

Constitution of Dairy Australia Limited

ACN 105 227 987

NOTE

This constitution and the *Corporations Act 2001* (Cth) set out the legal framework for the governance of this company. This document includes notes that signpost provisions of the Corporations Act that are relevant to this constitution. The notes are not part of the constitution, and may not take account of amendments to the Corporations Act after the constitution takes effect.

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CONSTITUTION OF DAIRY AUSTRALIA LIMITED
ABN 48 807 469 331

PRELIMINARY

1. COMPANY LIMITED BY GUARANTEE

1.1 Status of company as company limited by guarantee

The company is limited by guarantee.

1.2 Limited liability of members (guarantee)

The liability of members is limited as follows: if the company is wound up:

- (a) each member at the time the winding up starts; and
- (b) each person who, at any time in the 12 months before the winding up started, was a member;

undertakes to contribute to the assets of the company up to an amount not exceeding \$2 for payment of the debts and liabilities of the company, including the costs of the winding up.

2. REPLACEABLE RULES

All the replaceable rules referred to in the Corporations Act section 141 are displaced by this constitution.

Note The Corporations Act sets out a number of rules that apply as rules in a company's constitution unless the company's constitution replaces them. This constitution replaces all of those Corporations Act rules.

3. INTERPRETATION

3.1 Definitions

The following definitions apply in this constitution.

AGM means Annual General Meeting.

annual report means the report for each financial year that members may elect to receive under the Corporations Act section 316A.

Note The Corporations Act section 317 requires the annual report etc to be tabled at the AGM.

Board means the directors acting collectively under this constitution.

Board nominated candidate means a candidate for election as a director nominated by the Board under rule 29.2(a) or (b).

Chair has the meaning given in rule 21.4.

company means the company named at the beginning of this constitution, whatever its name is for the time being.

Corporations Act means the *Corporations Act 2001* (Cth) and the subordinate legislation and instruments made under that Act.

dairy farm enterprise means a business in Australia that delivers market milk or manufacturing milk as defined in the Dairy Produce Act Schedule 2.

Dairy Produce Act means the Dairy Produce Act 1986 (Cth) and the subordinate legislation and instruments made under that Act, as in force after the conversion time.

Note The Dairy Produce Act section 3 (1) says that the conversion time is the time when Dairy Australia is registered as a Corporations Act company.

Deputy Chair has the meaning given in rule 21.4.

director means a person who is, for the time being, a member of the board of directors of the company.

first purchaser has the same meaning as in the Levy Collection Act.

industry services body means the industry services for the purposes of the Dairy Produce Act.

levy means the levy imposed by or under the Primary Industries (Excise) Levies Act 1999 (Cth) as dairy service levy but not amounts of penalty (if any) payable under the Levy Collection Act in relation to any of those levies.

Note Penalties (such as for late payment) are excluded.

Levy Collection Act means the *Primary Industries Levies and Charges Collection Act 1991* (Cth).

general meeting means a meeting of members of the company.

Note It includes the AGM and any extraordinary general meetings (EGMs).

Group A member means a person whose name is entered in the register of members as a Group A member of the company.

Group A member nominated candidate means a candidate for election as a director nominated under rule 29.3.

Group B member means a person whose name is entered in the register of members as a Group B member of the company.

Managing Director means a person appointed as managing director under rule 30.

member means a Group A member or a Group B member.

Minister means the Minister for the time being administering Part II of the Dairy Produce Act.

nominated member means:

- (a) for a member that consists of 1 person—that person; and
- (b) for a member that consists of more than 1 person—the person identified in the application for membership as the nominated member and identified as such in the register.

ordinary resolution means a resolution passed at a general meeting other than a special resolution.

Note The Corporations Act section 9 says that to pass a special resolution, notice of the resolution has to have been given at least 21 days before the meeting, and the votes in favour must be at least 75% of the votes cast by members entitled to vote on the resolution.

plan means a plan made as mentioned in rule 18.

register of members means the register of members kept as required by the Corporations Act sections 168 and 169.

secretary means, during the term of that appointment, a person appointed as a secretary of the company in accordance with this constitution.

Selection Committee means a selection committee appointed under rule 28.

Skills Matrix has the meaning given in rule 28.3(a).

voting entitlements register means the register kept as mentioned in rule 12.1.

3.2 **Corporations Act meanings to apply**

Words and expressions not defined in rule 3.1 have the same meanings as they have in a similar context in the Corporations Act.

3.3 **Dairy Produce Act meanings to apply**

So long as the company is the industry services body for the purposes of the Dairy Produce Act, words and expressions not defined in rule 3.1 or in the Corporations Act have the same meanings as in the Dairy Produce Act.

3.4 **Interpretation of this constitution**

Headings and notes are for convenience only, and do not affect interpretation.

The following rules also apply in interpreting this constitution, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the company, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes a reference to an executor, administrator or successor in law of the person;
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word that suggests 1 gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (for example, a right, obligation or concept), for example, by saying it includes something else, the example does not limit the scope of the thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.

4. **NOT USED**

OBJECTS

5. **OBJECTS OF THE COMPANY**

5.1 **Objects**

The objects of the company are:

- (a) to promote the development of Australian dairy resources; and

- (b) to contribute to the promotion and development of the Australian dairy industry and Australian dairy produce by:
 - (i) carrying out research, development and extension activities for the benefit of the Australian dairy industry and the Australian community generally; and
 - (ii) carrying out activities to develop the Australian national market for, and international trade in, Australian dairy produce; and
 - (iii) providing information and other services; and
 - (iv) carrying out other activities for the benefit of the Australian dairy industry; and
- (c) to act as industry services body for the purposes of the Dairy Produce Act.

5.2 Application of income and property

Subject to rules 5.3, 5.4, 32 and 37, the company must apply its income and assets solely towards promoting the objects of the company, and no part of its income or assets may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to members.

5.3 Certain payments allowed

Rule 5.2 does not prevent:

- (a) the payment of reasonable remuneration to an officer or employee of the company, a member or another person in return for services rendered to the company; or
- (b) the company paying to a member:
 - (i) interest on money lent by the member to the company at a rate not exceeding a rate charged by Australian banks for overdrawn accounts; or
 - (ii) a reasonable amount for goods or services supplied by the member to the company in the ordinary course of business; or
 - (iii) reasonable rent for premises leased by the member to the company; or

5.4 Certain arrangements allowed

Rule 5.2 does not prevent the company paying to a member, or providing any of its assets to a member, by way of grant, or in accordance with arrangements between the member and the company (whether or not there are other parties to the arrangement), being grants or arrangements for the purpose of activities of a kind mentioned in rule 5.1(b)(i), if the grant, or the arrangements, are made or entered into in the ordinary course of the company's business and on terms that are the same as, or are not materially different from, those on which grants and arrangements of a similar kind are made with persons who are not members.

6. PROHIBITION OF AGRI-POLITICAL ACTIVITIES

So long as the company is the industry services body, it must not knowingly engage in, or support, directly or indirectly, financially or otherwise, political campaigning or political funding.

THE MEMBERS

Membership

7. FIRST MEMBERS

The first members of the company are those who have agreed to be members. They are Group A or Group B members as set out in the instrument of agreement.

8. CLASSES OF MEMBERSHIP AND QUALIFICATION

8.1 Classes of members

There are to be 2 classes of members: Group A members and Group B members.

8.2 Qualifications for Group A membership

A person is qualified to be a Group A member for a financial year if:

- (a) levy was paid directly to the Commonwealth on account of the person's liability for levy in respect of either the financial year concerned or the previous financial year; or
- (b) the first purchaser of dairy produce from the person paid amounts to the Commonwealth on account of the person's liability for levy in respect of either the financial year concerned or the previous financial year.

Note See Levy Collection Act sections 7 and 9.

8.3 Qualifications for Group B membership

A person is qualified to be a Group B member if:

- (a) the person is a body corporate; and
- (b) the body's objects are or include representing the Australian dairy industry or a significant sector of the Australian dairy industry; and
- (c) either:
 - (i) under the body's constitution, all participants in the Australian dairy industry, or all participants in that sector of the Australian dairy industry the body represents, are entitled to be members of, or affiliated with, the body; and
 - (ii) a substantial proportion of the participants in the Australian dairy industry, or a substantial proportion of the participants in that sector of the Australian dairy industry the body represents, are members of or affiliated with the body;

or

 - (iii) under the body's constitution, all peak representative organisations for the Australian dairy industry, or all peak representative organisations in that sector of the Australian dairy industry the body represents, are entitled to be members of, or affiliated with, the body; and
 - (iv) a substantial proportion of the peak representative organisations for the Australian dairy industry, or a substantial proportion of the peak representative organisations in that sector of the Australian dairy industry the body represents, are members of or affiliated with the body; and
- (d) the body is in a sound financial position.

