



# Constitution

of

## Potatoes Australia Limited

A COMPANY LIMITED BY GUARANTEE

14 May 2021

Crawford Legal  
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## **PART 1 – PRELIMINARY**

### **1. NAME OF THE COMPANY**

The name of the company is **Potatoes Australia Limited**.

### **2. DEFINITIONS**

In this Constitution:

**Board** means the board of Directors of the Company.

**CEO** means the Company's Chief Executive Officer.

**Chairperson** means an independent Director appointed to act as the Company's presiding officer.

**Company** means Potatoes Australia Limited.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Deputy Chairperson** means the Director appointed to that office.

**Director** means a director of the Company.

**End Point Potato** means a ware potato or a potato produced for use in processing.

**Fresh Sector** means that part of the potato industry that is producing potatoes (whether Seed Potatoes or End Point Potatoes) that are intended for consumption as potatoes.

**Independent Director** means a Director who is not a Member, a Representative of a Member, or an associate of a Member.

**Member** means a person that is a member of the Company.

**Member Director** means a Director who is a Member or a Representative of a Member.

**Membership Category** means the categories of membership for the Company, being Produce Members and Value Chain Members.

**Membership Year** means a period of 12 months commencing 1 July in each year.

**Ordinary Resolution** means a resolution passed by a simple majority of Members present (including by proxy, where allowed) and entitled to vote on the resolution at a general meeting.

**Processing Sector** means that part of the potato industry that is producing potatoes (whether Seed Potato or End Point Potatoes) that are intended for transformation through manufacturing into other products.

**Producer** means a person that carries on business as a commercial potato grower (including seed, fresh market and processing potatoes) in Australia.

**Producer Member** means a Producer that is a Member of the Company.

**Representative** means a natural person appointed to represent a Member that is a body corporate body pursuant to clause 18.

**Secretary** means the company secretary of the Company.

**Seed Potato** means an earlier generation of potato than an End Point Potato.

**Special Resolution** means a resolution of Members:

- i. of which notice has been given under clause 29 (including the timeframe required by clause 29.2(b)); and
- ii. that has been passed by at least 75% of the votes cast by Members present (including by proxy, where allowed) and entitled to vote on the resolution.

**Surplus Assets** means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

**Treasurer** means the Director with primary responsibility for overseeing the Company's financial record keeping.

**Value Chain Member** means a Member that:

- (a) carries on pre or post farm-gate potato value chain activities (other than as a Producer), which the Board considers in its discretion are consistent with the objects of the Company;
- (b) is engaged in other businesses or activities that the Board considers in its discretion are consistent with the objects of the Company; or
- (c) is a sponsor of the Company's activities,

in each case makes a financial contribution to the Company which the Board does not resolve to decline or return.

### 3. INTERPRETATION

In this Constitution, unless the context otherwise requires:

- 3.1 words importing the singular include the plural, and vice versa;
- 3.2 words referring to a person includes corporations and other entities, and vice versa;
- 3.3 the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression;
- 3.4 reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations);
- 3.5 where a word or an expression is defined, another part of speech or grammatical form of that word or expression has a corresponding meaning; and
- 3.6 an expression used in this Constitution that is not defined in this Constitution but is defined in the Corporations Act has the same meaning given to that term in the Corporations Act, unless the context otherwise requires.

### 4. REPLACEABLE RULES

The replaceable rules set out in the Corporations Act do not apply to the Company.

### 5. TYPE OF COMPANY

- 5.1 The Company is a not-for-profit public company limited by guarantee and does not have share capital.

- 5.2 The Company is established to be, and to continue as, a not-for-profit entity.
- 5.3 The Company is not established to be a charity registered with the Australian Charities and Not-for-profits Commission.

## 6. LIMITED LIABILITY OF MEMBERS

- 6.1 Each Member must contribute an amount of not more than \$1.00 (**the guarantee**) to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:
- (a) debts and liabilities of the Company incurred before the Member stopped being a Member; or
  - (b) costs of winding up.
- 6.2 The liability of Members is limited to the amount of the guarantee.

## 7. DETERMINING PERCENTAGE OF VOTES

- 7.1 Where a clause of this Constitution requires the percentage of votes a Member has to be worked out, that percentage must be worked out as at midnight before the relevant event.

## 8. OBJECTS

- 8.1 The objects of the Company are to act in the best interests of, and generally advance, the Australian potato industry and to provide industry leadership, advocacy and services, and in that regard include:
- (a) identifying and supporting the development of export marketing opportunities for the potato industry;
  - (b) identifying opportunities for, supporting and fostering research, development and extension in the potato industry, including liaising with the national potato industry advisory committees;
  - (c) commissioning, coordinating or undertaking consumer education and product promotional activity at state and national levels;
  - (d) representing Members in respect to legislative change or pending legislative change in any matter that may affect the potato industry;
  - (e) promoting and conducting education and training programs for Members;
  - (f) promoting and conducting seminars, exhibitions and public education as appropriate;
  - (g) facilitating the sharing of information and providing networking opportunities for Members;
  - (h) planning projects and delivering services funded by the potato industry or any other funds as may be established;
  - (i) fostering co-operation and goodwill between research, and educational institutions, and any other association or body formed for the betterment of the potato industry;

- (j) affiliating with relevant regional, state and national industry organisations;
- (k) promoting the interests of the Company and doing all other lawful things as the Company may consider incidental or conducive to the attainment or advancement of the objects of the Company;
- (l) utilising industry funds wisely for the benefit of the potato industry;
- (m) identifying, developing, supporting and pursuing opportunities for the commercialisation of any intellectual property relating to potatoes or the potato industry, including without limitation establishing commercial ventures and relationships with third parties;
- (n) liaising and advocating with governments and regulatory bodies at all levels (Federal, State and local); and
- (o) doing all things as are incidental or conducive to any of the above objects.

