



Constitution

Sugar Research Australia Limited

as amended 25 October 2018

CLEAN

CONTENTS

1. COMPANY LIMITED BY GUARANTEE	6
1.1. Status of Company as company limited by guarantee	6
1.2. Limited liability of Members (guarantee)	6
2. REPLACEABLE RULES	6
3. INTERPRETATION	6
3.1. Definitions	6
3.2. Corporations Act meanings to apply	10
3.3. Sugar Research and Development Services Act meanings to apply	10
3.4. Interpretation of this constitution	10
3.5. Notes do not form constitution	11
4. RESTRICTION ON MODIFYING THIS CONSTITUTION	11
5. OBJECTS OF THE COMPANY	11
5.1. Objects	11
5.2. Application of income and property	11
5.3. Certain payments allowed	12
5.4. Certain arrangements allowed	12
6. ACTIVITIES NOT PERMITTED	12
7. CONSULTATION WITH THE INDUSTRY	13
8. MEMBERS AND CLASSES OF MEMBERSHIP	13
8.1. Classes of Members	13
8.2. Qualifications for Group G Membership	13
8.3. Qualifications for Group M Membership	13
9. ADMISSION TO MEMBERSHIP (REGISTRATION)	13
9.1. Form of application	13
9.2. Group G Member Representative	13
9.3. Group M Member Representative	14
9.4. Membership not transferable	14
10. CEASING TO BE A MEMBER	14
10.1. Resigning as a Member	14
10.2. Group G Members – lack of qualification	14
10.3. Group M Members – lack of qualification	14
11. VOTES OF MEMBERS AND OTHER RIGHTS	14
11.1. Group G and Group M Members vote separately	14
11.2. Number of votes allocated to Group G Members	15
11.3. Number of votes allocated to Group M Members	15
11.4. Board to allocate votes to Group G and Group M Members	15
11.5. Notice and review of allocation of votes	15
11.6. Determinations conclusive	15
11.7. Where Company is not the Industry Services Body	16
11.8. Other rights	16
12. VOTING REGISTER	16
12.1. Register	16
12.2. Voting entitlement information confidential	16

13.	NOT USED	16
14.	GENERAL MEETINGS	16
14.1.	Calling General Meetings	16
14.2.	General Meetings requested by Members	17
14.3.	Notice of General Meeting and period of notice	17
14.4.	Postponement or cancellation	17
14.5.	Fresh notice	17
14.6.	Accidental omission	17
15.	PROCEEDINGS AT GENERAL MEETINGS	18
15.1.	Member Representative present at General Meetings	18
15.2.	Quorum	18
15.3.	Chairing meetings of Members	18
15.4.	Attendance at meetings of Members	19
15.5.	Business at Annual General Meetings	19
15.6.	General conduct of General Meeting	19
15.7.	Adjournment	19
15.8.	Business at adjourned meetings	19
16.	PROXIES OR ALTERNATES	20
16.1.	Member proxy	20
16.2.	Appointment of proxies by Members	20
16.3.	Suspension of proxy appointment if Member Representative present	20
16.4.	Priority of conflicting appointments of a Member proxy	20
16.5.	Revoking appointments	20
16.6.	Continuing authority	20
16.7.	Board to issue forms of proxy	21
17.	HOW VOTING IS CARRIED OUT	21
17.1.	Voting by show of hands unless poll required	21
17.2.	Voting by Member Representatives	21
17.3.	Voting restrictions	21
17.4.	Demand for a poll	22
17.5.	When and how polls must be taken	22
17.6.	Chair does not have a casting vote	22
17.7.	Decision on right to vote	22
18.	PLANS AND REVIEWS OF PERFORMANCE	22
18.1.	Strategic and annual operating plans	22
18.2.	The strategic plan	23
18.3.	The operating plan, projected expenditures and cost allocation	23
18.4.	Reviews of Performance	23
18.5.	Performance Review precedes review of the Sugarcane Levy	24
19.	POWERS OF THE BOARD	24
19.1.	Powers generally	24
19.2.	Power to borrow and give security	24
19.3.	Powers of appointment	25
19.4.	Exercise of powers	25
20.	BOARD DECISIONS WITHOUT MEETINGS	25

20.1.	Written resolution	25
20.2.	Additional provisions concerning written resolutions	25
21.	BOARD MEETINGS	25
21.1.	Convening Board meetings	25
21.2.	Notice of Board meeting	25
21.3.	Use of technology	26
21.4.	Chairing Board meetings	26
21.5.	Quorum	26
21.6.	Procedural rules	26
21.7.	Majority decisions	26
21.8.	Valid proceedings	26
22.	BOARD COMMITTEES	27
22.1.	Functions and delegations to committees	27
22.2.	Committees	27
22.3.	The SRA Research Funding Panel as a Board Committee	28
22.4.	Proceedings of committees	29
22.5.	Remuneration	30
22.6.	Reports to Members	30
23.	DELEGATION OF BOARD POWERS	30
23.1.	Power to revoke delegation	30
23.2.	Terms of delegation	30
24.	CODE OF CONDUCT	30
24.1.	Formulation of code of conduct	30
24.2.	Compliance	30
24.3.	Reports to Members	31
25.	DIRECTORS	31
25.1.	Number of Directors	31
25.2.	Vacancy	31
26.	BOARD TO INCLUDE CERTAIN SKILLS	31
26.1.	Qualifications for Directors	31
27.	DIRECTOR SELECTION COMMITTEES	32
27.1.	Establishing Director Selection Committees	32
27.2.	Casual vacancies	32
27.3.	Terms of reference and process	32
27.4.	Function of selection committee	32
27.5.	Report of Director Selection Committee	33
27.6.	Director Selection Committee meetings	33
28.	ELECTION OF DIRECTORS	33
28.1.	How Directors are elected	33
28.2.	Maximum number of Directors	33
29.	INITIAL DIRECTORS	34
29.1.	Initial Directors	34
30.	DIRECTORS' TERMS OF OFFICE	34
30.1.	Cessation of Directors' office	34