9. ADMISSION TO MEMBERSHIP

9.1 Group A members

Subject to this constitution, the Board may, on application, admit a person to membership as a Group A member in respect of the dairy farm enterprise in which the person has an interest.

9.2 Where 2 or more dairy farm enterprises

A person who is admitted as a Group A member in respect of 2 or more dairy farm enterprises may be admitted separately in respect of each enterprise.

Note For example, a company that carries on 1 dairy farm enterprise by itself, and is a partner in another dairy farm enterprise, will have 2 memberships.

Note The Corporations Act section 169 (8) says that, in a company limited by guarantee, 2 or more persons who have given a guarantee jointly are taken to be a single member of the company. Partnerships and other joint parties who become members therefore only hold a single membership, even though each of the joint guarantors (members of the partnership) may be listed in the register.

9.3 Group B members—application to be supported

An application for Group B membership is not valid unless supported by at least 100 Group A members.

9.4 Dealing with applications for Group B membership

If a person applies to be a Group B member:

- (a) the Board must consider the application; and
- (b) if the Board determines that the applicant satisfies the criteria set out in rule 8.3, the Board must put the application to the next general meeting and formally move as an ordinary resolution at that meeting that the applicant be admitted as a Group B member; and
- (c) if but only if the resolution is passed, the Board must admit the applicant as a Group B member.

Note The Board may comment on an application, and does not have to support it.

9.5 Form of application

The form of application is to be as the Board prescribes.

10. CEASING TO BE A MEMBER

10.1 Resigning as a member

A member may resign from the company by giving written notice to the Board.

10.2 Group A members—no levy payments

A Group A member who ceases to be qualified as mentioned in rule 8.2 ceases to be a member and the Board must remove his or her name from the register of members as soon as practicable after becoming aware of the matter.

Note The Corporations Act section 169 requires the company to keep a members register, and sets out what must be in it.

10.3 Group B members—lack of qualification

A Group B member that ceases to satisfy the requirements of rule 8.3(a) or 8.3(b) ceases to be a member and the Board must remove its name from the register of members as soon as practicable after becoming aware of the matter.

Note If a Group B member ceases to meet the qualification in rule 8.3(d) (which relates to financial soundness) or 8.3(c) (that is, ceases to be representative), the Board or Group A members may move a special resolution to remove it as a member: see rule 10.6 and Corporations Act section 249N.

10.4 Board may expel members for non-compliance etc

The Board may, by resolution, expel from the company a member on the ground that the member:

- (a) has not complied, or is not complying, with this constitution or any by-laws, rules or regulations of the company; or
- (b) has acted in a way that, in the opinion of the Board, is prejudicial to the interests of the company.

The member's name must be then be removed from the register of members.

10.5 **Notice etc required**

The Board must not act under rule 10.4 unless:

- (a) at least 21 days before the resolution is passed, the Board gave a written notice to the member stating the following:
 - (i) the allegations against the member;
 - (ii) the proposed resolution for the member's expulsion;
 - (iii) that the member has an opportunity at the directors meeting at which the resolution will be put to address the allegations either orally or in writing;
 - (iv) that, if the member notifies the secretary in writing at least 48 hours before the meeting, the member may elect to have the matter dealt with by a general meeting; and
- (b) the member has not notified the secretary as mentioned in rule 10.5(a)(iv); and
- (c) any matter put to the Board by the member in response to the notice has been considered by the Board.

10.6 **Power to remove members by resolution**

The company must expel a member and the member's name must be removed from the register of members if:

- (a) in the case of a Group A member—an ordinary resolution is passed at a general meeting that the member cease to be a member; or
- (b) in the case of Group B member—a special resolution is passed at a general meeting that the member cease to be a member.

A vote must be taken by poll.

Note The resolution could be on any ground.

10.7 **No claim**

Expulsion from the company does not itself give rise to a claim on the company, its funds or its property.

11. **VOTES OF MEMBERS**

Note Rule 11 replaces section 250E (2).

11.1 **Group B members not entitled to vote**

A Group B member is not, by virtue of that membership, entitled to vote on a resolution at a general meeting.

11.2 **Number of votes allocated to Group A members**

A Group A member is entitled (subject to this constitution and the Corporations Act) to cast, at a general meeting, the number of votes shown in the voting entitlements register as allocated to it for the relevant financial year.

Note The Corporations Act sections 224 (1) and 225 (1) say that, in the case of certain related party transactions, the votes of the related parties are not to be counted.

Note The Corporations Act section 169 (8) says that, in a company limited by guarantee, 2 or more persons who have given a guarantee jointly are taken to be a single member of the company. Partnerships and other joint parties who become members therefore only hold a single membership, and only have 1 allocation of votes. The Corporations Act section 250H says that these votes need not all be cast in the same way, so, for example, a partnership could "split" its votes on a resolution to reflect differing views within the partnership. See rule 17.1. See also rule 16 and the notes to it, about proxies and attorneys.

11.3 Board to allocate votes to Group A members

The Board must determine the number of votes to which a Group A member is entitled for a financial year, in accordance with this constitution.

11.4 Basis of allocating votes to Group A members

The Board must determine the number of votes to which a Group A member is entitled by allocating 1 vote for each whole dollar paid as levy in respect of the member in respect of the financial year immediately before the financial year in which the determination is made. For this purpose the Board may, without further inquiry, rely on information provided to the company under section 27 (3A) of the Levy Collection Act.

Note Section 27 (3A) of the Levy Collection Act authorises the Levies and Revenue Service of the Commonwealth Department of Agriculture, Forestry and Fisheries to give levy data to the company, so long as it is the industry services body.

11.5 Notice and review of allocation of votes

- (a) At least once in each financial year, and before the AGM to be held in that year, the Board must give each Group A member a written notice:
- (i) setting out the Board's determination of the number of votes to which the Board has determined the member is entitled for the financial year; and
 - (ii) stating that the member may ask for a review of the determination within 21 days after the date of the notice.
- (b) If the member asks for such a review within the 21 days, the Board must review the determination, taking into account any matter put to the Board by the member, and confirm the determination, or make a fresh determination under rule 11.3. The confirmation or fresh determination must be made within 1 month after the request for review, and the member must be notified accordingly.

11.6 Determinations conclusive

- (a) A determination made under rule 11.3 is conclusive if no request for review is made by the end of the 21 days mentioned in clause 11.5(b).
- (b) A determination confirmed or made under rule 11.5(b) is conclusive.

11.7 Where company not industry services body

Rules 11.2 to 11.6 inclusive apply only while the company is the industry services body. If the company ceases to be the industry services body, each Group A member is entitled (subject to this constitution and the Corporations Act) to cast, at a general meeting, the number of votes shown in the voting entitlements register as allocated to the member immediately before the company ceased to be the industry services body.

Note The Corporations Act sections 224 (1) and 225 (1) say that, in the case of certain related party transactions, the votes of the related parties are not to be counted.

12. VOTING ENTITLEMENTS REGISTER AND GROUP A MEMBER RIGHTS

12.1 Register

As well as the register of members that the Corporations Act requires the company to keep, the Board must cause a register (**voting entitlements register**) to be kept of the number of votes allocated to each Group A member for the then current financial year.

12.2 Voting entitlement information confidential

The company must not use nor disclose to any person information on the voting entitlements register unless the use or disclosure is:

- (a) required by law; or
- (b) made for the purposes of the conduct of, or voting at, a general meeting.

12.3 Group A member rights

A Group A member has the following rights:

- (a) to receive notices of general meetings and all other documents sent to members in respect of general meetings;
- (b) on providing a written notice of request to the company, to receive an annual report of the company;
- (c) to attend and to speak at general meetings;
- (d) to vote on resolutions at a general meetings;
- (e) any other rights conferred on members by this constitution, including:
 - (i) the right to appoint a proxy for the purposes of rule 16;
 - (ii) the right to demand a poll for the purposes of rule 17.5
 - (iii) the right to request a review of the number of votes the member is entitled to pursuant to rule 11.5;
 - (iv) the right of at least 100 Group A members to nominate a person for election as a director under rule 29.3;
- (f) any other rights conferred on members by the Corporations Act, including:
 - (i) the right of at least 100 members or members with at least 5% of the votes to call for a meeting pursuant to section 249D of the Corporations Act; and
 - (ii) the right of at least 100 members or members with at least 5% of the votes to propose a resolution at a general meeting pursuant to section 249N of the Corporations Act.