8.2 In respect of the Company's objects under clause 8.1, the Company may:

- (a) do all or any of the things authorised by the Corporations Act; and
- (b) engage in any fundraising events and activities allowed by law.

## 9. POWERS

Subject to clause 10, the Company has the following powers, which may only be used to carry out its purposes set out in clause 8:

- 9.1 the powers of an individual; and
- 9.2 all the powers of a company limited by guarantee under the Corporations Act.

## 10. NOT-FOR-PROFIT

- 10.1 The Company must not distribute any income or assets directly or indirectly to its Members or their associates, except as provided in clauses 10.2 and 66.
- 10.2 Clause 10.1 does not stop the Company from doing the following things, provided they are done in good faith:
  - (a) paying a Member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company;
  - (b) making a payment to a Member in carrying out the Company's objects; or
  - (c) paying a Member reasonable interest on any money lent to the Company by that Member.



## **PART 2 – MEMBERSHIP**

### **11. INITIAL MEMBERS**

Upon the incorporation of the Company, the Directors will be deemed to be the Members of the Company. This position will continue until the Company has invited applications for membership and attained 10 Producer Members, at which point, the Company's Members will be only those people who have applied for and been granted membership as either a Producer Member or a Value Chain Member.

### **12. CATEGORIES OF MEMBERS**

12.1 The Company has the following types of membership:

- (a) Producer Member; and
- (b) Value Chain Member.

12.2 All Members must be registered to one Membership Category only. A Producer must be registered as a Producer Member.

12.3 If an existing Producer Member ceases to be a Producer during a Membership Year, they will no longer be eligible to be a Member of the Company. The Company is not required to refund any portion of any membership fee paid in respect of that Membership Year.

12.4 The Board may, in its discretion, determine whether an applicant for Membership is, or an existing Member continues to be, a Producer. The Board may request that the applicant or Member provide such information as the Board reasonably considers necessary to assist in its determination.

### **13. RIGHTS OF MEMBERS**

13.1 All Members have the rights granted under this Constitution, including but not limited to:

- (a) the right to receive notices of general meetings and all other documents sent to Members in respect of general meetings;
- (b) the right to attend and speak at general meetings; and
- (c) the right to vote at general meetings on any matter.

13.2 Subject to the terms of this Constitution, all Members are entitled to vote in respect of the election of all Directors.

13.3 Where a Member is a body corporate, it must exercise its powers under this Constitution through a Representative nominated pursuant to clause 18.

13.4 The rights of any Member under this Constitution shall be suspended automatically if that Member has not paid their membership fee in full (for Producer Members) or made an annual financial contribution (for Value Chain Members) three months after the due date for payment. Suspension will continue until such time as that Member pays all outstanding membership fees or makes an annual financial contribution to the Company, or is terminated as a Member.

### **14. MEMBERSHIP YEAR**

14.1 Each Membership Year starts on 1 July.

- 14.2 Membership fees or financial contributions shall be payable annually on 1 July or at such other times as the Board shall determine in its absolute discretion.

## 15. PRODUCER MEMBERS

- 15.1 Producer Members will be classified by reference to their annual tonnes of potato production as:

- (a) Small;
- (b) Medium;
- (c) Large; or
- (d) Extra-Large,

as set out in Schedule 1 (Producer Bands).

- 15.2 In calculating the Producer Bands, an equalisation factor is applied to equalise production of End Point Potatoes and Seed Potatoes (Equalisation Factor). The initial Equalisation Factor is 1.6 (1 tonne of Seed Potatoes is equivalent to 1.6 tonnes of End Point Potatoes), as calculated in Schedule 1.

- 15.3 The membership fees and voting right entitlements of Producer Members may be different for each Producer Band.

- 15.4 The initial membership fees and voting right entitlements of Producer Members are set out in Schedule 1 and will apply until amended in accordance with this Constitution.

- 15.5 From time to time:

- (a) Members may, by Special Resolution in a general meeting, resolve to change:
  - (i) the tonnages that define each Producer Band;
  - (ii) the number and description of Producer Bands (for example, by adding or removing Producer Bands);
  - (iii) the Equalisation Factor; and/or
  - (iv) the number of votes that can be exercised by Producer Members within each Producer Band; and
- (b) the Board may resolve to change the membership fees applicable to each Producer Band.

## 16. VALUE CHAIN MEMBERS

- 16.1 Value Chain Members will be classified by reference to the value of their annual financial contribution to the Company as:

- (a) Bronze;
- (b) Silver;
- (c) Gold; or
- (d) Platinum,

(Tiers).

- 16.2 The voting right entitlements of each Tier of Value Chain Membership may be different.
- 16.3 The initial financial contribution for qualification to each Tier and the voting right entitlements of each Tier of Value Chain Members are set out in Schedule 2 and will apply until amended in accordance with this Constitution.
- 16.4 From time to time:
- (a) Members may, by Special Resolution in a general meeting, resolve to change:
    - (i) the number and description of Tiers (for example, by adding or removing Tiers); and/or
    - (ii) the number of votes that may be exercised by Members in each Tier; and
  - (b) the Board may resolve to change the annual financial contribution required to qualify for each Tier.

## 17. FRESH AND PROCESSING SECTORS

The Board may, in its discretion, when registering Members identify them as belonging to the Fresh Sector or the Processing Sector.

