on the date and at the time when the last Director signed the document.

11.12 Several Documents Suffice

For the purpose of clause 11.11:

11.12.1 2 or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and

11.12.2 a facsimile or other electronic message containing the text of the document expressed to have been signed by a Director and sent to the Company is a document signed by that Director at the time of its receipt by the Company.

11.13 Validity of Acts of Directors

Each resolution passed or act or thing performed or done by, or with the participation of, a person acting as a Director or member of a committee in respect of whom it is later discovered there was some defect in appointment to, or continuation in, office of that person or that the person so appointed was disqualified or not entitled to perform, vote on or do, the resolution, act or thing, is as valid and effective as if that Director or member of committee had been validly appointed, had validly continued in office, or had not been disqualified and was entitled so to perform, vote or do.

12. Secretary

12.1 Appointment of secretaries

The directors may appoint one or more Secretaries and may at any time terminate such appointment or appointments.

12.2 Terms of appointment of secretaries

The directors may determine the terms and conditions of appointment of a Secretary, including remuneration.

12.3 Secretaries may act separately

Any one of the Secretaries may carry out any act or deed required by these Rules, the Act or by any other statute to be carried out by the secretary of the Organisation.

13. Company Administration

13.1 Minutes to be Made

The Board must cause minutes to be made of:

13.1.1 the names of the Directors present at each Board meeting;

13.1.2 the names of the committee members present at each meeting of a committee appointed under clause 11.9;

13.1.3 the proceedings and resolutions of each general meeting;

13.1.4 the proceedings and resolutions of each Board meeting; and

13.1.5 the proceedings and resolutions of each meeting of a committee appointed under clause 11.9.

13.2 Minutes to be Entered

The Board must cause all minutes made under clause 13.1 to be entered in the relevant minute book of the Company.

13.3 Common Seal

13.3.1 Nothing in this Constitution requires the Company to have, or execute documents using, a common seal.

13.3.2 If the Company has a common seal, the Board must provide for its safe custody.

13.3.3 An instrument is validly executed under the Common Seal where the Common Seal is affixed to it in the presence of:

- a Director; and
- another person who is either a Director, a Secretary or a person appointed by the Board for the purpose,

and each of those persons signs the instrument to witness the affixing of the Common Seal.

13.3.4 Without limiting any other manner of execution, in the instance where the Company does not have a common seal, an instrument is validly executed on behalf of the Company if the instrument is signed under hand by:

- 2 Directors; or
- a Director and a Secretary; and
- a Director and another person appointed by the Board for the purpose.

13.4 Execution of Bills and Cheques

All cheques, bills of exchange and other negotiable instruments, all orders for payment and all receipts for money paid to the Company, may only be signed for and on behalf of the Company in the manner (which may include the use of facsimile signatures) determined, and by the persons appointed for the purpose, by the Board from time to time.

13.5 Inspection of Records

Subject to the Act, the Board may determine whether and to what extent, at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members other than Directors, and a Member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Board.

14. Accounts, Audit and Reserves

14.1 Company to Keep Accounts

The Board must:

- 14.1.1 cause the Company to keep the accounting records as required by the Act; and
- 14.1.2 if required by the Act – cause financial statements to be made out, and sent with any other documents required by the Act to be sent to Members; and
- 14.1.3 ensure the appointment of a registered company auditor.

14.2 Audits

If required by the Act to do so, the Board must cause:

- 14.2.1 the accounts of the Company to be audited as required by the Act; and
- 14.2.2 the auditor's report to be sent to Members.

14.3 Accumulation of Reserves

The Board may do either or both of the following with the profits of the Company:

- 14.3.1 set aside any sum the Board determines as reserves to be applied, in the Board's discretion, for any purpose it considers to be appropriate and use any sum so set aside in the business of the Company or invest any such sum in investments (which the Board may vary and deal with as it determines) which the Board determines; and
- 14.3.2 carry forward any amount from them which the Board considers ought to be transferred to a reserve.

15. Notices

15.1 Service of Notices by Company

A notice is properly given by the Company to a person if:

- 15.1.1 it is personally served;
- 15.1.2 a letter containing the notice is prepaid and posted to the person at an address (if any) supplied by the person to the Company for service of notices or (where the person is a Member) shown in the Register;
- 15.1.3 it is sent to the facsimile number or electronic address nominated by the person to the Company for service of notices; or
- 15.1.4 the person receives the notice.