30.2.	Casual vacancies	34
30.3.	Removal from office	34
30.4.	Rotation of Directors	35
30.5.	Eligibility for re-election	35
31.	DIRECTORS' REMUNERATION	35
31.1.	Remuneration of Directors	35
31.2.	Additional payment for extra services	35
31.3.	Expenses of Directors	35
31.4.	Directors' retirement benefits	36
31.5.	Interpretation	36
32.	DIRECTORS' RIGHT TO INFORMATION AND ADVICE	36
32.1.	Right to information	36
32.2.	Exceptions	36
32.3.	Advice	36
33.	COMPLIANCE WITH DUTIES UNDER THE CORPORATIONS ACT	36
34.	PROTECTIONS AND OTHER PROVISIONS	37
34.1.	Director not disqualified from holding other offices etc	37
34.2.	Director interested in a matter	37
34.3.	Restrictions on voting for interested Directors	37
34.4.	Agreements with third parties	37
35.	CONFIDENTIALITY	37
36.	CHIEF EXECUTIVE OFFICER	38
36.1.	Appointment of Chief Executive Officer	38
36.2.	Termination of appointment of Chief Executive Officer	38
36.3.	Powers and functions of the Chief Executive Officer	38
37.	OFFICERS' INDEMNITY AND INSURANCE	38
37.1.	Indemnity in favour of Directors, Secretaries and Officers	38
37.2.	Indemnity for legal costs	38
37.3.	Proceedings	39
37.4.	When insurance may not be provided by the Company	39
37.5.	Insurance	39
37.6.	Former officers	39
37.7.	Deeds	39
38.	SECRETARY	40
38.1.	Terms and conditions of office	40
38.2.	Cessation of Secretary's appointment	40
38.3.	Removal from office	40
39.	MINUTES	40
40.	FINANCIAL REPORTS AND AUDIT	40
40.1.	Audited reports conclusive	40
40.2.	Inspection of financial records and books	41
41.	AUDITOR ROTATION	41
42.	NOTICES	41
42.1.	Notices by Company	41
42.2.	When notice is given	41

42.3.	Business days and counting days	41
42.4.	Notices to lost Members or Member Representatives	42
43.	WINDING UP	42

CONSTITUTION

SUGAR RESEARCH AUSTRALIA LIMITED

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 rules that apply as rules in a company's constitution unless the constitution replaces them. See: www.asic.gov.au/asic/asic.nsf/byheadline/Constitution+and+Replaceable+Rules
------	--

3. INTERPRETATION

3.1. Definitions

The following definitions apply in this constitution.

ABN means Australian Business Number.

Agri-Political Activities means engaging in, or supporting, directly or indirectly, financially or otherwise, representational activity for the Industry or a part of the Industry, political campaigning or political funding.

Note	Rule 6 of this constitution also sets out activities that are not considered to be Agri-Political Activities.
------	---

Annual Report means the report for each financial year required to be given to Members under the Corporations Act sections 314 and 315.

Note	Corporations Act sections 314 and 315 set out what must be in the annual report to Members. Section 317 requires the annual report etc to be tabled at the AGM.
------	---

Associate in relation to a Mill Company, means an entity controlled by or controlling that entity as defined in the Corporations Act section 12.

Australian Sugar Industry (the Industry), for the purposes of this constitution, means those businesses paying the Sugarcane Levy on Sugarcane.

Board means the Directors for the time being of this Company or those of them who are present at a meeting at which there is a quorum, acting collectively.

Chair means the chairman of Directors appointed by the Directors under rule 21.4.

Chief Executive Officer means a person appointed as chief executive officer under rule 36.

Committee means a committee or panel to which powers have been delegated by the Board under rule 22.

Commonwealth means the Commonwealth of Australia.

Company or Sugar Research Australia Limited (SRA) means Sugar Research Australia Limited.

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

Delivery (or Delivered) means any form of delivery (including physical or financial or ownership transfer) of Sugarcane by a Grower to a Processing Plant.

Director means a person who is a member of the Board of this Company.

Director Selection Committee means a selection committee appointed under rule 27.

General Meeting means a meeting of Members of the Company including the annual general meeting (AGM) and extraordinary general meetings (EGMs).

Group G Member means a person (or entity) whose name is entered in the Members Register as a Group G Member of the Company and has not ceased to be a Member.

Group M Member means a person (or entity) whose name is entered in the Members Register as a Group M Member of the Company and has not ceased to be a Member.

Grower (or Producer) means the Growing Business owning the Sugarcane (or the last in a succession of owners) prior to its Delivery to a Processing Plant for processing.

Growing Business means a business in Australia with an ABN that grows Sugarcane for processing by a Processing Plant.

Industry Peak Organisation means the organisation that represents a majority of Grower Levy Payers and a majority of Miller Levy Payers.

Industry Priorities means a statement of priorities or plan for application of Australian Sugar Industry funds to Research and Development Activities, developed by the Industry.

Industry Representative Organisation means any organisation with advocacy or agri-political objectives in relation to the Australian Sugar Industry or a sector of the Industry.

Industry Services Body means the industry services body for the purposes of the *Sugar Research and Development Services Act*.

Levy means a levy imposed by or under the *Primary Industries (Excise) Levies Act 1999* (Cth).

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

Levy Payer means a business liable to pay the Sugarcane Levy referred to in schedule 24 of the *Primary Industries (Excise) Levies Act 1999* (Cth).

Member means a Sugarcane Levy Payer who is a Group G Member or a Group M Member.

Member Representative means a natural person admitted by the Company as a representative of a Group G Member or a Group M Member under rule 9.2 or rule 9.3.

Members Register means the register of members kept and maintained by the Company Secretary as required by the Corporations Act sections 168 and 169.

Mill Company (or Processor Company) means an entity (including any Associates of an entity) operating one or more Processing Plants.

Mill Area means:

- (a) in relation to a Processing Plant (mill) that is supplied by Growing Businesses under a current agreement, **the area** comprising all farms of the Growing Businesses that supply the Processing Plant (mill);
- (b) in relation to a group of Processing Plants (mills) in a Region owned by one Mill Company (the Mill Group) that are supplied by Growing Businesses under an agreement, whereby the Sugarcane can be processed at any of the Processing Plants (mills), **the area** within the Region comprising all farms of the Growing Businesses supplying the group of Processing Plants (mills), except where the Directors, considering the particular circumstances of a Region, determine otherwise.

Miller (or Processor) means an entity that operates a Processing Plant.

Minister means the government minister for the time being administering the *Sugar Research and Development Services Act*.

Ordinary Resolution means a resolution (other than a Special Resolution) passed by more than 50% of the votes cast at a General Meeting on each of the three bases set out in rules 11.2 and 11.3.

Performance Review (Review of Performance) means a review as set out in rule 18.4.

Plan means a plan made as set out in rule 18.

Processing means processing or milling of Sugarcane for any purpose (including producing raw sugar, ethanol, food products, stock feed, paper, biochemical, energy or any other product).

Processing Plant means a facility or premises that take Delivery of at least 3,000 tonnes of Sugarcane in a calendar year and processes Sugarcane into any subsequent product or form.

Note A processing plant can also be referred to as a mill – see mill definitions.

Processor (or Miller) means an entity that operates a Processing Plant.

Producer (or Grower) means the Growing Business owning the Sugarcane (or the last in a succession of owners) prior to its Delivery to a Processing Plant for processing.