## 18. REPRESENTATIVE

- 18.1 A Member being a body corporate must appoint one natural person, who shall not be a Member, to represent it at general meetings of the Company and to otherwise exercise all the rights of that Member granted under this Constitution (Representative).
- 18.2 Where a partnership of two or more persons applies to be a Member, all partners will be taken to be one Member and they must appoint a Representative to represent all partners at general meetings of the Company and to exercise all the rights of that Member granted under this Constitution.
- 18.3 A Representative shall be appointed by a resolution of the Member's board or other governing body.
- 18.4 A Representative shall be deemed to be a Member for all purposes until the authority to represent that Member is revoked and notified to the Company in writing.
- 18.5 A Member may replace its Representative from time to time by providing written notice to the Company.

## 19. REGISTER OF MEMBERS

- 19.1 The Company must establish and maintain a register of Members, which must contain:
- (a) the name, address, email and other such contact details of each Member and their current authorised contact person or Representative;
  - (b) current Membership Category, including their Producer Band or Tier (as the case may be);
  - (c) the date on which each Member was entered onto the register and admitted as a Member of the Company; and

- (d) if applicable, the date of and reason(s) for termination or cessation of Membership.
- 19.2 The Company must maintain the register for all current Members and for former Members for a period of at least 12 months after the cessation of their Membership or such longer period as required by law.
- 19.3 The confidentiality of Members' information (including the details of their current authorised contact person or Representative) shall be maintained in accordance with the *Privacy Act 1988* (Cth) and any other applicable privacy laws.

## 20. APPLICATIONS FOR MEMBERSHIP

- 20.1 An applicant for Membership must:
- (a) complete the application form provided or made available by the Company and deliver it to the Company;
  - (b) state the Membership Category to which the applicant applies;
  - (c) in the case of an application for Producer Membership, state which Producer Band applies to the applicant's annual production tonnes in the 12 months prior to the date of the application; and
- 20.2 Agree to comply with this Constitution, including paying the guarantee under clause 7 if required.
- 20.3 The Board must consider an application for membership within a reasonable time after it is received.
- 20.4 If the Board (in their absolute discretion) approve an application, the Secretary must:
- (a) as soon as practicable, notify the applicant in writing to tell them that their application was approved; and
  - (b) upon payment of the membership fee (for Producer Members) or financial contribution (for Value Chain Members), enter the new Member on the register of Members.
- 20.5 If the Board (in its absolute discretion) rejects an application, the Secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 20.6 The Board may delegate some or all of its powers under this clause 20 to the CEO or such other person as the Board may determine from time to time.

## 21. MEMBERS OF AMALGAMATING BODIES

- 21.1 Despite clause 20, if any existing not-for-profit entity (Amalgamating Body) agrees to amalgamate or merge with the Company, the Company may by resolution of the Board admit existing members of the Amalgamating Body as Members of the Company (Amalgamating Members), subject to their consent. In resolving to do so, the Board may, in its discretion:
- (a) waive payment of membership fees or the need to make a financial contribution to the Company from the date the Amalgamating Members become Members of the Company to a date determined by the Board;

- (b) determine the Membership Categories to which each Amalgamating Member will be admitted; and
  - (c) decline to offer membership to specific members of the Amalgamating Body.
- 21.2 To avoid doubt, the Board's discretion in clause 21.1 may be exercised in relation to members of Potatoes South Australia Inc. in the event that association amalgamates or merges with the Company.
- 21.3 The Company must cause details of the Amalgamating Members to be entered on the register of Members on, or as close as practicable to, the date on which the amalgamation or merger takes effect.\

## **22. WHEN A PERSON BECOMES A MEMBER**

- 22.1 An applicant will become a Member when they are entered on the register of members.

## **23. WHEN A PERSON STOPS BEING A MEMBER**

- 23.1 A person immediately stops being a Member if they:
- (a) die;
  - (b) are wound up or otherwise dissolved or deregistered (for an incorporated member);
  - (c) notify the Company in writing that they no longer wish to be a Member; or
  - (d) have not responded within three months to a written request from the Secretary that they confirm in writing that they want to remain a member.
- 23.2 The Member will cease to be a Member with effect from the date of the relevant event in clause 22.1(a).

## **24. TERMINATION OF MEMBERSHIP**

### Termination for Outstanding Membership Fees or Financial Contribution

- 24.1 The Board may resolve to terminate a Member if:
- (a) in the case of a Producer Member, that Member's membership fees are outstanding for more than three months after the due date for payment;
  - (b) in the case of a Value Chain Member, the Member has failed to make an annual financial contribution to the Company within three months after the start of the Membership Year; or
  - (c) in the case of any Member, a debt due to the Company (other than membership fees or an annual financial contribution) is outstanding for more than three months after the due date for payment,
- provided always that the Board may reinstate that membership on such terms as it thinks fit.
- 24.2 The Member will cease to be a member of the Company as at the date of the Board's resolution.

**Termination for Misconduct**

- 24.3 The Board may at any time terminate the membership of a Member if the Member:
- (a) refuses or neglects to comply with this Constitution or any applicable by-laws made by the Board; or
  - (b) engages in conduct which, in the opinion of the Board, is detrimental to the interests of the Company.
- 24.4 At least 14 days before the Board terminates the membership of a Member, the Secretary must notify the Member in writing that:
- (a) the Board in considering whether to terminate the membership of the Member;
  - (b) the date on which the Board will decide whether or not to terminate the membership of the Member;
  - (c) details of what the Member is alleged to have done or not done;
  - (d) that the member may provide written submissions to the Board relating to the allegation of misconduct or the consequences that should flow from any findings of misconduct.
- 24.5 The Secretary must notify the Member as soon as possible after the Board determines whether or not to terminate the membership of the Member.
- 24.6 In the event of a determination to terminate the Member's membership, the Member shall cease to be a Member (subject to clause 24.6) 14 days after the Board has communicated its determination to the Member.
- 24.7 A Member may appeal the termination of their Membership to the Company at a general meeting. The intention to appeal shall be communicated to the Secretary of the Company within 14 days after the determination of the Board has been communicated to the Member. The Member may not appeal if they fail to communicate their intention to appeal within that timeframe.
- 24.8 In the event of an appeal, the appellant's membership of the Company shall not be terminated unless the determination of the Board to expel the Member is upheld by the Members in a general meeting (by way of an Ordinary Resolution) after the appellant has been heard by the Members, and in such event the appellant's membership will be terminated at the date of the general meeting at which the determination of the Board is upheld.