15.2 Time of Service

A notice is treated as being given to a person by the Company:

- 15.2.1 where sent by post in accordance with clause 15.1.2, 3 Business Days after the day on which it is posted;
- 15.2.2 where sent by facsimile or other electronic means in accordance with clause 15.1.3 on the next Business Day after it is sent; or
- 15.2.3 in any other case, when the person actually receives the notice.

15.3 Notice of General Meetings

15.3.1 The Company must give notice of every general meeting to:

- every Member;
- every Director;
- the Auditor, if any,

but no other person is entitled to receive notices of general meetings.

15.3.2 In addition to the method for giving notices permitted by statute, a notice by the Company or a Member in connection with this Constitution may be given to the addressee by:

- delivering it to a street address of the addressee;
- sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee;
- sending it by facsimile to the facsimile number or e-mail to the e-mail address of the addressee; or

- publication in F&V News, or another publication the Board considers is at least equivalent to giving notice in F&V News.

15.3.3 Addresses for giving notices to Members

- The street address or postal address of a Member is the street or postal address of the Member shown in the Register.
- The facsimile number or e-mail address of a Member is the number which the Member may specify by written notice to the Company as the facsimile number or e-mail address to which notices may be sent to the Members.

15.4 Counting of Days

Where a specified period (including, without limitation, a particular number of days) must elapse or expire from or after the giving of a notice before an action may be taken neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

15.5 Certificate of Director or Secretary

If a Director or Secretary signs a certificate that a notice was given in the manner set out in the certificate, that certificate is conclusive evidence of the accuracy of the matters set out in it.

16. Winding Up

16.1 Winding Up Generally

16.1.1 If the Company is wound up and there remains any property, after satisfaction of all debts and liabilities, that property must not be paid to or distributed amongst the Members of the Company.

16.1.2 The property must be given or transferred to some other institution or body which:

- has objects similar to the objects of the Company;
- whose constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 2.2; and
- is exempt from income tax.

16.1.3 That institution or body must apply the property solely towards the promotion of its objects.

16.1.4 The institution or body referred to in clause 16.1 will be determined by the Members of the Company in general meeting at or before the time of winding up of the Company, or, after the Company is wound up, by the liquidator.

16.2 Contribution by Members

If the Company is wound up, should it be necessary every Member of the Company undertakes, during the time that he is a Member or within 1 year after that time, to contribute an amount not exceeding \$10 for payment of the debts and liabilities of the Company that were incurred before the time at which he ceased to be a Member.

17. Miscellaneous

17.1 Indemnity of Officers

To the extent that it is permitted to do so by the Act, the Company must indemnify each Director, officer, Auditor and agent of the Company ("Officer") against any liability which that Officer may incur by reason of being an Officer or in carrying out the business or exercising the powers of the Company.

17.2 Specific Indemnities

Without limitation to clause 17.1 , to the extent that it is permitted to do so by the Act, the Company must indemnify each Officer against:

17.2.1 any liability (other than a liability which arises out of conduct involving a lack of good faith) to another person (other than the Company or a related body corporate) incurred by reason of being an Officer or in carrying out the business or exercising the powers of the Company; and

17.2.2 any liability for costs and expenses incurred by that Officer as such:

- in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the Officer or in which the Officer is acquitted; or
- in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Act.

17.3 Further Power to Indemnify

The Company may indemnify or agree to indemnify or enter into (and pay premiums on) a contract of insurance in respect of any person (whether or not that person is, or has been, an Officer) to the extent permitted by the Act and this power is not restricted by the provisions of clauses 17.1 and 17.2.

17.4 Former Officer

The indemnities conferred on Officers by clauses 17.1 and 17.2 apply in respect of each person who is at any time an Officer for all the period that person is an Officer and the person may claim on those indemnities in respect of that period even though the person is not an Officer at the time the claim is made.

17.5 General Authorisation

Where the Act authorises or permits a company to do any thing if so authorised by its Constitution, the Company is authorised by this Clause to do that thing.