Production means any form of growing of Sugarcane up to its Delivery to a Processing Plant or another entity.

Region means each of the following: (a) the Northern region; (b) the Herbert River region; (c) the Burdekin region; (d) the Central region; (e) the Southern region; and (f) the NSW region, such regions being as generally understood by participants in the Australian Sugar Industry or as determined by the Directors.

Research and Development (R&D) means systematic experimentation or analysis in any field of science, technology, economics or business (including study of social or environmental effects of adoption of new technology) carried out with the object of:

- (a) acquiring knowledge that may be of use in achieving or furthering an objective of the Industry, including knowledge that may be used for improving any aspect of Production, processing, storage, transport or marketing of Sugarcane or its products; or
- (b) applying such knowledge for the purpose of achieving or furthering such an objective.

Research and Development Activities means activities carried out by the Company, or conducted with its support, for the purposes of Research and Development, and that relate to

the Australian Sugar Industry and are for the benefit of the Australian Sugar Industry and the Australian community generally. Examples include:

- (a) Research and Development;
- (b) development of workforce skills, education and the training of people to undertake Research and Development and apply the outcomes;
- (c) building of strong Research and Development leadership capacity and encouraging diversity of people across the Industry;
- (d) investigation and evaluation of the requirements for Research and Development and, on the basis of such investigation and evaluation, the preparation, reviewing and revising of Research and Development plans;
- (e) carrying out, and the coordination and funding of the carrying out of Research and Development;
- (f) monitoring, evaluating and the reporting to the Commonwealth and the Industry on Research and Development funded by the Company;
- (g) facilitating the dissemination, extension, adoption and commercialisation of the results of Research and Development or of practices or technological transfer or developments that have been designed or adapted to improve the operation or efficiency of the Industry;
- (h) dissemination or extension of information related to any aspect of Research and Development, whether electronically, by print or by any other means;
- (i) improving the accountability for expenditure on Research and Development activities in relation to the Industry;
- (j) development in the Industry of an awareness of the contribution that can be made by Research and Development in improving its efficiency and competitiveness;
- (k) collection of statistical information on the Industry;
- (l) such other activities as may be approved by the Commonwealth in writing from time to time;
- (m) engaging Directors, employees, consultants and agents of the Company and in meeting administration, operating or capital expenses (including, but not limited to, lease costs, Sugar Poll costs and legal and other professional expenses) reasonably necessary or appropriate to be incurred by the Company to support its activities in relation to paragraphs (a) to (l) inclusive; and
- (n) any activity incidental but considered important to an activity referred to in paragraphs (a) to (m).

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

Special Resolution means a resolution passed more than 75% of the votes cast on each of the three bases set out in rules 11.2 and 11.3 at a General Meeting.

Note Special resolutions are required by the Corporations Act for particular decisions including any change to the Constitution, change of company name, and winding up arrangements. www.asic.gov.au. Corporations Act section 9 says to pass a special resolution, notice has to have been given at least 21 days before the meeting,

Statutory Funding Agreement means the agreement between Sugar Research Australia Limited and the Commonwealth of Australia represented by the Commonwealth Department of Agriculture, Fisheries and Forestry.

SRA Research Funding Panel means the panel established as a Board Committee by Sugar Research Australia to identify investment portfolios for the contestable research funding process.

Sugarcane means stalks (whole or not) and/or leaves of any species of sugarcane plant.

Sugar Research and Development Services Act means the *Sugar Research and Development Services Act 2013* (Cth) and subordinate legislation and instruments made under that Act.

Sugarcane Levy means a levy imposed under the *Primary Industries (Excise) Levies Act 1999* (Cth) on Processors and Growing Businesses.

Sugar Poll (Levy Poll) means a poll of current and potential Sugarcane Levy Payers with regard to the Sugarcane Levy or Sugar Research Australia as conducted under the *Levy Principles and Guidelines*. A poll conducted under rule 17 of Member Representatives at a General Meeting is not a Sugar Poll.

Voting Register means the register of voting entitlements kept as mentioned in rule 12.

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. Sugar Research and Development Services Act meanings to apply

So long as the Company is the Industry Services Body for the purposes of the *Sugar Research and Development Services Act*, words and expressions not defined in rule 3.1 or in the Corporations Act have the meanings as set out in the Sugar Research and Development Services 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 the 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; and
 - (v) a business or entity includes a reference to a person, company or other organisation.
- (b) A singular word includes the plural, and vice versa.
- (c) A word that suggests one gender includes 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.

3.5. Notes do not form constitution

The notes contained within this constitution do not form part of the constitution.

4. RESTRICTION ON MODIFYING THIS CONSTITUTION

So long as this Company is the Industry Services Body, the Company must consult with the Minister about changes proposed by the Company to this constitution at least 21 days prior to the changes being considered at a General Meeting.

5. OBJECTS OF THE COMPANY

5.1. Objects

The objects of Sugar Research Australia are to contribute to development of the Australian Sugar Industry (all Sugarcane Levy Payers) and to the community in general by:

- (a) delivering cost effective Research and Development services to the Australian sugar industry to enhance its viability, competitiveness and sustainability;
- (b) receiving funds from the Commonwealth of Australia, being proceeds from the Sugarcane Levy and contributions by the government to Research and Development in relation to the sugar industry and accounting to the government and the Parliament of the Commonwealth of Australia and Members and Levy Payers for expenditure of such funds;
- (c) seeking and receiving funds from other persons for Research and Development Activities for the benefit of Australian Sugar Industry participants and accounting for expenditure of such funds;
- (d) managing funds the Company receives and any risks related to expenditure and funding;
- (e) consulting with, and being accountable to, Company stakeholders to achieve planned objectives and outcomes;
- (f) investigating and evaluating requirements for Research and Development and innovation and research-based services in relation to the Australian Sugar Industry;
- (g) supporting and developing research capacity through a contestable funding framework that provides for a diverse range of Research and Development service providers;
- (h) carrying out, co-ordinating and providing funding for Research and Development Activities in relation to the Australian Sugar Industry;
- (i) facilitating dissemination, extension, adoption and commercialisation of results of Research and Development Activities in relation to the Australian Sugar Industry;
- (j) managing, developing, utilising, extending and opening access to intellectual property from Research and Development Activities, and to receive proceeds, if any, of such activity; and
- (k) undertaking other associated activities that are required to achieve the Company objects.

5.2. Application of income and property

Subject to rules 5.3, 5.4, 31 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 or Member Representative:
 - (i) interest on money lent by the Member or Member Representative 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 or Member Representative to the Company in the ordinary course of business; or
 - (iii) reasonable rent for premises leased by the Member or Member Representative to the Company.