**25. CONSEQUENCES OF CESSATION OR TERMINATION OF MEMBERSHIP**

Where a Member ceases to be a Member of the Company for any reason:

- 23.1 Membership fees or financial contributions paid in advance will not be refunded (in whole or in part) to a person who ceases to be a Member, except at the discretion of the Board.
- 23.2 the Member shall be liable for any outstanding membership fees (in the case of Producer Members) or financial contribution (in the case of Value Chain Members) or any other debts owing to the Company, which may each be recovered as a debt due to the Company; and
- 23.3 the secretary must enter the date on which and reasons for which the Member ceased to be a Member.

## **PART 3 – GENERAL MEETINGS**

### **26. ANNUAL GENERAL MEETING**

- 26.1 The Board shall call an annual general meeting to be held:
- (a) within 18 months after registration of the Company; and
  - (b) after the first annual general meeting, within five months of the end of each of the Company's financial years.
- 26.2 The order of the business at the annual general meeting shall be:
- (a) the confirmation of the minutes of the previous annual general meeting and of any special general meeting held since that meeting;
  - (b) the consideration of the accounts and reports of the Board and the auditor's report (if an auditor's report is required);
  - (c) if applicable, the election of Directors;
  - (d) the appointment of an auditor, if required;
  - (e) any other business notified in the notice convening the annual general meeting; and
  - (f) any other business requiring consideration by the Company in general meeting.

### **27. SPECIAL GENERAL MEETING**

- 27.1 The Board may call a special general meeting of the Company at any time.
- 27.2 If Members with at least 5% of the votes that may be cast at a general meeting make a written request to the Company for a general meeting to be held, the Directors must:
- (a) within 21 days of the Members' request, give all Members notice of a general meeting; and
  - (b) hold the general meeting within 2 months of the Members' request.
- 27.3 The Members who make the request for a general meeting must:
- (a) state in the request the purpose of the meeting and any resolution to be proposed at the meeting;
  - (b) sign the request (including by separate but identically worded counterparts); and
  - (c) give the request to the Company.
- 27.4 If a special general meeting is not convened within two months, as required by clause 27.2(b) above, the requisitionists, or at least 50% of their number, may convene a special general meeting. Such a meeting shall be convened in the same manner as nearly as practical as a meeting convened by the Board, and for this purpose the Board shall ensure that the requisitionists are supplied free of charge with particulars of the Members entitled to receive a notice of meeting. The reasonable expenses of convening and conducting such a meeting shall be borne by the Company.

**28. MEMBERS' RESOLUTIONS**

- 28.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the Company of a resolution they propose to move at a general meeting (Members' Resolution); and
  - (b) a written request to the Company that the Company give all of its Members a statement about the proposed Members' Resolution (Members' Statement) .
- 28.2 A notice of a Members' Resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution (including by separate but identically worded counterparts).
- 28.3 If the Company has been given notice of a Members' Resolution under clause 28.1(a), the resolution must be included in the notice of meeting for the next general meeting held more than two months after the notice is given and considered at that meeting, and any Members' Statement must also be included with the notice of meeting.
- 28.4 This clause does not limit any other right that a Member has to propose a resolution at a general meeting.

**29. NOTICE OF GENERAL MEETINGS**

- 29.1 Notice of a general meeting must be given to:
- (a) each Member entitled to vote at the meeting;
  - (b) each Director; and
  - (c) the auditor (if any).
- 29.2 Notice of a general meeting must be provided in writing at least:
- (a) 14 days before the general meeting; unless
  - (b) a Special Resolution is to be proposed, in which case notice must be given 21 days before the meeting.
- 29.3 At least 21 days before a notice of an annual general meeting is sent to Members in a year when Directors will be retiring under clauses 40.5 or 40.6, the Company must notify Members that nominations for Directors may be made by notice to the Company and that the deadline for nominations is 28 days prior to the annual general meeting (refer clause 41.1).
- 29.4 A notice of a general meeting may be delivered to a Member personally, by sending it by post or email to the address appearing in the register of Members. Where a notice is sent by post, the service is effected by properly addressing, prepaying and posting a letter or packet containing the notice and unless the contrary is proved, service will be taken to have been effected at the time at which the letter or packet would be delivered in the ordinary course of post. Where a notice is sent by electronic mail, the service is effected at the time and on the day shown in the sender's server, if it shows that the notice was sent or otherwise routed to the person's electronic address or server last notified, and has not been rejected or returned by the server.
- 29.5 Notwithstanding clause 29.4, the business transacted at a general meeting will not be invalidated by the failure to successfully deliver a notice of meeting to Members comprising



less than 5% of all Members by number and by voting entitlements, provided at least one bona fide attempt to deliver the a notice of meeting to affected Members.

- 29.6 Notice of a general meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (b) the general nature of the meeting's business;
  - (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
  - (d) if applicable, any Members' Resolution or Members' Statement (refer clause 28); and
- 29.7 a statement that Members have the right to appoint in writing a natural person who is also a Member or a Representative of a Member to be their proxy to attend and vote at the general meeting, provided that the proxy form is delivered to the Company at its registered address or any other address specified in the notice of meeting (including an electronic address) at least 48 hours before the meeting.
- 29.8 If a general meeting is adjourned for one month or more, the Members must be given new notice of the resumed meeting.