13. CONSULTATION PROCEDURES FOR GROUP B MEMBERS

- (a) The Company may from time to time agree in writing with the Group B members, procedures for consultation with Group B members (including in those cases where consultation is required by this constitution). The Company must give effect to any consultation procedures so agreed.
- (b) The procedures must include provision for the following:
 - (i) consultation arrangements; and
 - (ii) meeting the reasonable expenses of Group B members in considering plans and participating in the consultations.

GENERAL MEETINGS

14. GENERAL MEETINGS

Note There must be at least 1 general meeting held each year (the *AGM*). The first AGM must be held within 18 months after registration. Thereafter, AGMs must be held within 5 months after the end of the financial year: Corporations Act section 250N.

Note A general meeting can be an AGM or an "extraordinary general meeting" (EGM). Because the first AGM does not have to be held until 18 months after registration of the Company, it is likely that the first general meeting called by the Board will be an EGM. The notice of meeting will clearly say whether a general meeting is an AGM or an EGM.

Note The Corporations Act section 250R sets out the minimum business for an AGM. The Corporations Act does not set out the business for an EGM.

14.1 Calling general meetings

A general meeting may be convened at any time by the Board or a director.

Note Rule 14.1 replaces the Corporations Act section 249C.

Note The Corporations Act sections 249D says that a general meeting must be held if 100 members, or members with at least 5% of the votes that can be cast at the meeting, ask for it. The Board has to call the meeting within 21 days after the request and the meeting itself must be held within 2 months.

Note The Corporations Act section 249F says that, in any case, members who hold at least 5% of the votes that can be cast at a general meeting can call and arrange to hold a general meeting themselves.

14.2 Group B and non-voting members entitled to notice of general meeting

Written notice of a general meeting must be given individually to members who are not entitled to vote at the meeting.

Note The Corporations Act section 249J (3) says that notice of a general meeting can be given personally, or by post to the members' registered address, or by fax or e-mail. See also rule 43.

Note The Corporations Law sections 249J and 249K say that the directors, the auditor and the members who are entitled to vote (Group A members) must be given notice of the meeting.

Note The Corporations Act section 249L sets out what a notice of meeting must contain.

14.3 Period of notice

The minimum period of notice for a general meeting is 28 days.

Note The Corporations Act section 249H (2) sets out when a general meeting can be held on short notice.

14.4 Postponement or cancellation

The Board may postpone, cancel or change the place for a general meeting by written notice given individually to each person entitled to be given notice of the meeting.

Note The Corporations Act section 249D says that the Board must call a general meeting if 100 members, or 5% of the Group A members, ask. The meeting must be held within 2 months, so it cannot be postponed beyond that time.

Note This rule 14.4 does not cover general meetings under the Corporations Act section 249F, which covers meetings members call and arrange themselves.

Note This rule 14.4 does not override Corporations Law section 250N, which sets out when the AGM must be held.

Note See also rule 14.6.

14.5 Fresh notice

If a general meeting (the **original meeting**) is postponed or adjourned for 1 month or more, the company must give new notice of the resumed meeting individually to each person entitled to be given notice of the original meeting.

Note Rule 14.5 replaces the Corporations Act section 249M.

14.6 Notice to joint members

Notice to joint members need only be given to nominated member.

Note The Corporations Act section 169 (8) says that, in a company limited by guarantee, 2 or more persons who have given a guarantee jointly are taken to be a single member of the company. Partnerships and other joint parties who become members therefore only hold a single membership, and thus only receive 1 notice.

14.7 Accidental omission

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

15. PROCEEDINGS AT GENERAL MEETINGS

Note The Corporations Act section 249R says that general meetings must be held at a reasonable time and place.

Note The Corporations Act section 249S says that a general meeting can be held using any technology (such as video conferencing), provided that it gives the members as a whole a reasonable opportunity to participate in the meeting.

Note The Corporations Act Part 2G.2 Division 4 sets out Group A members' entitlements to put resolutions etc at general meetings.

15.1 Group B members may move resolutions

A Group B member may give the company notice of a resolution that it proposes to move at a general meeting. The provisions of the Corporations Act to do with moving resolutions at general meetings apply, as provisions of this constitution, changing what needs to be changed, in relation to such a resolution.

Note The Corporations Act Part 2G.2 Division 4 provides for matters such as notice of resolutions and distribution of accompanying statements.

15.2 Member present at general meetings

A member that has appointed a proxy or attorney or (in the case of a member that is a body corporate) a representative to act at a general meetings is taken to be present at a general meeting at which the proxy, attorney or representative is present.

15.3 Quorum

- (a) The quorum for a general meeting is 50 Group A members present in person or by proxy, attorney or representative.
- (c) If a member has appointed more than 1 proxy or representative, only 1 of them may be counted towards a quorum.

Note Rule 15.3 replaces the Corporations Act sections 249T (1) and (2).

15.4 Quorum not present

If a quorum is not present within 15 minutes after the time for which a general meeting is called:

- (a) if the meeting was called as a result of a request of members under the Corporations Act section 249D—the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to:

- (A) the same time on the same day in the next week at the same place; or
 - (B) if the Board notifies members before that day of some other day, time or place for the meeting—as so notified; and
- (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

Note Rule 15.4 replaces the Corporations Act section 249T (3) and (4).

Note The Corporations Act section 249D says that the Board must call a general meeting if 100 members, or 5% of the Group A members, ask.

15.5 Chairing meetings of members

The Chair is to chair general meetings. If the Chair is not present at the time for which a general meeting is called or declines to chair the meeting and the Board has appointed a Deputy Chair, the Deputy Chair is to chair the general meeting. If the Deputy Chair is not present at the time for which a general meeting is called or declines to chair the meeting the Group A members present must elect a director or other person present to chair the meeting.

Note Rule 15.5 replaces the Corporations Act section 249U (1) to (3).

15.6 Attendance at meetings of members

Every member, and every director, has the right to attend all general meetings.

Note The Corporations Act section 249V says that the company's auditor has the right to attend any general meeting and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

15.7 Adjournment

The person chairing a general meeting at which a quorum is present may adjourn it to another time and place. He or she must do so if directed by ordinary resolution of the meeting.

Note Rule 15.7 replaces the Corporations Act section 249U (4).

15.8 Business at adjourned meetings

The only business that may be transacted at a general meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

Note Rule 15.8 replaces the Corporations Act section 249W (2).

16. PROXIES, ATTORNEYS AND REPRESENTATIVES

Note The Corporations Act Part 2G.2 Division 6 lays down most of the procedures for the use of proxies.

Note The Corporations Act section 249X says that a Group A member can appoint up to 2 proxies. Group B members, who do not have a vote, cannot appoint proxies.

Note A proxy need not be a member.

Note Proxies have the same rights as Group A members.

Note The Corporations Act section 250BB provides that an appointment of proxy may specify the way the proxy is to vote.

16.1 Appointment of proxies

An appointment of a proxy is not invalid merely because it does not contain all the information required.

Note The Corporations Act section 250A (1) says that a proxy appointment must include the member's name and address, the company's name, the proxy's name or the name of the office held by the proxy and the general meetings at which the appointment may be used.

Note The Corporations Act section 250B says that the proxy's appointment and, if the appointment is signed by the appointor's attorney, the authority under which it was signed, or a certified copy of the authority, must be received by the company at least 48 hours before the general meeting.

16.2 Proxies may be lodged or completed electronically

- (a) A document appointing a proxy may be lodged or completed in electronic form.
- (b) Electronic lodgment or completion of proxies must comply with procedural requirements as set by the Board from time to time.

16.3 Chair must inform meeting of proxy votes

Before a vote is taken the person who is the Chair of that general meeting must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.

16.4 Member's attorney

- (a) A member may appoint an attorney to act at a general meeting. The attorney need not be a member.
- (b) If the appointor is an individual, the power of attorney must be signed in the presence of at least 1 witness.
- (c) To be effective for a particular general meeting, the power of attorney must be received by the company at the address, or at the fax number, specified in the notice of meeting and must be received no later than 48 hours before the time the meeting is to start.

16.5 Standing appointments

An appointment of an attorney may be for a particular general meeting or it may be a standing appointment.

Note The Corporations Act sections 250A (1) and 250D (1) say that an appointment of a proxy or a representative may be a standing appointment.

16.6 Representatives

Note Bodies corporate can appoint a representative to attend a general meeting. The Corporations Act section 250D gives them an unrestricted right to do this.

A representative need not be a member.

16.7 Suspension of proxy or attorney's powers if member present

A proxy or attorney has no power to act for a member at a general meeting at which the member is present:

- (a) in the case of an individual—in person; or
- (b) in the case of a body corporate—by representative.