5.4. Certain arrangements allowed

Rule 5.2 does not prevent the Company paying to a Member or Member Representative, or providing any of its assets to a Member, by way of grant, or in accordance with arrangements between the Member or Member Representative 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, 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 or Member Representatives.

6. ACTIVITIES NOT PERMITTED

- (a) Prohibition on **Agri-political activities**. The Company must not engage in, or support, directly or indirectly, financially or otherwise, representational activity for the Industry or a part of the Industry, political campaigning or political funding (**Agri-Political Activities**). The Company must not act as, or promote itself as, an Industry representative organisation with advocacy or agri-political objectives or functions.

Agri-Political Activity does not include the following:

- (i) use by another person, for political purposes, of a report or other publication prepared or financed by the Company as a Research and Development Activity; or
 - (ii) the Company making statements or providing information to the Industry on matters related to its objects in the proper performance of its functions and the proper furtherance of its objects.
- (b) The Company is not an Industry policy development or Industry representative organisation. The Company is not to undertake representation on behalf of the Industry. This does not preclude the Company making representations in relation to the Company's interests. The Company is not a public agency and is not to take regulatory functions in any form.

Note	Corporations Act 2001 section 125 reads: Constitution may limit powers and set out objects (1) If a company has a constitution, it may contain an express restriction on, or a prohibition of, the company's exercise of any of its powers.
------	---

7. CONSULTATION WITH THE INDUSTRY

The Company will consult regularly with the Industry and wider stakeholders, including but not limited to the Industry Peak Organisation, on strategic and operational plans and priorities for investment in Research and Development Activities. No person or entity will receive any remuneration for participating in consultation under this rule.

8. MEMBERS AND CLASSES OF MEMBERSHIP

8.1. Classes of Members

- (a) The Members of the Company are those Sugarcane Levy Payers who have agreed to be Members by registration.
- (b) There are to be two classes of Members: Group G Members and Group M Members.

8.2. Qualifications for Group G Membership

A Growing Business is eligible to be a Group G Member of the Company for a calendar year if a Sugarcane Levy amount was paid to the Commonwealth on account of the Growing Business's liability for levy during the calendar year concerned or the previous calendar year.

Note See Levy Collection Act sections 7 and 9.

8.3. Qualifications for Group M Membership

A Mill Company is eligible to be a Group M Member of the Company if the Mill Company paid a Sugarcane Levy amount during the calendar year concerned or the previous calendar year. Each Mill Company eligible under this clause will have one Group M Membership.

9. ADMISSION TO MEMBERSHIP (REGISTRATION)

9.1. Form of application

A Growing Business who is eligible to be a Group G Member under rule 8.2 or a Mill Company who is eligible to be a Group M Member under rule 8.3 may submit a written application to be a Member of the Company. The Board may require a Member to provide evidence of eligibility before it is admitted as a Member. The form of application for admission to membership is to be as the Board determines from time to time.

9.2. Group G Member Representative

- (a) Subject to this constitution and rule 9.2(b), a Group G Member must nominate, and the Board may admit, one natural person as a representative of the Group G Member in respect of a Growing Business in which the person alone or with other persons has an interest.
- (b) Where a Group G Member is an individual natural person, they will automatically be deemed to be the Member Representative.
- (c) The Member Representative will be entitled to do all things required by, and attend meetings and vote on behalf of, the Member by whom they have been appointed, as if they themselves were the Member. A Group G Member can revoke or amend the appointment of a Member Representative at any time in writing to the Board.

Note Each Group G Member, a Growing Business (with unique ABN), can be represented by only one natural person. See Part 16 on proxies.

9.3. Group M Member Representative

Subject to this constitution, a Group M Member must nominate, and the Board may admit, one natural person (including a director or employee of the Group M Member) as a representative of the Group M Member in respect of one or more specified Processing Plants. The Member Representative will be entitled to do all things required by, and attend meetings and vote on behalf of, the Member by whom they have been appointed, as if they themselves were the Member. A Group M Member can revoke or amend the appointment of a Member Representative at any time in writing to the Board.

9.4. Membership not transferable

- (a) Group G Membership of the Company is associated with a Growing Business with an unique ABN and is not transferable.
- (b) Group M Membership of the Company is associated with the eligibility of a Mill Company and is not transferable.

10. CEASING TO BE A MEMBER

10.1. Resigning as a Member

A Member may resign from membership of the Company by giving written notice to the Board.

10.2. Group G Members – lack of qualification

A Group G Member who ceases to be qualified as mentioned in rule 8.2 ceases to be a Member and the Board must remove their name from the Members Register 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 M Members – lack of qualification

A Group M Member that ceases to satisfy the requirements of rule 8.3 ceases to be a Member and the Board must remove its name from the Members Register as soon as practicable after becoming aware of the matter.

11. VOTES OF MEMBERS AND OTHER RIGHTS

Note Rule 11 replaces Corporations Act section 250E(2)

11.1. Group G and Group M Members vote separately

- (a) In any vote of Members of the Company, the votes of Group G and of Group M Members are to be counted separately and on each of the bases in rule 11.2 and rule 11.3.
- (b) To pass a resolution put to a formal poll of Company Members requires sufficient votes of those cast from each of Group G and Group M Members and on each voting base in rule 11.2 and rule 11.3.
- (c) This means that in order to pass an Ordinary Resolution, at least 50% of Group G Members and at least 50% of Group M Members (on each of the bases set out in rule 11.2 and rule 11.3) must vote in favour of the resolution.
- (d) To pass a Special Resolution, at least 75% of Group G Members and 75% of Group M Members (on each of the bases set out in rule 11.2 and rule 11.3) must vote in favour of the resolution.

11.2. Number of votes allocated to Group G Members

A Group G Member is entitled (subject to this constitution and the Corporations Act) to cast, at a General Meeting, one vote. Each Member Representative may cast one vote for each Growing Business for which they are the admitted Member Representative and shown on the Voting Register for the relevant calendar year.

Note A natural person may be admitted as representing a Group G Member under rule 9.1 on the basis of having an interest in that Growing Business. One natural person could represent multiple Group G Member Growing Businesses, and have more than one vote.

11.3. Number of votes allocated to Group M Members

- (a) A Group M 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 Register as allocated to it for the relevant calendar year.
- (b) For Group M Members, voting entitlements and votes are to be calculated on two separate bases:
 - (i) one vote per Mill Company; and
 - (ii) one vote per whole tonne of Sugarcane Delivered to the Processing Plant(s) of a Mill Company in the prior calendar year.