### **30. QUORUM AT GENERAL MEETINGS**

- 30.1 Five Members present personally or by proxy shall constitute a quorum for the transaction of business at any general meeting.
- 30.2 No business may be conducted at a general meeting if a quorum is not present. Any business conducted at the general meeting while a quorum is present will be valid notwithstanding that a quorum is subsequently lost.
- 30.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, a meeting convened upon the requisition of Members shall lapse. In any other case, the general meeting is adjourned to the same day in the next week, at the same time and place.
- 30.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

### **31. AUDITOR'S RIGHT TO ATTEND MEETINGS**

- 31.1 The auditor (if any) is entitled to attend any general meeting and to be heard by the Members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 31.2 The Company must give the auditor (if any) any communications relating to the general meeting that a Member of the Company is entitled to receive.

### **32. USING TECHNOLOGY TO HOLD MEETINGS**

- 32.1 The Company may hold a general meeting at two or more venues using any technology that gives:
- (a) the Members as a whole; or

- (b) specific Members who have notified the Company they wish to attend the general meeting but cannot do so in person,

a reasonable opportunity to participate, including to hear and be heard.

- 32.2 Anyone using this technology is taken to be present in person at the meeting.

### **33. CHAIRPERSON FOR GENERAL MEETINGS**

- 33.1 Subject to this clause 33, the Chairperson will chair general meetings.

- 33.2 If the Chairperson has notified the Company that they will not be attending the general meeting, or (having not so notified the Company) is not present within 30 minutes after the starting time set for the general meeting, the Deputy Chairperson will chair the general meeting.

- 33.3 The Members present and entitled to vote at a general meeting may choose a Director or Member to be the chairperson for that meeting if both the Chairperson and Deputy Chairperson have notified the Company that they will not be present at the meeting or (having not so notified the Company) are not present within 30 minutes after the starting time set for the general meeting, or otherwise state they do not wish to act as chairperson of the general meeting.

### **34. ADJOURNMENT OF MEETINGS WITH A QUORUM**

- 34.1 If a quorum is present, a general meeting must be adjourned if a majority of Members present direct the chairperson of the meeting to adjourn it.

- 34.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

### **35. NUMBER OF VOTES**

Each Member has the number of votes relevant to their Producer Band or Value Chain Member Tier, as set out in **Schedule 1** and **Schedule 2** (as applicable) and amended from time to time in accordance with this Constitution.

### **36. VOTING BY CHAIRPERSON**

- 36.1 The chairperson of a general meeting may exercise a personal deliberate vote at the meeting if they are a Member of the Company.

- 36.2 The chairperson of a general meeting does not have a casting vote.

### **37. VOTING AT GENERAL MEETINGS**

- 37.1 Subject to this Constitution, a question for decision at a general meeting, other than a Special Resolution, must be determined by a majority of Members who vote in person or by proxy at that meeting.

- 37.2 A question for decision at a general meeting may be determined by a show of hands, but in so voting each Member is taken to be exercising the number of votes that they are entitled to exercise under this Constitution. On a show of hands, the meeting chairperson's decision is conclusive evidence of the result of the vote.

- 37.3 A question for decision at a general meeting may be determined by a poll, if:

- (a) three Members request a poll prior to a vote being taken; or

- (b) a vote has been taken on a show of hands and either the chairperson of the meeting, or alternatively three Members, state that they are uncertain as to the result of the vote on the show of hands (or words of like effect).
- 37.4 A poll must be conducted in a manner specified by the chairperson of the meeting and the result of the poll is the resolution of the meeting on that question (even if there was a prior vote taken on a show of hands).
- 37.5 A poll demand for the election of a person presiding or on a question of adjournment must be taken immediately. Any other poll may be conducted at any time before the close of the meeting.
- 37.6 The chairperson of the meeting and the minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### **38. APPOINTMENT OF PROXY**

- 38.1 A Member may appoint a proxy to attend and vote at a general meeting on their behalf. The Company may prescribe a form for the appointment of proxies, containing details including the proxy's name. An appointment of a proxy is valid only for the general meeting to which it relates and is not a continuing appointment.
- 38.2 A proxy does not have the authority to speak and vote for a Member at a meeting while the member is at the meeting.
- 38.3 Unless the Company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:
  - (a) dies;
  - (b) is mentally incapacitated;
  - (c) revokes the proxy's appointment; or
  - (d) revokes the authority of a Representative or agent who appointed the proxy.
- 38.4 A proxy appointment may specify the way the proxy must vote on a particular resolution.

### **39. VOTING BY PROXY**

- 39.1 A proxy is entitled to vote on a show of hands provided that where the proxy is also a Member or Representative of a Member, or holds multiple proxies, the proxy must cast all votes being exercised the same way and not in different ways in different capacities.
- 39.2 When a vote is held, a proxy:
  - (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
  - (b) if the way they must vote is specified on the proxy form, must vote that way; and
  - (c) if the proxy is also a Member or Representative of a Member, or holds more than one proxy, may cast the votes held in different ways where a poll is conducted.

## **PART 4 – THE BOARD**

### **40. NUMBER AND ROTATION OF DIRECTORS**

40.1 The Company must have at least five and no more than ten Directors, including the independent Chairperson appointed by the Board under clause 40.2.

40.2 The Board may determine the number of Directors who are appointed within the range in clause 40.1. Within that range, the Board must be comprised of the following number of Member Directors and Independent Directors (including the Chairperson):

Total Number of Directors	Minimum Number of Member Directors	Maximum Number of Independent Directors (including the independent Chairperson)
<b>10</b>	6	4
<b>9</b>	5	4
<b>8</b>	5	3
<b>7</b>	4	3
<b>6</b>	4	2
<b>5</b>	3	2

This clause does not apply to the initial membership provided for by clause 11.