A proxy has no power to act for a member at a general meeting at which the member is present by attorney.

16.8 Priority of conflicting appointments of attorney or representative

If more than 1 attorney or representative appointed by a member is present at a general meeting and the company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule 16.8(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

Note The Corporations Act section 250A (7) sets out what happens if 2 inconsistent proxy appointments are made.

16.9 Revoking appointments

An appointment of a proxy, attorney or representative may be revoked, but the revocation must be in writing.

16.10 Continuing authority

A vote cast at a general meeting by a proxy, attorney or representative is not invalid merely because, before the act is done, the appointing member:

- (a) died or became mentally incapacitated; or
- (b) became bankrupt or an insolvent under administration, or was wound up; or
- (c) revoked the appointment or the authority under which the appointment was made;

unless the company received written notice of the matter before the start or resumption of the meeting.

Note Rule 16.10 replaces the Corporations Act section 250C(2).

17. HOW VOTING IS CARRIED OUT

17.1 Where joint holders

- (a) Subject to paragraph (b), where a Group A member consists of 2 or more persons, only votes cast by the nominated member are to be counted. This rule 17.1 does not prevent a person voting as proxy or attorney.

Note The Corporations Act section 169 (8) says that, in a company limited by guarantee, 2 or more persons who have given a guarantee jointly are taken to be a single member of the company. Partnerships and other joint parties who become members therefore only hold a single membership, even though each of the joint guarantors (members of the partnership) may be listed in the register.

- (b) A Group A member that consists of 2 or more persons (the *joint members*) may by notice in writing signed by all joint members and given to the company, allocate the Group A member's voting entitlements between the joint members as specified in the notice. If such a notice is given, then subject to paragraph (c) each joint member may cast on behalf of the Group A member the voting entitlements allocated to that joint member in the notice and the company shall issue separate voting and ballot papers to each joint member or the Group A member's proxy or proxies, showing the number of votes each joint member is entitled to exercise.

Note The Corporations Act section 249X says that a Group A member can appoint up to 2 proxies. Even if voting entitlements are split under paragraph (b), it is the Group A member (not the individual joint members) who is able to appoint a proxy or proxies. No more than 2 proxies may be appointed.

- (c) If a Group A member's voting entitlements are allocated between the joint members in accordance with paragraph (b), those joint members must not vote on a show of hands.

17.2 Method of voting

Subject to rule 29, a resolution put to a vote at a general meeting must be decided on a show of hands unless, either before or on declaration of the result of the vote on a show of hands, a poll is demanded. Unless a poll is demanded, the Chair's declaration of a decision on a show of hands is final.

Note Rule 17.2 replaces the Corporations Act sections 250J (1) and (2).

Note The Corporations Act section 250L (1) says that a poll may be demanded by 5 or more members, or members holding 5% of votes that may be cast on the resolution. It also says that a poll may be demanded before a vote is taken, or before or immediately after the voting results on a show of hands are declared.

Note Rule 29 deals with elections of directors.

17.3 Voting restrictions

If:

- (a) the Corporations Act requires that some members are not to vote on a resolution, or that votes cast by some members be disregarded, in order for the resolution to have an intended effect; and
- (b) the notice of the general meeting at which the resolution is proposed states that fact; those members have no right to vote on that resolution and the company must not count any votes those members purport to cast. If a proxy purports to vote in a way or in circumstances that contravene the Corporations Act section 250BB, on a show of hands the vote is invalid and the company must not count it and on a poll rule 17.5(c) applies.

Note The Corporations Act s 250BB says that an appointment of a proxy may specify the way the proxy is to vote on a particular resolution. If it does, although the proxy need not vote on a show of hands, if the proxy does so, the proxy must vote in accordance with the specification. If the proxy holds appointments from 2 or more different members that specify different ways to vote on the resolution, the proxy must not vote on a show of hands. If the proxy is the Chair of the meeting then the proxy must vote on a poll, and must vote in accordance with the specification. 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 in accordance with the specification.

17.4 Demand for a poll

A demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

17.5 When and how polls must be taken

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting—the poll must be taken immediately and, subject to rule 17.5(c), in the way the person chairing the meeting directs; and
- (b) in all other cases—the poll must be taken at the time and place and, subject to rule 17.5(c), in the way the person chairing the meeting directs; and
- (c) votes which the Corporations Act section 250A (4) requires to be cast in a given way must be treated as cast in that way; and
- (d) a person voting who has the right to cast 2 or more votes need not cast all those votes and may cast them in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

Note Rule 17.5 replaces the Corporations Act section 250M.

17.6 Chair does not have a casting vote

The person chairing a general meeting does not have a casting vote. If an equal number of votes is cast for and against a resolution, the question is decided in the negative.

Note Rule 17.6 replaces section 250E(3).

17.7 Decision on right to vote

A Group A member or a director may challenge a person's right to vote at a general meeting. The challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the person chairing the meeting, whose decision is conclusive.

Note Rule 17.7 replaces the Corporations Act section 250G.

STRATEGIC AND OPERATIONAL PLANNING

18. STRATEGIC AND OPERATIONAL PLANS

18.1 Strategic and operational plans

The Board must ensure that there is in force at all times:

- (a) a strategic plan; and
- (b) an operational plan;

made by the Board under this rule 18. A plan may be both a strategic plan and an operational plan.

18.2 Contents of strategic plans

A strategic plan must set out, for the period to which the plan relates:

- (a) the Board's assessment of the external environment affecting the Australian dairy industry; and
- (b) the principal goals of the company the Board proposes to pursue; and
- (c) a broad outline of the strategies that the company proposes to pursue to achieve those goals.

18.3 Contents of operational plans

An operational plan must set out, for the period to which the plan relates, particulars of the actions that the Board intends the company to take to give effect to or further, during that year, the matters set out in the relevant strategic plan.

18.4 Plan periods

A plan must specify the period to which it relates.

18.5 First plan

The first plan must be made no later than 31 December 2003.

18.6 Variation of plans

The Board may vary a plan at any time.

18.7 Plans and variations to be developed in consultation with Group B members

The Board must not make a plan, or vary a plan in a significant way, unless it has given the Group B members a reasonable opportunity to consider and consult the Board in relation to the plan or variation, and taken into account matters raised by the Group B members.

Note See rule 13.

18.8 Compliance with plans

The Board must strive to ensure that the company gives effect to plans made under this rule 18, as varied under this rule 18.

THE BOARD

19. POWERS OF THE BOARD

19.1 Powers generally

Except as otherwise required by the Corporations Act, any other applicable law or this constitution, the Board has power to manage the business of the company and may exercise every right, power or capacity of the company to the exclusion of the company in general meeting and the members.

Note Rule 19.1 replaces the Corporations Act section 198A.

19.2 Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with this rule 19; or
- (b) in accordance with a delegation of the power under rule 22.2(a) or 23.

Note For rule 19.2(a), the *Acts Interpretation Act 1901* (Cth) section 34AB makes general provisions about delegations.

19.3 Executing negotiable instruments

The Board must decide how (including the use of facsimile signatures if thought appropriate) negotiable instruments can be executed, accepted or endorsed for and on behalf of the company. The company may execute, accept, or endorse negotiable instruments only in the manner decided by the Board.

Note Rule 19.3 replaces the Corporations Act section 198B.

20. BOARD DECISIONS WITHOUT MEETINGS**20.1 Written resolution**

If all the directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last director signs.

Note Rule 20.1 replaces section 248A.

20.2 Additional provisions concerning written resolutions

For the purpose of rule 20.1:

- (a) 2 or more separate documents in identical terms, each of which is signed by 1 or more directors, are treated as 1 document; and
- (b) a facsimile transmission or other document produced by mechanical or electronic means under the name of a director with the director's authority is considered a document in writing signed by the director and is deemed to be signed when received in legible form.

21. BOARD MEETINGS**21.1 Convening Board meetings**

A director may at any time, and the secretary must on request from a director, convene a Board meeting.

Note Rule 21.1 replaces the Corporations Act section 248C.

21.2 Notice of Board meeting

- (a) The convenor of a Board meeting must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each director who is in Australia.
- (b) Oral or faxed notice is enough.
- (c) The mere fact of non-receipt of notice by a director does not result in a Board meeting being invalid.

21.3 Use of technology

Note The Corporations Act section 248D says that Board meeting can be held using any technology (such as video conferencing) agreed to by the directors.

A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the directors present at the meeting is located or, if an equal number of directors are in each of 2 or more places, at the place where the director chairing the meeting is.