11.4. Board to allocate votes to Group G and Group M Members

The Board must determine the number of votes to which a person admitted as a representative of more than one Group G Member or a representative of a Group M Member under rules 9.2 or 9.3 is entitled to in a calendar year, in accordance with this constitution. The Company Secretary is required to update the Voting Register accordingly.

The Board will establish and circulate to Members a process to identify voting entitlements and achieve the objects of this rule 11.

11.5. Notice and review of allocation of votes

- (a) At least 60 days before the AGM to be held in that year, the Company must give each of the Group M Members a notice:
 - (i) setting out the Board's determination of the number of votes the Board has determined the relevant Member is entitled to vote for the calendar year under rule 11.3; and
 - (ii) stating they may apply for a review of the determination within 21 days after the date of the notice.
- (b) If a review is requested 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 11.4. The confirmation or fresh determination must be made within one month after the request for review, and the applicant must be notified accordingly.

11.6. Determinations conclusive

- (a) A determination made under rule 11.4 is conclusive if no request for review is made by the end of the 21 days mentioned in rule 11.5(b).
- (b) A determination confirmed or made under rule 11.5(b) is conclusive.

11.7. Where Company is not the Industry Services Body

If the Company is not designated as the Industry Services Body, each 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 Register as allocated under rule 11.4.

11.8. Other rights

Each Member is entitled:

- (a) to receive notices of General Meetings and all other documents sent to Members in respect of General Meetings;
- (b) to attend and speak at General Meetings;
- (c) to vote at General Meetings on:
 - (i) any matter relating to the Company's constitution including any change to the Company's constitution;
 - (ii) election of Directors selected by the Director Selection Committee under rule 27;
 - (iii) the total remuneration payable to the Directors of the Company; and
 - (iv) any other matters reserved to Members by the law; and
- (d) to such other rights conferred on Members by the law.

12. VOTING REGISTER

12.1. Register

As well as the separate Members Register that the Corporations Act requires the Company to keep, the Board must also cause a Voting Register to be kept of the number of votes allocated to each admitted representative of a Group G Member and each Group M Member for the current calendar year determined under rule 11.4.

12.2. Voting entitlement information confidential

The Company must not use nor disclose to any person voting entitlement information on the Voting 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, or at a Sugar Poll.

13. NOT USED**14. GENERAL MEETINGS**

- | | |
|------|--|
| Note | There must be at least 1 general meeting held each year (the annual general meeting (AGM)). The first AGM must be held within 18 months after the Company is formed. 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). |
| Note | Corporations Act section 250R sets out the minimum business for an AGM. It 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.

14.2. General Meetings requested by Members

- (a) Subject to rule 14.1, a General Meeting must also be convened by the Board where:
- (i) 100 Members (comprising Group G Members, Group M Members or a combination of both); or
 - (ii) Members with at least 5% of the votes that can be cast at a General Meeting (calculated under rules 11.2 and 11.3),
- request that a General Meeting is held.
- (b) Where a meeting is requested by Members, the Board must call a General Meeting within 21 days of the request and the General Meeting must be held within 2 months of the date of request.

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.

14.3. Notice of General Meeting and period of notice

The minimum period of notice for a General Meeting is 21 days.

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

Note Corporations Act section 249J(3) says that notice of a General Meeting can be given personally, by post to the Members' registered address, by fax or e-mail. See also rule 42. Section 249L sets out contents.

Note Corporations Act sections 249J, 249K states that the Directors, the auditor and the Members who are entitled to vote must be given notice of the meeting.

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 Corporations Act section 249D says the Board must call a General Meeting if 100 Members, or 5% of the 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 Corporations Act section 249F, i.e. 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.

14.5. Fresh notice

If a General Meeting (the **original meeting**) is postponed or adjourned for one 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. 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 | Corporations Act section 249R says general meetings must be held at a reasonable time and place. |
| Note | Corporations Act section 249S says a general meeting can be held using any technology (such as video conferencing), provided it gives Members as a whole a reasonable opportunity to participate in the meeting. |
| Note | Corporations Act Part 2G.2 Division 4 sets out Members' entitlements to put resolutions etc at general meetings. |

15.1. Member Representative present at General Meetings

A Member that has appointed a Member Representative under rules 9.2 and 9.3, or a Member or Member Representative who has appointed the Chair or a person to be a proxy under rule 16 is taken to be present at a General Meeting if the Member Representative or proxy is present.

15.2. Quorum

- (a) For a General Meeting, a quorum is 30 Group G Members and 3 Group M Members present in person, by Member Representative or by proxy as specified in rule 15.1. No business may be transacted at any meeting except appointment of a Chair (if needed) and adjournment of the meeting unless a quorum is present at the start of the meeting.
- (b) If there is not a quorum at a General Meeting within 30 minutes after the time specified in the notice of the meeting, the meeting is dissolved unless the Chair acting under rule 15.5 adjourns the meeting to a date, time and place determined by him or her. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.
- (c) An individual present at the meeting may only be counted once toward a quorum.

- | | |
|------|---|
| Note | Rule 15.2 replaces the Corporations Act section 249T. |
| Note | On appointment of a Chair of the Board see rule 21.4. |

15.3. Chairing meetings of Members

- (a) The Chair of the Board is entitled to chair every General Meeting.
- (b) If at any General Meeting:
 - (i) the Chair of the Board is not present at the specified time for holding the meeting; or
 - (ii) the Chair of the Board is present but is unwilling to act as chair of the meeting, the Deputy Chair of the Board is entitled to chair the meeting.
- (c) If at any General Meeting:
 - (i) there is no Chair of the Board or Deputy Chair of the Board;
 - (ii) the Chair of the Board and Deputy Chair of the Board are not present at the specified time for holding the meeting; or
 - (iii) the Chair of the Board and the Deputy Chair of the Board are present but each is unwilling to chair the meeting,

the Directors present may choose another Director to chair the meeting and if no Director is present or if each of the Directors present is unwilling to chair the meeting, a Member Representative chosen by the Member Representatives present may chair the meeting.

- | | |
|------|--|
| Note | Rule 15.3 replaces the Corporations Act section 249U (1) to (3). |
|------|--|

15.4. Attendance at meetings of Members

Every Member (as Member Representative) and every Director has the right to attend all General Meetings.

15.5. Business at Annual General Meetings

- (a) The business of an Annual General Meeting is:
 - (i) if required by the Corporations Act, to receive and consider the financial and other reports required by the Corporations Act to be laid before each Annual General Meeting;
 - (ii) if required by the Corporations Act, to appoint an auditor; and
 - (iii) to transact any other business which, under this document, is required to be transacted at an Annual General Meeting.
- (b) All other business transacted at an Annual General Meeting and all business transacted at other General Meetings is special business.
- (c) The auditor and its representative may attend and be heard on any part of the business of a meeting concerning the auditor. The auditor, if any, or its representative, if present at the meeting, may be questioned by the Member Representatives about the audit, if undertaken.