40.3 A Director must be a natural person.

40.4 Subject to clauses 40.5 and 40.6, a Director's tenure will be for a period of four years.

40.5 At every annual general meeting, any Director appointed by the Board since the last annual general meeting must (and shall be deemed to) retire. This rule does not apply to the Chairperson.

40.6 At every second annual general meeting, one-half of the Directors (excluding any Director appointed since the last annual general meeting), being the longest serving Directors since their last election, must (and shall be deemed to) retire. This rule does not apply to the Chairperson.

40.7 For the purposes of clause 40.6:

(a) if there is an odd number of Directors (excluding Directors appointed since the last annual general meeting and the Chairperson), the number of Directors to retire shall be rounded up; and

(b) if the longest serving Directors cannot be identified because certain Directors became Directors on the same day, then the Directors who must retire will be determined by agreement and, if they cannot agree, determined by lot.

- 40.8 Subject to clause 40.9, a Director retiring under clauses 40.5 or 40.6 (Retiring Director) shall be eligible to stand for re-election without nomination by notifying the Company in writing that he or she is available for re-election at least 28 days before the annual general meeting at which the Director is seeking to be re-elected.
- 40.9 No Director shall be entitled to hold office as a Director for more than three consecutive terms. No Director may re-nominate for election as a Director unless twelve months have elapsed from the date the Director ceased to hold office. To avoid doubt:
- (a) where a Director is initially appointed by the Board to fill a casual vacancy, the period between their appointment and their election at the next annual general meeting is not counted as a term; and
  - (b) where a Director ceases to hold office having served three consecutive terms, the Board may appoint that Director to fill a casual vacancy within 12 months of their resignation.

#### **41. APPOINTMENT OF DIRECTORS**

- 41.1 A person may nominate for election to the Board as long as that person is eligible to be appointed to the Board and the nomination is:
- (a) in writing;
  - (b) signed by the nominee, the proposing Member and another Member; and
  - (c) provided to the Company at least 28 days before the annual general meeting at which they are seeking to be elected (refer clause 29.3).
- 41.2 Provided it is a Member, the Processing Potato Association of Australia may nominate a candidate to the position of convenor of the Processing Value Chain Sub-committee and that nominee will be a Member Director until removed by the Processing Potato Association of Australia or a majority resolution of Members.
- 41.3 The Board may appoint any person as a Director to fill a casual vacancy or as an addition to the Board, provided the composition of the Board is consistent with clause 40.2. Any Director appointed under this clause shall hold office until the next annual general meeting and shall be eligible for re-election (refer clause 40.5).
- 41.4 If the number of Directors is reduced to fewer than five or is less than the number required for a quorum, the continuing Directors may act for the purpose of increasing the number of Directors to five or calling a general meeting, but for no other purpose.

#### **42. APPOINTMENT OF OFFICE HOLDERS AND CEO**

- 42.1 The Company shall have an independent Chairperson, a Deputy Chairperson, a Treasurer, a Secretary and a CEO.
- 42.2 The Chairperson and CEO shall be appointed by the Board from time to time on such terms (including remuneration) as the Board may determine in its discretion. However, the terms of the independent Chairperson's appointment must not provide for a term longer than two years, although the appointment may subsequently be renewed by the Board for successive terms of no more than two years each.
- 42.3 The Chairperson will be a Director.
- 42.4 The CEO may, but need not, be a Director.

- 42.5 The Deputy Chairperson and Treasurer will be appointed by the Board from its number at the first meeting of the Board following each annual general meeting and otherwise when a vacancy arises.
- 42.6 Unless otherwise determined by the Board, the CEO will also be the Secretary of the Company. If the Board otherwise determines, the Secretary must be appointed by the Board from its number.

#### 43. OFFICE HOLDER ROLES

##### Chairperson and Deputy Chairperson

- 43.1 The Chairperson shall be the Company's presiding officer.
- 43.2 In the absence of the Chairperson, the Deputy Chairperson shall act as and have the rights and powers of the chairperson.
- 43.3 The Chairperson has the right to vote at meetings of the Board, but does not have a casting vote.

##### Secretary and Treasurer

- 43.4 The Secretary and Treasurer shall cause to keep all files and records relevant to their offices as directed by the Board and as required by the *Corporations Act*.
- 43.5 The Secretary shall:
- (a) maintain the register of the Company's Members; and
  - (b) maintain the minutes and other records of general meetings (including notices of meetings), Board meetings and circular resolutions.
- 43.6 The Treasurer shall attend to all Company accounts and matters of finance. This shall include preparation and maintenance of financial statements and returns as required by law.

##### Public Officer

- 43.7 The Board shall appoint a public officer from one of its number or the CEO.

#### 44. CESSATION OF DIRECTOR

A Director stops being a Director if they:

- 44.1 give written notice of resignation as a Director to the Company;
- 44.2 die or become permanently incapacitated by disability or ill-health;
- 44.3 in the case of Member Directors, cease to be a Member, or Representative of a Member for any reason;
- 44.4 are absent with apology for three consecutive Board meetings in a financial year without approval from the Board;
- 44.5 are absent without apology from more than two Board meetings in a financial year; or
- 44.6 become ineligible to be a Director of the Company under the Corporations Act.

**45. POWERS OF DIRECTORS**

- 45.1 The Board is responsible for:
- (a) managing and directing the activities of the Company to achieve the purposes set out in clause 8;
  - (b) developing and implementing strategic plans for the Company; and
  - (c) overseeing and monitoring the use and control of the funds and other property of the Company.
- 45.2 The Board has authority to interpret the meaning of this Constitution and any other matter relating to the affairs of the Company on which this Constitution is silent.
- 45.3 The Board may use all the powers of the Company except for powers that, under the Corporations Act or this Constitution, may only be used by Members.
- 45.4 The Board cannot remove a Director or auditor. Directors and auditors may only be removed by an Ordinary Resolution at a general meeting.