21.4 Chairing Board meetings

The Board may by resolution appoint a director to chair its meetings and decide the period for which that director holds that office (the *Chair*). The Board may also by resolution appoint a Deputy Chair (the *Deputy Chair*). If no appointment of a Chair has been made, or the person appointed is not present within 15 minutes after the time for which a Board meeting is called or declines to act, the Deputy Chair may chair the meeting. If the Deputy Chair is also absent or declines to act the directors present must elect a director present to chair the meeting.

Note Rule 21.4 replaces the Corporations Act section 248E.

21.5 Quorum

- (a) Unless the Board decides otherwise, the quorum for a Board meeting is:
- (i) if the number of directors is an even number—one half of the number of directors plus 1;
 - (ii) if the number of directors is an odd number—one half of the number of directors rounded up to the next whole number.
- (b) A quorum must be present for the whole meeting.
- (c) A director is treated as present at a meeting held by audio or audio-visual communication if the director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by the Corporations Act section 248D, the Board must resolve the basis on which directors are treated as present.

Note Rule 21.5 replaces the Corporations Act section 248F.

Note The Corporations Act section 248D says a Board meeting can be held using any technology (such as video conferencing) agreed to by the directors.

21.6 Procedural rules

The Board may adjourn and, subject to this constitution, otherwise regulate its meetings as it decides.

21.7 Majority decisions

- (a) A resolution of the Board is passed if a majority of the votes cast by directors entitled to vote on the resolution are in favour of it.
- Note Rule 21.7(a) replaces the Corporations Act section 248G.
- (b) The director chairing a Board meeting does not have a casting vote. If an equal number of votes is cast for and against a resolution, the question is decided in the negative.

21.8 Valid proceedings

- (a) Each resolution passed or thing done by, or with the participation of, a person acting as a director is not invalid merely because it is later discovered that:
- (i) there was a defect in the appointment of the person; or
 - (ii) the person was disqualified from continuing in office, voting on the resolution or doing the thing.
- (b) A resolution passed or thing done by the Board is not invalid merely because there is a vacancy in the office of a director.

22. BOARD COMMITTEES

22.1 Committees

- (a) The Board must establish the following committees:
- (i) Audit and Risk Management Committee;

- (ii) Human Resources Committee; and
- (iii) Selection Committee (as detailed in rule 28).
- (b) The Board may establish other committees as it sees fit.
- (c) The members of each Committee (other than the Selection Committee):
 - (i) will be appointed (and may be removed) by the Board;
 - (ii) must include at least one Director; and
 - (iii) may include persons who are not Directors.

The members of the Selection Committee will be appointed under rule 28.2.

22.2 Functions and charter of committees

- (a) The Board must establish a charter for each committee it establishes. The charter:
 - (i) must specify the powers, functions and responsibilities of the committee;
 - (ii) may give direction as to the reports the committee is to make to the Board;
 - (iii) may contain other directions and guidance for the committee, including in relation to proceedings of the committee; and
 - (iv) will be made publicly available.
- (b) The Board may amend a charter as it sees fit from time to time.
- (c) The Board will delegate to each committee the powers, functions and responsibilities specified in the committee charter.

22.3 Proceedings of committees

Subject to the terms of the charter for the committee, the meetings and proceedings of committees are, to the greatest extent practicable, to be governed by the provisions of the Corporations Act and this constitution that regulate the meetings and proceedings of the Board.

22.4 Reports to members

The Board must include in the annual report for each financial year a report on the operations of the Audit and Risk Management Committee, the Human Resources Committee and the Selection Committee during the year to which the report relates.

Note The Corporations Act section 317 requires the annual report etc to be tabled at the AGM.

23. DELEGATION OF BOARD POWERS

23.1 Delegation

The Board may delegate any of its powers to:

- (a) a committee established under rule 22 or rule 28;
- (b) a director; or
- (c) an employee of the company.

A delegation of the Board's power does not either prevent the exercise of that power by the Board or alter the Board's powers and responsibility to manage the company under rule 19.1.

23.2 Terms of delegation

- (a) The Board may document the terms and conditions of the delegation of its powers.
- (b) A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

Note The Acts Interpretation Act 1901 (Cth) sections 34AA and 34AB set out general rules about delegations, for example, that the power to delegate does not include delegating the power to delegate, and that delegations may be made subject to restrictions and conditions.

23.3 Exercise of Delegation

- (a) The exercise of a power delegated under rule 23.1 is to be treated as the exercise of that power by the Board.
- (b) In the exercise of any powers delegated under rule 23.1, the delegate must exercise the powers delegated in accordance with any terms and conditions of the delegation provided by the Board under rule 23.2(a) and any other directions of the Board.

23.4 Power to revoke delegation

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

24. CODE OF CONDUCT

24.1 Formulation of code of conduct

The Board must formulate and implement a code of conduct for the directors and senior officers of the company. The code is to include provisions about at least the following:

- (a) use and disclosure of information;
- (b) receiving, keeping, holding and reporting gifts of any description by directors and senior officers of the company;
- (c) conflicts of interest and duty;
- (d) ethical behaviour by the company, directors and its senior officers in relation to the company's affairs.

24.2 Review of code

The Board must keep the code of conduct under periodic review.

24.3 Compliance

A person to whom the code applies is not to contravene the code.

24.4 Reports to members

The Board must include in the annual report for each financial year a report on the operations of the code of conduct during the year to which the report relates, including how the Board dealt with any material breaches of the code that came to its notice during the year.

Note The Corporations Act section 317 requires the annual report etc to be tabled at the AGM.

THE DIRECTORS

Directors

25. NUMBER OF DIRECTORS

25.1 Number of Directors

The company must have the number of directors determined by the Board from time to time, provided there are at least 7, but no more than 9, directors (or such other maximum and minimum numbers determined by ordinary resolution).

Note The Managing Director is included.

25.2 Vacancy

A vacancy in the office of a director does not affect anything done by the Board, unless the number of directors is less than 7. If the number of directors falls below 7, the continuing directors may act as the Board only:

- (a) to appoint directors up to that minimum number; and
- (b) to convene a meeting of members; and
- (c) in emergencies.

26. BOARD TO INCLUDE CERTAIN SKILLS

The Board must strive to ensure that the Board :

- (a) as a whole has an appropriate balance of skills and experience, having regard to the nature of the business and affairs of the company; and
- (b) has at least four directors with milk producer skills (such skills being determined by the Board from time to time).

Note See also rule 28.4(a).

27. QUALIFICATIONS FOR DIRECTORS

A director need not be a member. Neither the auditor of the company nor a partner or employee of the auditor is eligible to act as a director.

28. SELECTION COMMITTEE

28.1 Functions of the Selection Committee

The functions of the Selection Committee (which will be specified in the Selection Committee's charter as amended from time to time) must include:

- (a) identifying and nominating persons for appointment as directors of the company to fill vacancies that arise at general meetings;
- (b) identifying and nominating persons for appointment as directors of the company at any other time (casual vacancies);
- (c) making recommendations to the Board with respect to the recruitment of directors; and
- (d) such other functions conferred by this Constitution or determined by the Board from time to time.

28.2 Composition of the Selection Committee

- (a) The Selection Committee will be appointed on a standing basis for a term of approximately 12 months.
- (b) Approximately every 12 months the Board must appoint a Selection Committee for the following 12 months. The Selection Committee will consist of:
 - (i) a director or other person appointed by the Board to chair the committee; and
 - (ii) 4 other persons appointed by the Board.
- (c) The following provisions apply in respect of appointments:
 - (i) if there are 4 or fewer Group B members:
 - (A) all the Group B members may, jointly, nominate up to 4 members of the Selection Committee; and

- (B) if the Group B members are not able to agree on nominations within 14 days after being asked for nominations by the Board—each Group B member may, within a further 14 days, nominate 1 or more persons, so that:
- (I) each Group B member nominates the same number of persons; and
 - (II) up to 4 persons are nominated; and
- (C) if Group B members have nominated a person for appointment to the Selection Committee under this rule 28.2(c), the Board must appoint that person under rule 28.2(b);
- (ii) if there are 5 or more Group B members—the Board must consult the Group B members on the matter before making the appointments, and take into account any matter put to the Board by the Group B members.
- Note If there are 2 Group B members, they both agree on 4 nominations. If they do not agree, each nominates 1 or 2 persons. If 1 or both of them only nominates 1 person, the Board appoints the additional person under rule 28.2(b).
- Note If there are 3 Group B members, they all agree on 4 nominations. If they do not agree, each may nominate 1 person and the Board appoints 1 person. If a Group B member does not nominate a person, the Board appoints the additional person under rule 28.2(b).
- Note If there are 4 Group B members, they all agree on 4 nominations. If they do not agree, each may nominate 1 person. If a Group B member does not nominate a person, the Board appoints the additional person under rule 28.2(b).
- Note For rule 28.2(c)(ii) see rule 13.
- (d) In appointing the Selection Committee, and in nominating persons to be appointed, the Board and each Group B member must seek to achieve an appropriate balance between renewal of the Selection Committee and ensuring continuity of membership of the Selection Committee.