15.6. General conduct of General Meeting

The Chair of a General Meeting:

- (a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the Chair's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the General Meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the Chair considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the Chair under this rule is final.

Note On voting at a General Meeting see rule 17.

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.

Note Rule 15.5 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 15.6 replaces the Corporations Act section 249W(2).

16. PROXIES OR ALTERNATES

- | | |
|------|--|
| Note | The Corporations Act Part 2G.2 Division 6 lays down most of the procedures for the use of proxies. Section 249X says that a Member entitled to cast 2 or more votes can appoint up to 2 proxies. |
| Note | A proxy need not be a Member but has the same rights as Members. |
| Note | Corporations Act section 250A(4) and (5) make it clear a proxy must vote as directed on any resolution. |

16.1. Member proxy

- (a) Any Member may appoint a person to act as proxy at a General Meeting. The person need not be a Member.
- (b) The notice of appointment of a proxy must be signed in the presence of at least one witness.
- (c) An appointment may be for a particular General Meeting or it may be a standing appointment.

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

16.2. Appointment of proxies by Members

To be effective for a particular General Meeting, the appointment notice must be received by the Company at the address, or by fax or electronically, as specified in the notice of meeting and must be received no later than 48 hours before the time the meeting is to start.

- | | |
|------|--|
| Note | Corporations Act section 250A(1) says that a proxy appointment must include the Member's name and address, 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 | Corporations Act section 250B says the proxy's appointment must be received by the company at least 48 hours before the General Meeting. |

16.3. Suspension of proxy appointment if Member Representative present

A proxy has no power to act for a Member at a General Meeting at which the admitted Member Representative is present.

16.4. Priority of conflicting appointments of a Member proxy

If more than one proxy appointed by a Member is present at a General Meeting and this Company has not received notice of revocation of any of the appointments:

- (a) a proxy appointed to act at that particular meeting may act to the exclusion of a proxy appointed under a standing appointment; and
- (b) a proxy under a more recent appointment may act to the exclusion of a proxy appointed earlier in time.

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

16.5. Revoking appointments

An appointment of a proxy may be revoked. The revocation must be in writing.

16.6. Continuing authority

A vote cast at a General Meeting by a proxy is not invalid just 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 16.7 replaces the Corporations Act section 250C(2).

16.7. Board to issue forms of proxy

- (a) The Board may issue with any notice of General Meeting of Members forms for appointment of proxies.
- (b) Each form must enable the Member to write in the proxy's name.
- (c) The form may include the names of any of the Directors, or of any other person, as a suggested proxy.
- (d) The form must allow the Member to direct the proxy to vote for or against (or to abstain from voting on) any proposed resolution.

17. HOW VOTING IS CARRIED OUT

17.1. Voting by show of hands unless poll required

- (a) A resolution put to a vote at a General Meeting must be decided on a show of hands unless a poll is required by this constitution or the Corporations Act, or, 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.
- (b) A poll may be demanded by the Chair, or on a vote by Members, by at least five Member Representatives present.

Note Rule 17.1 replaces Corporations Act sections 250J(1) and (2).

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

17.2. Voting by Member Representatives

- (a) On a show of hands each Member Representative present has one vote.
- (b) Subject to rule 17.2(c), on a poll, each Group G Member and Group M Member Representative present has the number of votes on bases determined in accordance with rules 11.2 and 11.3.
- (c) On a poll, only Member Representatives present at the General Meeting may vote unless, consistently with the law, the Board has approved other means (including electronic) for the casting and recording of votes on any resolution to be put to a General Meeting.

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 Member Representatives have no right to vote on that resolution and the Company must not count any votes those Member Representatives purport to cast. If a proxy purports to vote

in a way or in circumstances that contravene the Corporations Act section 250A(4), 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 Corporations Act section 250A(4) 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, and, if the proxy holds appointments from two or more different Members that specify different ways to vote on the resolution, the proxy must not vote on a show of hands.

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 Chair directs;
- (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;
- (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;
- (d) a person voting who has the right to cast two 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 17.6 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 17.7 replaces section 250E (3).

17.7. Decision on right to vote

A Member Representative or 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 meeting chair, whose decision is final.

Note Rule 17.7 replaces Corporations Act section 250G.

18. PLANS AND REVIEWS OF PERFORMANCE

18.1. Strategic and annual operating plans

- (a) The Board must ensure there is in force within eight months of commencement and then at all times, a strategic plan and an annual operating plan made by the Board under this rule. The Board must review and update a strategic plan at least once in 12 months.

Note A Transitional Operating Plan will be in place at commencement of Sugar Research Australia under which Sugar Research Australia will operate until the first full operating plan is adopted by the Board.

- (b) The Company must develop a strategic plan and annual operating plan in consultation with the Industry in accordance with rule 7.

- (c) The Board must strive to ensure the Company gives effect to plans made under this rule.

Note For rules 18.1 and 18.2, see also rule 7.

18.2. The strategic plan

- (a) The strategic plan should be prepared in accordance with good planning practice and must set out, for the 3 to 5 year specified period to which the plan relates, the principal goals of the Company the Board proposes to pursue and a broad outline of the strategies the Company proposes to pursue to achieve those goals. The strategic plan must include:
- (i) an assessment of the operating environment including current and future trends and their implications for sugar industry research and development needs and extension of results;
 - (ii) the objectives and priorities of the Company for the delivery of research management and Research and Development for the Industry for the period of the plan;
 - (iii) the outcomes planned from the expenditure of income projected over the plan period;
 - (iv) key deliverables which contribute to achieving the planned outcomes;
 - (v) performance indicators that enable progress being made towards achieving the planned outcomes to be monitored and reported upon;
 - (vi) consultations in preparation of the plan and an explanation of how Industry Priorities and government priorities are reflected in and acted on in the plan;
 - (vii) broad resource allocation with estimates of income and expenditure including for operation and resourcing of the Company research funding pool open to a range of providers and the SRA Research Funding Panel, for the life of the strategic plan; and
 - (viii) a corporate statement which outlines the Company's roles and responsibilities as the declared Industry Services Body under the Act including its mutual obligations as a partner with the Commonwealth and the Industry in delivering Research and Development to the Industry and/or the community and its responsibilities for the custody and investment of income from the Industry and Government.
- (b) The Company must develop a strategic plan that will apply its income in a manner consistent with this constitution and the Industry Priorities for research, and government priorities.