18. Modifying Constitution

18.1 This Constitution may be modified from time to time by special resolution passed at a general meeting, provided that notice in writing of the substance of the proposed alterations and resolution has been duly given to all Members not less than 21 days prior to the meeting.

18.2 No alteration to this Constitution takes effect until it is registered by the Registrar under the Industrial Relations Act 1999.

19. Disputes

Upon the Board or any one of its directors determining the existence or likelihood of an Industrial Dispute, the Secretary (or if there is more than one Secretary, any one of the appointees) is to notify the Queensland Industrial Relations Commission of the Industrial Dispute in the manner prescribed by the *Industrial Relations Act 1999*.

SCHEDULE 1

Part 1 - Definitions

In this Constitution, unless the subject or context is inconsistent, each of the following expressions shall have the meaning assigned to it below:

Act	means the <i>Corporations Act 2001 (Cth)</i> as it applies to the Company from time to time.
Auditor	means the auditor of the Company from time to time.
Board	means the Directors acting collectively under this Constitution, or a sole Director exercising the powers of the Board under the Act and this Constitution.
Business Day	means a day on which banking corporations in the State generally are open for the full range of banking business.
Common Seal	means the common seal of the Company.
Company	means the company named above whatever its name may be from time to time.
Corporation	includes a body corporate established under the legislation of a State, Territory or the Commonwealth.
Director	means a person appointed as a director for the time being of the Company (including, where appropriate, an Alternate Director).
Eligible Person	means a natural person who is a partner, director, officer or principal of a partnership, company, trustee or other entity which itself is a Member.
F&V News	means the periodic publication by the Company to its Members.
Financial Member	means a member who has paid all membership fees and other monies payable by the Member to the Company.
Member	means a person whose name is entered in the Register as a Member.
Ordinary Resolution	means a resolution of a general meeting of Members other than a Special Resolution.
Register	means the register of members kept pursuant to the Act.
Remuneration	means any emolument but does not include any payment by way of compensation for loss of office or in connection with the retirement of a person from office.
Secretary	means a person appointed as a secretary of the Company from time to time (including any person appointed to perform the duties of a secretary temporarily).
Special Resolution	means a resolution of a general meeting of Members passed in accordance with section 9 of the Act.
State	means Queensland.

Transaction means any contract, agreement, arrangement or dealing (whether formal or informal, whether in writing or oral and whether or not enforceable).

Voting Member means a Grower Member:

- (a) who is a Financial Member;
- (b) who is entitled to be present at a general meeting;
- (c) who is present at the meeting in any of the ways set out in clause 5.1; and
- (d) in respect of whom there is at least one item of business to be considered at the meeting on which the Member is not disqualified from voting.

Part 2 - Interpretation

In this Constitution, headings are for convenience only and shall not affect its interpretation. Except to the extent that the context otherwise requires:

1. headings are for convenience only and do not affect the interpretation of this Constitution;
2. reference to any statute or statutory provision shall include any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation or such provision;
3. words denoting the singular shall include the plural and vice versa;
4. words denoting individuals shall include corporations, associations, trustees, instrumentalities and partnerships and vice versa;
5. words denoting any gender shall include all genders;
6. references to Parties, Parts, clauses, Annexures and Schedules are references to Parties, Parts, clauses, Annexures and Schedules to this Constitution as modified or varied from time to time;
7. references to any document, deed or agreement shall include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
8. a party includes the party's representatives, administrators and permitted assigns;
9. all references to dates and times are to Brisbane time;
10. all references to "\$" and "dollars" are to the lawful currency of Australia unless otherwise expressly stated;
11. if a party consists of more than one person, this Constitution binds them jointly and each of them severally;
12. "including" and similar expressions are not words of limitation;
13. where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
14. "related body corporate", "subsidiary" and "holding company" have the same meaning as in the *Corporations Act 2001 (Cth)*;

15. reference to any body other than a party to this document (including, without limitation, an institute, association or authority), whether or not it is a statutory body:
- (a) which ceases to exist, or
 - (b) whose powers or function are transferred to any other body,
- refers to the body which replaces it or which substantially succeeds to its powers or functions; and
16. if the day on which a person must do something under this Constitution is not a Business Day:
- (a) if the act involves a payment that is due on demand, that person must do it on or by the next Business Day; and
 - (b) in any other case, the person must do it on or by the previous Business Day.