**46. DELEGATION OF DIRECTORS' POWERS**

- 46.1 The Board may delegate any of their powers and functions to a committee, a Director, an employee of the Company (such as the CEO) or any other person, as they consider appropriate.
- 46.2 The delegation must be recorded in the Company's minute book.

**47. PAYMENTS TO DIRECTORS**

- 47.1 Other than the Chairperson, the Company must not pay fees to a Director for acting as a Director.
- 47.2 The Company may:
- (a) pay a Director for work they do for the Company, other than as a director, if the amount is no more than a reasonable fee for the work done; or
  - (b) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.
- 47.3 Any payment made under clause 47.2 must be approved by the Board and must be reported to Members in the Company's next annual report.
- 47.4 The Board must ensure that appropriate inquiries have been made or processes implemented to verify that the amount paid to a Director under clause 47.2(a) is no more than a reasonable fee for the work done.
- 47.5 The Company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Corporations Act) and this Constitution.

**48. EXECUTION OF DOCUMENTS**

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

- 48.1 two Directors of the Company; or
- 48.2 a Director and the Secretary.

**49. CONFLICTS OF INTEREST**

- 49.1 A Director must disclose to the other Directors the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of the Board (or that is proposed in a circular resolution). The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting and must be disclosed to Members at the next annual general meeting of the Company.
- 49.2 A Director does not have a conflict of interest simply by virtue of the fact that the matter being considered relates to the interests of all or part of the Australian potato industry generally (as opposed to relating directly or specially to the interests of the Director or any Member of whom the Director is a Representative).
- 49.3 Each Director who has a material personal interest in a matter that is being considered at a meeting of the Board (or that is proposed in a circular resolution) must not, except as provided under clauses 49.4:
  - (a) be present at the meeting while the matter is being discussed; or
  - (b) vote on the matter.
- 49.4 A Director may still be present and vote if:
  - (a) their interest arises because they are a Member of the Company, and the other Members within their Membership Category have the same interest;
  - (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company (see clause 62);
  - (c) their interest relates to a payment by the Company under clause 61 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
  - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter; or
  - (e) the Directors who do not have a material personal interest in the matter pass a resolution that:
    - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
    - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.



## **PART 5 – PROCEEDINGS OF THE BOARD**

### **50. FREQUENCY OF DIRECTORS MEETINGS**

The Board shall meet together for the dispatch of business at least four times per year, at a time and place as determined by the Board.

### **51. CALLING DIRECTORS' MEETINGS**

51.1 A Director may call a Board meeting by giving reasonable notice to all of the other Directors.

51.2 A Director may give notice in writing or by any other means of communication that has previously been adopted to by all of the Directors.

### **52. QUORUM AT DIRECTORS' MEETINGS**

52.1 Unless the Board determines otherwise, the quorum for a Board meeting is a majority (more than 50%) of Directors.

52.2 No business may be conducted at a Board meeting if a quorum is not present. Any business conducted at a Board meeting while a quorum is present will be valid notwithstanding that a quorum is subsequently lost.

### **53. USING TECHNOLOGY TO HOLD BOARD MEETINGS**

53.1 Board meetings may be conducted face to face, or using technology to enable each Director to communicate with the other Directors, as long as all Directors are able to communicate to each other simultaneously.

### **54. PASSING DIRECTORS' RESOLUTIONS**

#### At a Board Meeting

54.1 A resolution at a Board meeting must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution.

#### Circulating Resolutions

54.2 The Directors may pass a resolution without a Board meeting being held if all of the Directors entitled to vote on the resolution:

- (a) sign a document containing a statement that they are in favour of the resolution set out in the document; or
- (b) state by means of electronic communication (including by email), without the necessity of signing, that they are in favour of the resolution, or words of like effect.

54.3 Each Director must be given a copy of a document used for signing by Directors or notice of the proposed resolution.

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

54.5 The resolution is passed when the last Director who makes up a majority signs or states their assent.

Recording of Resolutions

- 54.6 Passage of all resolutions, including circulating resolutions, must be recorded in the Company's minute book.

## **PART 6 – SUB-COMMITTEES AND WORKING GROUPS**

### **55. ESTABLISHMENT OF SUB-COMMITTEES**

- 55.1 The Board will have three standing sub-committees, representing the interests of:
- (a) Fresh Value Chain;
  - (b) Seed Value Chain; and
  - (c) Processing Value Chain,
- (Permanent Sub-Committees).
- 55.2 Each Permanent Sub-Committee will have a Co-ordinator who, in substance, acts as the chairperson of that Sub-Committee.
- 55.3 The Permanent Sub-Committee Co-ordinator:
- (a) must be a Member Director;
  - (b) is appointed by the Board; and
  - (c) must resign and is deemed to have resigned as the Co-ordinator if they cease to be a Member Director for any reason.
- 55.4 Subject to clause 55.5, in addition to the Co-ordinator, Permanent Sub-Committee members will be appointed by the Board and will comprise:
- (a) a minimum of three Members; and
  - (b) such other persons, whether or not Members, as the Board considers appropriate having regard to their skills and experience and the objects of the Permanent Sub-Committee or the matters upon which a Permanent Sub-Committee is focusing as priorities.
- 55.5 In respect of:
- (a) the Processing Value Chain Sub-Committee, the Processing Potato Association of Australia may nominate a candidate for appointment as convenor of the Sub-Committee;
  - (b) the Seed Value Chain, the Australian Seed Potato Council may nominate a candidate for appointment to the Sub-Committee; and
  - (c) the Fresh Value Chain, Members who are registered as members of the Fresh Sector may (to the exclusion of other Members) elect a candidate for appointment to the Sub-Committee.
- 55.6 The Board may establish such other sub-committees as it resolves from time to time and may appoint any persons to those sub-committees in its discretion, save that at least three Members must be appointed to each sub-committee. The Board may disband any such sub-committees at any time.
- 55.7 The role of each sub-committee (permanent or otherwise) is to consider and evaluate specific issues relevant to the Company's objects as referred to the sub-committee by the Board from time to time. Sub-committees will be responsible for developing recommended

policy positions to the Board for consideration and (subject to the Board's discretion) approval. A policy position of the Company may only be made by resolution of the Board.