18.3. The operating plan, projected expenditures and cost allocation

- (a) An operating plan must set out, for the specified period, particulars of actions the Board intends the Company to take to give effect to or further matters set out in the relevant strategic plan, and include associated financial projections.
- (b) Strategic and operating plans are to include projected expenditure by year on at least the following categories: the research funding program through the SRA Research Funding Panel, and the Company's research-based operational activities, and the Company carrying out Research and Development.
- (c) The Board must develop and apply a cost allocation policy for allocating direct and indirect costs to these categories.

18.4. Reviews of Performance

The Company is to commission a comprehensive Performance Review at the end of each fourth year in line with the provisions of the Statutory Funding Agreement, to be undertaken by an independent organisation against terms of reference agreed with the Industry under rule 7 and

the Commonwealth Government, and recorded in a Performance Review report. The Performance Review must investigate and report objectively on the:

- (a) performance of the Company in meeting its obligations under its governance documents;
- (b) implementation of the strategic and operating plans and the effectiveness and efficiency of the Company in meeting the targets and budgets set out in those plans and any sub-plans; and
- (c) delivery of benefits to the Industry as foreshadowed by strategic and operating plans.

18.5. Performance Review precedes review of the Sugarcane Levy

- (a) Changes to the Sugarcane Levy are to follow the processes in the Department of Agriculture, Fisheries and Forestry Levy Principles and Guidelines or successor documents including the requirements for a Levy Poll (Sugar Poll).
- (b) The report and findings of each Performance Review conducted pursuant to clause 18.4, plus the Board assessment and response, are to be presented to the next General Meeting of Members convened under rule 14.1.
- (c) If a levy change is recommended based on performance, and supported, the change would be taken to a Sugar Poll.
- (d) If the Company (following prior consultation with the Industry Peak Organisation) considers there is a special case for a change in the Sugarcane Levy at another time, it may call for a Sugar Poll.
- (e) A Sugar Poll is to include three levy options, one of which is to be a zero levy.
- (f) Voting in any future Sugar Poll is to use the four bases used in Sugar Poll 2012 with a target of 50% positive votes on each basis (growing business ABN, tonnes; milling companies, tonnes).

19. POWERS OF THE BOARD

19.1. Powers generally

- (a) The Directors are responsible for managing the business of the Company and may exercise all powers and do all things that are within the Company's power except those expressly required by the Corporations Act or this constitution to be exercised by the Company in a General Meeting.
- (b) The Board may make policies consistent with the constitution, which in the opinion of the Board are necessary or desirable for the proper control, administration and management of the Company's finances, affairs and property, or are necessary for the convenience and well-being of the Members (including the terms of entry of Member Representatives to the Company's premises and any event or function sponsored, promoted, facilitated or conducted by the Company). The Board may amend or rescind any policies.
- (c) A resolution made by the Company in General Meeting cannot invalidate prior acts of the Board which would have been valid if that resolution had not been passed or made.

19.2. Power to borrow and give security

The Directors may exercise all the powers of the Company:

- (a) to borrow or raise money in accordance with the objects of the Company; and
- (b) to give guarantees and indemnities.

19.3. Powers of appointment

The Directors may:

- (a) appoint or employ any person as an officer, agent or attorney of the Company for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for any period and on any other conditions they decide;
- (b) authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney; and
- (c) remove or dismiss any officer, agent or attorney of the Company at any time, with or without cause.

Note Rule 19.1 replaces the Corporations Act section 198A.

19.4. 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 rule 19; or
- (b) in accordance with a delegation of the power under rule 22.

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

20. BOARD DECISIONS WITHOUT MEETINGS

20.1. Written resolution

If a majority of 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 in the document, a Board resolution in those terms is passed at the time when the last Director signs.

Note Rule 20.1 replaces Corporations Act section 248A.

20.2. Additional provisions concerning written resolutions

For the purpose of rule 20.1:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and
- (b) an electronic, telex or fax electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time it is received by the Company.

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) A notice of a Board meeting can be given by oral, facsimile or electronic means.
- (c) The non-receipt of notice by a Director does not result in a Board meeting being invalid.

21.3. Use of technology

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 two or more places, at the place the Director chairing the meeting is.

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

21.4. Chairing Board meetings

- (a) The Board, on nomination of a Director Selection Committee, shall by resolution appoint the nominated Director to chair its meetings for a period of three years from appointment (Chair).
- (b) If no appointment 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 Directors present must elect a Director present to chair that meeting.

Note Rule 21.4 replaces the Corporations Act section 248E. On Director Selection Committees see rule 22.2 and rule 27.

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.

21.6. Procedural rules

The Board may, subject to this constitution, 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 are 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 just 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 just because there is a vacancy in the office of a Director.

22. BOARD COMMITTEES

22.1. Functions and delegations to committees

- (a) The Board may establish Committees, as it sees fit, and may confer on, or delegate to, a Committee (including a Committee mentioned in rule 22.2 or rule 22.3) other functions and powers.
- (b) In establishing a Committee, the Board must determine the membership, functions and responsibilities of the Committee, and give direction as to the reports the Committee is to make to the Board and elsewhere. Committee members do not have to be Directors. The Board may give other directions to a Committee.
- (c) The Board may by resolution delegate to, or confer on, a Committee, any of the powers of the Board on terms, and subject to the restrictions, specified in the resolution; and so as to be concurrent with, or to the exclusion of, the powers of the Board.
- (d) This Constitution specifies delegated powers and functions and accountabilities for the Director Selection Committee (rule 22.2, with rules 23.1, 27 and 28.1), and the SRA Research Funding Panel (rule 22.3).
- (e) The Board may revoke or vary a delegation or conferral at any time, except for delegated powers, functions and accountabilities of the Director Selection Committee, or the SRA Research Funding Panel. These can be changed after consultation under rule 7 and on Special Resolution of Members.

Note Corporations Act section 198D says the Board may delegate any of its powers to a committee, or a director, or an officer, or anyone, the delegate must comply with the Board's directions on exercise of the powers, and powers exercised by a delegate are effective as if exercised by the Board.