28.3 Skills Matrix and Reporting Schedule

The Board (or the HR Committee if the Board delegates this function to that committee) must prepare and provide to the Selection Committee annually:

- (a) a statement (the *Skills Matrix*):
 - (i) outlining the skills and experience that, in the Board's view, the Board as a whole should possess in order to comply with rule 26(a) and the milk producer skills that at least four directors should possess in order to comply with rule 26(b);
 - (ii) assessing the extent to which the current Board has the skills and experience outlined pursuant to rule 28.3(a)(i);
 - (iii) outlining the specific skills and experience that the Board considers the directors to be nominated for that year by the Selection Committee should possess, in order to ensure the Board as a whole possesses the skills and experience required by rule 26(a) and the milk producer skills required by rule 26(b) as outlined pursuant to rule 28.3(a)(i) (taking into account the fact that certain directors are to retire);
- (b) the reporting schedule with which the Selection Committee must comply, including the date by which the Selection Committee must nominate director candidates pursuant to rule 28.4.

The Board must publish and make publicly available the Skills Matrix.

28.4 Nomination of Director candidates by Selection Committee

- (a) In identifying and nominating persons for appointment as Directors, the Selection Committee must choose from the available candidates those persons who will in its view best ensure that the Board:
- (i) as a whole has an appropriate balance of skills and experience in the areas specified in the statement provided to the Selection Committee under rule 28.3(a)(i); and
 - (ii) has at least four directors with milk producer skills (such skills being as specified in the statement provided to the Selection Committee under rule 28.3(a)(i)).
- (b) The committee is to make only 1 nomination for each vacancy. The nomination must have received the support of a majority of the members of the Selection Committee.
- (c) The Selection Committee's report must include:
- (i) details of each nominee's qualifications and experience; and
 - (ii) a statement of how, in the committee's opinion, the appointment of the person as a director would result in the Board having the skills and experience required under rule 28.4(a).
- (d) If the Board asks for further information in relation to a report, the Selection Committee must comply with the request.

28.5 Pre-selection Committee

The Selection Committee may appoint a Pre-selection Committee, whose functions will include:

- (a) assisting in the identification of potential director candidates with milk producer skills; and
- (b) referring potential director candidates with milk producer skills to the Selection Committee.

28.6 Remuneration

The members of the Selection Committee are entitled to fees and allowances as determined by the Board.

28.7 Reporting

The Chair of the Selection Committee will update the Board regularly about matters relevant to the Selection Committee's role, responsibilities, and matters considered, discussed and resolved at Selection Committee meetings.

29. APPOINTMENT OF DIRECTORS

Note Rule 29 replaces the Corporations Act sections 201G and 201H.

Note The Corporations Act section 201E makes special provision for resolutions appointing 2 or more directors.

Note This rule 29 does not apply to the Managing Director: see rule 30.2.

29.1 How directors are appointed

A director may be appointed:

- (a) by resolution or election by a general meeting as provided in rule 29.4;
- (b) by the Board at any time except during a general meeting, but only to fill a vacancy in the office of a director; or
- (c) by resolution at a general meeting other than an AGM.

A person declared appointed or elected in accordance with rule 29.4, or appointed pursuant to rule 29.1(c), is appointed as a director with effect from the end of the general meeting at which the resolution is passed or election is held.

29.2 Nomination by Board for election

- (a) If the Selection Committee recommends a person be appointed as a director, the Board must nominate the person for election as a director at the next AGM.

Note The Board may comment on the nomination and does not have to support it.

- (b) If a Selection Committee has been established but failed to make a recommendation under rule 28.4 by the date required in the statement provided by the Board under rule 28.3(b), the Board may nominate a person or persons for election as a director at the next AGM.

29.3 Nomination by Group A members for election

- (a) A person may also be nominated for election as a director at the next AGM if all of the following apply:

- (i) the person is nominated by at least 100 Group A members;
- (ii) the nomination specifies the skills and experience that the nominee is said to have relevant to the business and affairs of the company;
- (iii) the nomination and all other necessary documentation is received by the Board no later than 2 months after the start of the financial year in which the AGM at which the nomination is to be moved is to be held.

Note Rule 29.5 deals with casual vacancies.

- (b) As soon as practicable after receiving a nomination from a Group A member nominated candidate under rule 29.3(a), the Company must ask the Selection Committee to determine the most appropriate Board nominated candidate for the Group A member nominated candidate to stand against, having regard to the skills and experience of the Group A member nominated candidate. The Selection Committee must notify the Group A member nominated candidate and the Company as soon as practicable of the Board nominated candidate so selected.
- (c) Each Group A member nominated candidate must, as soon as practicable, after receiving notice under paragraph (b) provide a written statement describing his or her skills and experience relevant to the business and affairs of the company.
- (d) If any Group A member nominated candidate has not complied with rule 29.3(c), his or her nomination will be deemed to have been withdrawn.

29.4 Election of Directors

- (a) If at any AGM there is a Board nominated candidate against whom no Group A member nominated candidate is standing then:
- (i) a resolution will be put to the AGM that that Board nominated candidate be appointed as a director; and
 - (ii) the Board nominated candidate will be appointed as a director if he or she receives more votes for than against.
- (b) If at any AGM there is a Board nominated candidate against whom one or more Group A member nominated candidates are standing there will be an election in relation to that position held in accordance with Schedule 1.

29.5 Casual Vacancies

- (a) The Board must not appoint a person under rule 29.1(b) unless a Selection Committee has recommended the appointment. The recommendation must have been made after the most recent general meeting.
- (b) A person appointed as a director under rule 29.1(b) or 29.1(c) (other than the Managing Director) ceases to be a director at the end of the next AGM held after the appointment.

29.6 Maximum number of directors

This rule 29 does not authorise the number of directors for the time being fixed under rule 25 to be exceeded.

29.7 Notice to members

At least 28 days before the relevant AGM the company must provide members with:

- (a) the name of each Board nominated candidate;
- (b) the name of each Group A member nominated candidate and of the Board nominated candidate he or she is standing against; and
- (c) a copy of each candidate's statement of skills and experience (but only if the statement was received by the company from the candidate at least 35 business days prior to the relevant AGM).

30. MANAGING DIRECTOR**30.1 Appointment of Managing Director**

The Board must appoint a person to be Managing Director of the company. The appointment may be indefinite or for a specified term, but not for life.

Note Rule 30.1 replaces the Corporations Act section 201J.

Note The Managing Director's terms of engagement are covered in rule 32.1.

30.2 Managing Director to be a director, but rules 28 and 29 not to apply

The Managing Director is, by virtue of his or her appointment, a director. However, rules 28 and 29 do not apply in relation to the Managing Director.

Note Rules 28 and 29 require most Board appointments to be recommended by a Selection Committee.

30.3 Termination of appointment of Managing Director

Whether or not the appointment was expressed to be for a specified term, the appointment of a Managing Director terminates if:

- (a) the Managing Director ceases for any reason to be a director; or
- (b) the Board removes the Managing Director from office (which, without affecting the rights of the Managing Director under a contract between the company and the Managing Director, the Board has power to do).

Note: Rule 30.3 replaces the Corporations Act section 203F.

30.4 Powers and functions of the Managing Director

The Board may by resolution delegate to, or confer on, the Managing Director, any of the powers of the Board:

- (a) on terms, and subject to the restrictions, specified the resolution; and
- (b) so as to be concurrent with, or to the exclusion of, the powers of the Board.

The Board may revoke or vary a delegation or conferral at any time.

This rule 30.4 does not limit rule 23 or the Corporations Act section 198D.

Note Rule 30.4 replaces section 198C.

Note The *Acts Interpretation Act 1901* (Cth) section 34AB has general provisions relevant to delegations.

Note The Corporations Act section 198D provides that the Board may delegate any of its powers to any person.

31. DIRECTORS' PERIODS OF OFFICE

31.1 Cessation of directors' appointments

A person automatically ceases to be a director if the person:

- (a) is made the subject of guardianship or administration order, or a similar order, under a law relating to the protection of the person or property of a person on the grounds of infirmity, age or disability; or
- (b) resigns by written notice to the company; or
- (c) is not permitted by or under the Corporations Act to be a director or is disqualified by or under the Corporations Act from being a director; or
- (d) fails to attend Board meetings for a continuous period of 3 months without leave of absence from the Board;
- (e) is removed from office under rule 31.3.