- 55.8 The Board may establish working groups as it resolves from time to time to address topics that are considered relevant or conducive to the Company's objects. A working party may work across the Board's sub-committees. The Board may determine the Members of each working party, provided that each working party is comprised of at least two Members.

## **PART 7 – BOOKS AND RECORDS**

### **56. MINUTES**

- 56.1 Proper minutes of all proceedings of general meetings of the Company and of meetings of the Board shall be entered within one month after the relevant meeting in minute books kept for the purpose.
- 56.2 The minutes kept pursuant to this clause must be confirmed by the Members or the Board (as relevant) at a subsequent meeting.
- 56.3 The minutes kept pursuant to this clause must be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting at which the minutes are confirmed.
- 56.4 Where minutes are entered and signed they shall, until the contrary is proved, be evidence that the meeting was convened and duly held, that all proceedings held at the meeting shall be deemed to have been duly held, and that all appointments made at a meeting shall be deemed to be valid.

### **57. FINANCIAL YEAR**

The Company's financial year is from 1 July to 30 June, unless the Board passes a resolution to change the financial year.

### **58. FINANCIAL AND RELATED RECORDS**

- 58.1 The Company must make and keep (for at least 7 years) written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 58.2 The accounts, together with the auditor's report on the accounts, the Board's statement and the Board's report, shall be laid before Members at the annual general meeting.

### **59. APPOINTMENT OF AUDITOR**

- 59.1 At each annual general meeting, the Members shall appoint a person to be the auditor of the Company.
- 59.2 The auditor shall hold office until the next annual general meeting and is eligible for re-appointment.
- 59.3 If an appointment is not made at an annual general meeting, the Board shall appoint an auditor for the current financial year.

**PART 8 – BY-LAWS****60. BY-LAWS**

- 60.1 The Board may establish a set of administrative standing orders, by-laws and other administrative procedures and policies not inconsistent with this Constitution and the Corporations Act, to facilitate the effective operation of the Company. These and any alterations or amendments to them must be made available to Members generally (for example, by publication on a website maintained by the Company) or specifically upon request by a Member.
- 60.2 Members and Directors must comply with by-laws as if they were part of this constitution.

## **PART 9 – INDEMNITY, INSURANCE AND ACCESS**

### **61. INDEMNITY**

- 61.1 The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.
- 61.2 In this clause, 'officer' means a Director or Secretary and includes a Director or Secretary after they have ceased to hold that office.
- 61.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the Company is not precluded by law (including the Corporations Act) from doing so; and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 61.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

### **62. INSURANCE**

To the extent permitted by law (including the Corporations Act), and if the Board considers it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.

### **63. DIRECTORS' ACCESS TO DOCUMENTS**

- 63.1 A Director has a right of access to the financial records of the Company at all reasonable times.
- 63.2 If the Board so determines, the Company must give a Director or former Director access to:
- (a) certain documents, including documents provided for or available to the Directors; and
  - (b) any other documents referred to in those documents.

## **PART 10 – WINDING UP**

### **64. WINDING UP**

The Company may be wound up in the manner provided for in the Corporations Act.

### **65. SURPLUS ASSETS NOT TO BE DISTRIBUTED TO MEMBERS**

If the Company is wound up, any Surplus Assets must not be distributed to a Member or a former member of the Company, unless that Member or former Member is a not-for-profit entity described in clause 66.1.

### **66. DISTRIBUTION OF SURPLUS ASSETS**

66.1 Subject to the Corporations Act and any other applicable law, and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to one or more not-for-profit entities:

- (a) with purposes and objects similar to, or inclusive of, the purposes in clause 8; and
- (b) which also prohibit the distribution of any Surplus Assets to its Members to at least the same extent as the Company.

66.2 The decision as to the not-for-profit entity or entities to be given the Surplus Assets must be made by a Special Resolution of Members at or before the time of winding up. If the Members do not make this decision, the Company may apply to a Court of competent jurisdiction to make this decision.



**PART 11 – ALTERING THIS CONSTITUTION****67. ALTERING THIS CONSTITUTION**

- 67.1 This Constitution may be altered (including an alteration to the Company's name) by Special Resolution of the Members. This includes rescission or replacement by substitute rules.
- 67.2 The Constitution as in force from time to time shall bind the Company and every Member to the same extent as if they have respectively signed and sealed them, and agreed to be bound by all of the provisions thereof.

**SCHEDULE 1**  
**PRODUCER MEMBER**

<b>Producer Size</b>	<b>Tonnes</b>	<b>Seed (equivalent tonnes)</b>	<b>Annual Membership</b>	<b>Votes</b>
Small	<1,000	< 600	\$100	1
Medium	1,000-10,000	600-6,000	\$250	5
Large	10,001-50,000	6,001-30,000	\$1,000	10
Extra-large	>50,000	>30,000	\$5,000	50

**SCHEDULE 2**  
**VALUE CHAIN MEMBER**

<b>Tier</b>	<b>Annual Contribution</b>	<b>Votes</b>
Bronze	<\$5,000.00	1
Silver	\$5,000.00 - <\$10,000.00	5
Gold	\$10,000.00 - <\$25,000.00	10
Platinum	\$25,000.00 or more	20