Note Rule 31.1(a) replaces the Corporations Act section 203A.

Note The Corporations Act Part 2D.6 deals with disqualification.

31.2 3 year periods of office

Subject to rule 29.5, at the end of each AGM, a director (other than the Managing Director) who will, at the end of that AGM, have held that office for more than 3 years, ceases to be a director.

31.3 Removal from office

The company may by ordinary resolution remove a director from office. The power is in addition to the Corporations Act section 203D.

Note The Corporations Act section 203D allows a company to remove a director, and sets out some procedural requirements.

31.4 Rotation of directors

- (a) Without limitation to rule 29.5 or rule 31.2, but subject to rule 31.4(b), at each AGM, at least one-third of the total number of directors other than the managing director (or, if that is not a whole number, the nearest whole number) must retire from office. Any director that ceases to be a director under rule 29.5 or rule 31.2 is counted towards this number.
- (b) If the total number of directors (not including the managing director) is eight, and rule 31.4(a) would require a director appointed as a director under rule 29.2(a) to retire and that director would not otherwise cease to be a director under rule 31.2, the number of directors required to retire from office under rule 31.4(a) will be reduced by one.

31.5 Selection of directors to retire

The directors who retire under rule 31.4 are those who have held office the longest since last being elected or appointed. If 2 or more directors have been in office for the same period, those directors may agree which of them will retire. If they do not agree, they must draw lots to decide which of them must retire.

31.6 Eligibility for reappointment

- (a) Subject to rule 31.6(b) and the Corporations Act, a director whose period of office ends as mentioned in rules 29.5, 31.1(b), 31.2 or 31.4 is, unless otherwise disqualified, eligible for reappointment.
- (b) Subject to rules 31.6(c) and (d), a person (other than the Managing Director) cannot hold office after the conclusion of the AGM occurring in the year in which the person will have been a director for 9 consecutive years.

- (c) If at the 2014 AGM the then Chair would have been a director for 9 consecutive years, then, notwithstanding Rule 31.6(b), that person may serve one more term of 3 years if they are re-elected as a director by the Group A members at the 2014 AGM.
- (d) The Group A members may by special resolution permit a person to remain as a director notwithstanding rule 31.6(b) and (c) but only until the next AGM. A person's appointment may be extended any number of times under this rule 31.6(d), provided that at each AGM the person's continuation as a director is approved by special resolution.

32. DIRECTORS' REMUNERATION

Note Rule 32 replaces the Corporations Act section 202A.

32.1 Remuneration of Managing Director

Subject to any contract between the company and the Managing Director, the Board may fix the remuneration and other benefits to which the Managing Director is entitled. The remuneration may consist of salary, bonuses or other elements but must not be a commission on or percentage of profits or operating revenue.

32.2 Remuneration of other Directors

- (a) The directors (other than the Managing Director) are entitled to be paid, out of the funds of the company, approved fees that do not in any year exceed in aggregate the amount last fixed by ordinary resolution.
- (b) The fees must not consist of a commission on or percentage of profits or operating revenue of the company.
- (c) The fees are to be allocated among the directors:
 - (i) on an equal basis having regard to the proportion of the relevant year for which each director held office; or
 - (ii) as otherwise decided by the Board.
- (d) The fees are to be paid as the Board decides, which may include provision of non-cash benefits. If the Board decides to include non-cash benefits in the approved fees of a director, the Board must also decide how the value of those benefits is to be calculated for the purposes of this rule 32.2.

32.3 Additional payment for extra services

If a director, at the request of the Board and for the purposes of the company, performs extra services or makes special exertions (including going or living away from the director's usual residential address), the company may pay the director a fixed sum set by the Board for doing so. This payment may either be in addition to or in substitution for other remuneration to which that Director is entitled under rule 32.1 or 32.2.

32.4 Expenses of Directors

The company must pay a director (in addition to remuneration) all reasonable expenses (including travelling and accommodation expenses) incurred by the director:

- (a) in attending meetings of the company, the Board, or a committee of the Board; or
- (b) on the business of the company; or
- (c) in carrying out duties as a director.

32.5 Directors' retirement benefits

Subject to any applicable law, except in the case of the Managing Director (and then only as provided in any contract between the Managing Director and the company), the company must not give any benefit in connection with a director's retirement from or loss of office.

32.6 Interpretation

In this rule 32, **approved fees** means fees, salary, bonuses, fringe benefits and superannuation contributions provided by the company, but does not include:

- (a) payment as compensation for loss of office or in connection with retirement from office (which includes resignation from office and death while in office); or
- (a) an insurance premium paid by the company, or an indemnity, under rule 37.

33. DIRECTORS' RIGHT TO INFORMATION AND ADVICE**33.1 Right to information**

Each director has, for the purpose of enabling the director to carry out his or her duties and functions as a director, a right to any information or document held by or under the control of the company in relation to the company's operations, policies and affairs, and the company must comply with any reasonable request by a director for access to such information or document.

33.2 Exceptions

If the matter to which information held by or under the control of the company relates is a matter in which a director has a material personal interest of a kind that the director is required to disclose by the Corporations Act section 191, rule 33.1 does not give the director a right to information about that matter and the company need not comply with a request by the director for access to such information.

33.3 Advice

Each director has, for the purpose of enabling the director to carry out his or her duties and functions as a director, a right to obtain independent legal or other expert advice in relation to the company's operations, policies and affairs and his or her rights and duties in connection therewith. The company must meet the reasonable costs of, or reimburse the director for the reasonable costs of, obtaining such advice. This rule 33.3 applies in addition to rule 37.

Note Rule 37 deals with directors' and officers' right to indemnity and insurance.

Directors' duties and interests

Note The Corporations Act Part 2D.1 Divisions 1 and 2 set out duties of a director, including duties to act in good faith and the best interests of the company, and duties to disclose and, in some case, not to be involved with, matters that amount to a conflict of interest.

34. COMPLIANCE WITH DUTIES UNDER THE CORPORATIONS ACT

Each director must comply with the Corporations Act sections 180 to 183, 191 and 195.

Note The Corporations Act section 180 says that directors must act with the degree of care and diligence that a reasonable person in the same office and with the same responsibilities, in a corporation in similar circumstances, would exercise.

Note The Corporations Act section 181 says that directors must act in good faith in the best interests of the corporation, and for a proper purpose.

Note The Corporations Act section 182 says that directors must not improperly use their position to gain an advantage for themselves or someone else; or to cause detriment to the corporation.

Note The Corporations Act section 183 says that directors obtain information by being directors must not improperly use the information to gain an advantage for themselves or for someone else or to cause detriment to the corporation.

- Note The Corporations Act section 191 says that directors who have a material personal interest in a matter must give the other directors notice (although there are exemptions, such as where the interest is held in common with the other members of the company).
- Note The Corporations Act section 195 sets out when a director may be present, and vote, at a Board meeting that considers a matter in which the director has a material personal interest.

35. PROTECTIONS AND OTHER PROVISIONS

35.1 Director not disqualified from holding other offices etc

A director is not disqualified, merely because he or she is a director, from:

- (a) holding an office or place of profit or employment other than that of the company's auditor; or
- (b) being a member or creditor of a corporation (including the company) or partnership, other than the auditor; or
- (c) entering into an agreement with the company.

35.2 Director interested in a matter

Subject to the Corporations Act section 195:

- (a) a director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in which that director has an interest; and
- (b) the company may proceed with a transaction that relates to the interest and the director may participate in the execution of a relevant document by or on behalf of the company; and
- (c) the director may retain benefits under the transaction even though the Director has the interest; and
- (d) the company cannot avoid the transaction merely because of the existence of the interest.

If the interest must be disclosed under the Corporations Act section 191, rule 35.2(c) applies only if the interest is disclosed before the transaction is entered into.

Note For the Corporations Act section 195 and 191, see the notes to rule 34.

35.3 Agreements with third parties

The company cannot avoid an agreement with a third party merely because a director:

- (a) fails to disclose an interest as required by law or by this constitution; or
- (b) was present at, or was counted in the quorum for, a Board meeting that considered or voted on the agreement.

36. SECRECY

36.1 Secrecy

Every director and secretary must keep the transactions and affairs of the company and the state of its financial reports confidential unless required to disclose them:

- (a) in the course of duties as an officer of the company; or
- (b) by the Board or the company in general meeting; or
- (c) by law.

36.2 Deeds

The Company may require a director, secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule 36. A director or secretary must comply with the direction.

37. OFFICERS' INDEMNITY AND INSURANCE**37.1 Indemnity**

Subject to, and so far as permitted by, the Corporations Act:

- (a) the company must, to the extent the person is not otherwise indemnified, indemnify every officer of the company and its wholly owned subsidiaries, and may indemnify its auditor, against a liability incurred as such an officer or auditor to a person (other than the company or a related body corporate) including a liability incurred as a result of appointment or nomination by the company or subsidiary as a trustee or as an officer of another corporation, unless the liability arises out of conduct involving a lack of good faith; and
- (b) the company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule 37.1, **liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

Note The Corporations Act section 199A says that a company or a related body corporate must not exempt a person from a liability to the company incurred as an officer or auditor of the company or for a liability owed to a third party, where the director did not act in good faith. In certain circumstances, however, indemnity for legal costs may be allowed.

37.2 Insurance

Subject to the Corporations Act, the company may enter into, and pay premiums on, a contract of insurance in respect of any person.

Note The Corporations Act section 199B prohibits a company or a related body corporate from paying, or agreeing to pay, a premium for a contract insuring a person who is or has been an officer or auditor of the company against liability for conduct involving a wilful breach of duty or a breach of sections 182 and 183 (see note to rule 34).

37.3 Former officers

The indemnity in favour of officers under rule 37.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

37.4 Deeds

Subject to the Corporations Act, without limiting a person's rights under this rule 37, the company may enter into an agreement with a person who is or has been an officer of the company or any of the company's subsidiaries, to give effect to the rights of the person under this rule 37 on any terms and conditions that the Board thinks fit.

ADMINISTRATION AND FINANCE**38. SECRETARY**

Note The Corporations Act sections 204A and 204D say that there must be at least 1 secretary, appointed by the directors.

38.1 Terms and conditions of office

A secretary holds office on the terms (including as to period of office and as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a secretary.

Note Rule 38.1 replaces the Corporations Act section 204F.

38.2 Cessation of secretary's appointment

A person automatically ceases to be secretary if the person:

- (a) is made the subject of guardianship or administration order, or a similar order, under a law relating to the protection of the person or property of a person on the grounds of infirmity, age or disability; or
- (b) resigns by written notice to the company; or
- (c) is not permitted by or under the Corporations Act to be a secretary of a corporation or is disqualified by or under the Corporations Act from being a secretary of a corporation; or
- (d) is removed from office under rule 38.3.

Note The Corporations Act Part 2D.6 deals with disqualification.

38.3 Removal from office

The Board may remove a secretary from that office, whether or not the appointment was expressed to be for a specified term.

39. MINUTES**39.1 Matters to be included in minutes**

As well as the other matters to be recorded in the company's minute books, the names of the directors present at each Board meeting or Selection Committee or other committee meeting must be recorded.

Note Rule 39.1 supplements Corporations Act sections 251A, 251AA, 191 and 192 .

39.2 Minutes as evidence

A minute recorded and signed in accordance with the Corporations Act section 251A is admissible as evidence of the proceeding, resolution or declaration to which it relates and is conclusive unless the contrary is established.

Note The Corporations Act section 251B says that the members have rights to inspect and have copies of minute books.

40. COMPANY SEALS

Note A common seal is not required by law.

40.1 Common and duplicate seals

It is for the Board to determine whether the company is to have a common seal and a duplicate seal. The Board is responsible for the safe custody of any common seal and duplicate seal of the company.

Note For seals see Corporations Act section 123.

40.2 Use of seals

The common seal and duplicate seal (if any) may only be used with the authority of the Board.

40.3 Fixing seals to documents

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by 2 directors; or

- (b) by 1 director and 1 secretary; or
- (c) as authorised by the Board.

Note The Board may, for example, authorise other signatories or the use of facsimile signatures.

41. FINANCIAL REPORTS AND AUDIT

Note The Corporations Act chapter 2M sets out detailed requirements for financial record-keeping (including when directors, the auditor and members can have access to them), auditing financial records and reporting to members.

41.1 Audited reports conclusive

Audited financial reports laid before the company in general meetings are conclusive as to the matters therein except as regards errors notified to the company within 3 months after the relevant general meeting. If the company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

41.2 Inspection of financial records and books

A member who is not a director does not have any right to inspect any document of the company except as authorised by this constitution, the Board or by ordinary resolution.

Note The Corporations Act sections 247A and 290 allow the court to authorise access by a member or another person.

Note See rule 33.

Note Rule 41.2 replaces the Corporations Act section 247D.

42. AUDITOR ROTATION

If an individual has played a significant role (as defined in section 9 of the *Corporations Act* and for the avoidance of doubt includes the lead partner) in the audit of the company for five successive financial years they are not eligible to play a significant role in the audit of the company for a later financial year.

43. NOTICES

43.1 Notices by company

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

- (a) in writing signed on behalf of the company (by original or printed signature); and
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally; or
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

43.2 Overseas members

A member whose registered address is not in Australia may notify the company in writing of an address in Australia to which notices may be sent.

43.3 When notice is given

A notice to a person by the company is regarded as given and received:

- (a) if delivered personally or sent by fax or electronic message:
 - (i) by 5.00 pm (local time in the place of receipt) on a business day—on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a business day, or on a day that is not a business day—on the next business day; and
- (b) if sent by mail—3 business days after posting.

A certificate in writing signed by a director or secretary stating that a notice was sent is admissible as evidence of service, and is conclusive.

Note Rule 43.3(a)(i) replaces the Corporations Act section 249J (4).

43.4 **Business days**

For the purposes of rule 43.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

43.5 **Counting days**

If a specified period must pass after a notice is given 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 is to be counted in reckoning the period.

43.6 **Notices to "lost" members**

If:

- (a) on 2 or more consecutive occasions a notice served on a member in accordance with this rule 43 is returned unclaimed or with an indication that the member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a member is not at the address shown in the register of members or notified to the company under rule 43.2;

the company may give effective notice to that member by exhibiting the notice at the company's registered office for at least 48 hours.

This rule 43.6 ceases to apply if the member gives the company notice of a new address.

WINDING UP

44. WINDING UP

If the company is wound up, any surplus property must not be paid to members but must be paid or transferred to another corporation:

- (a) the objects of which are similar to the company's objects; and
- (b) the constitution of which prohibits the distribution of its income and property among its members.

Schedule 1 Election Procedure

Rule 29.4(b)

1. An election must be conducted by ballot.
2. If at any AGM there are two or more positions being contested pursuant to rule 29.4(b), separate elections will be conducted for each position.
3. The auditor of the company, or person appointed by the auditor of the company for the purpose, is to be the returning officer for elections.
4. The returning officer must cause ballot papers to be prepared for each Group A member, in a form approved by the Board, that comply with the process set out in this Schedule 1.
5. The ballot papers must state the names of the candidates nominated for the relevant position, with provision for a number to be placed against the name of each candidate.
6. The returning officer must determine by lot the order in which the candidates' names appear on the ballot paper.
7. To cast a valid vote the member must follow the instructions on the ballot paper; however, a ballot paper is not invalid if it does not strictly comply with the instructions on the ballot paper, so long as the member's intention is clear.
8. Subject to rules 16.7, 16.8 and 16.10, the returning officer may provide a single ballot paper to a proxy, showing the total of the number of votes the proxy may cast as proxy.

Note Rules 16.7, 16.8 and 16.10 deal with cases where proxies' rights might be suspended or a proxy's right to vote might otherwise be affected.
9. A member must assign a number to each candidate on the ballot paper, in order of the member's preference. The number "1" should be used to indicate the candidate who is the member's first preference, the number "2" should be used to indicate the candidate who is the member's second preference, and so on until numbers have been assigned to all candidates on the ballot paper.
10. No number may appear twice on the ballot paper. A ballot paper not complying with this regulation will be informal and will not be counted in the ballot.
11. The returning officer will count the total number of first preference votes given for each candidate. If any candidate upon the count of first preferences has a clear majority of the votes cast then that candidate shall be elected.
12. If no candidate has upon the first preferences being counted a clear majority the candidate with the least number of first preference votes will be excluded and that candidate's votes must be allocated according to the second preference on each ballot paper on which that candidate was the first preference and added to the first preference votes given in favour of those candidates to whom second preferences are allocated.
13. If no candidate has then received a clear majority the procedure set out in sub-regulation 12 will be continued until a candidate has a clear majority of votes.
14. Where the number of votes obtained by a candidate following this procedure is raised above a clear majority of the votes cast that candidate shall be elected.
15. The decision of the returning officer in respect of a ballot is final.
16. The person chairing the meeting may permit scrutineers for candidates to observe the count of ballot papers, and may do so subject to conditions.