22.2. Committees

The Board must establish at least the following Committees with the functions specified in this rule, plus the SRA Research Funding Panel with functions specified in rule 22.3:

Audit and Risk Management Committee	<p>Key functions and accountabilities</p> <ul style="list-style-type: none"> ▪ To assist the Board in ensuring that the Company understands key risks for the Company and complies with its legislative and other obligations. ▪ To review the internal processes for identifying, monitoring and managing key risks for the Company. ▪ To review and monitor any transactions with related parties or agri-political organisations. ▪ To review the external auditing of the Company, including making recommendations to the Board on the qualifications, appointment, remuneration and monitoring of the Company's external auditor. ▪ To review the internal auditing of the Company, including the systems and procedures for that auditing, and reporting results of those audits. ▪ To review the external reporting of significant financial information about the Company to improve its objectivity and reliability.
--	--

	<ul style="list-style-type: none"> To review the Board and Company procedures and practices relating to the SRA Research Funding Panel and the overall conduct of research and research management functions.
Remuneration Committee	<p>Key functions and accountabilities</p> <ul style="list-style-type: none"> To develop and review policies on remuneration for Directors and senior officers of the Company, including terms of contracts, retention and termination. To review remuneration agreements for senior officers of the Company. To conduct assessments of key senior officers in relation to the performance objectives of the Company, and advise the Board thereon. To assist the Board in ensuring that the Company complies with all regulatory and accounting requirements for disclosure of remuneration.
Director Selection Committee	<p>Key functions and accountabilities</p> <ul style="list-style-type: none"> To identify and nominate the number of persons needed for election to the Board as Directors of the Company. To ensure a field of candidates and to choose from the available candidates for nomination those persons who will in its view best ensure the Board collectively has an appropriate balance of skills and experience in the areas identified under rule 26. If the Chair is a retiring Director, to identify and nominate a person with appropriate skills for election to be Chair of the Company. Each Director Selection Committee may take any action it thinks appropriate to advertise vacancies and using a transparent search process, to identify persons suitable for election or re-election to the office of Director. The Director Selection Committee is to be assisted by an independent individual or organisation specialising in identification, selection and recruitment of board directors.

22.3. The SRA Research Funding Panel as a Board Committee

- (a) The Board must establish, appoint and maintain the SRA Research Funding Panel and ensure the SRA Research Funding Panel and the contestable research funding process operates as intended as stated in this constitution.
- (b) The SRA Research Funding Panel will be a Committee of the Board with delegated authorities to ensure it can function in a sustained manner to contribute to achieving Company objectives, including transparent, independent and robust review of all research and development projects, identification of projects on merit against plans, efficient and effective project management and compilation of information for Company reporting to stakeholders including government.
- (c) The SRA Research Funding Panel will manage the contestable research funding process and associated review and evaluation of funded projects and reporting as described in this constitution.
- (d) The Board will delegate to the SRA Research Funding Panel the authority to identify a portfolio of projects for funding each year against SRA Research Funding Panel processes and criteria for merit, consistent with the strategic plan, Industry Priorities and framework, financial, timing and other guidance provided.
- (e) In each Company annual operational plan, with reference to contestable funding and resourcing projections in the strategic plan, the Board will identify the quantum of funding allocated to the contestable Company research funding pool for that year. The

Board should use best endeavours to ensure that, on average over the four years between Performance Reviews, approximately half of the Company's income is allocated to the contestable funding pool. The Board will also provide other guidance as needed on funding or strategic developments.

- (f) The Panel will recommend a portfolio of projects to the Board to consider for approval and funding. If the portfolio of selected projects put to the Board for funding does not meet framework requirements, the Board would return the full set of projects or a section of projects to the Panel for review with guidance points and a timeframe. The Panel will provide explanation and/or adjustments to the portfolio project and financial balance as needed.
- (g) The Panel will comprise 4-5 independent people plus 1 Director of Sugar Research Australia (who is not the Chair), each with qualifications and experience needed for the Panel to carry out its functions and accountabilities for the benefit of the Australian Sugar Industry and the broader community. The SRA Research Funding Panel Chair will be independent of the Industry and not a Director of Sugar Research Australia. SRA Research Funding Panel members will not be staff of Sugar Research Australia or any Industry Representative Organisation, nor any researcher potentially a direct recipient of Sugar Research Australia project funding.
- (h) After initial Panel member appointment by the Board and within six months of commencement of the Company and adoption of this constitution, the Board will formalise procedures for Panel appointments and operation including for resolution of disagreements between the Board and the Panel on the contestable research funding process or the portfolio of projects.
- (i) Review of the SRA Research Funding Panel and its operations against targets and expectations will be included in each formal Review of Performance.

SRA Research Funding Panel	<p>Key functions and accountabilities</p> <ul style="list-style-type: none"> ▪ To conduct a contestable research grants process to identify project applications for support from Company contestable research funding. ▪ To develop and promulgate processes for selection of a portfolio of projects, from applications from internal and external providers, on merit against the strategic plan, and Industry and national priorities and through a robust, transparent system timed to optimise research performance and to meet reporting requirements. ▪ To work with the Board to ensure separation of Company research staff and SRA Research Funding Unit staff responsible for the contestable research funding process, including monitoring and evaluation management, so that internally and externally provided projects are selected and managed objectively and without bias. ▪ To work with the Board to ensure systems for efficient contracting and research program and R&D project monitoring and to develop and establish a project performance evaluation system to meet Industry, government and Council of Rural RDC expectations.
-----------------------------------	--

22.4. Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a 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.

22.5. Remuneration

Members of Committees established under rule 22 are entitled to fees and allowances as determined by the Board. The Chair of a Director Selection Committee shall receive a fee in line with the Commonwealth Remuneration Tribunal recommendations for part-time office holders. The other Members of a Director Selection Committee shall not receive a fee. The Board may also decide not to pay fees for certain Committees.

22.6. Reports to Members

The Board must include in the annual report for each financial year a report on the operations of the Committees specified in rule 22, 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. Power to revoke delegation

Subject to this constitution including rule 7 and rule 22.1(e), the Board may revoke a delegation previously made to a Committee or a person whether or not the delegation is expressed as for a specified period.

23.2. Terms of delegation

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 delegations may be made subject to restrictions and conditions.

24. CODE OF CONDUCT

24.1. Formulation of code of conduct

- (a) The Board must formulate and implement a code of conduct (**code**) for the Directors and senior officers of the Company and members of Committees. The code is to include provisions about at least the following:
 - (i) use and disclosure of information;
 - (ii) receiving, keeping, holding and reporting gifts of any description by Directors and senior officers of the Company;
 - (iii) conflicts of interest and duty; and
 - (iv) ethical behaviour by the Company, Directors and its senior officers in relation to the Company's affairs.
- (b) The Board must keep the code of conduct under periodic review.

Note In formulating a code of conduct the board should consider the UK Nolan Committee First Report on Standards in Public Life and the seven conduct principles identified: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.

24.2. Compliance

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

24.3. 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.

25. DIRECTORS

25.1. Number of Directors

The Company must have at least six but no more than eight Directors.

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 six. If the number of Directors falls below six, the continuing Directors may act as the Board only:

- (a) to act to appoint Directors up to that minimum number;
- (b) to convene a General Meeting; and
- (c) in emergencies.

26. BOARD TO INCLUDE CERTAIN SKILLS

The Board must ensure that the Board as a whole has a balance of appropriate and identified skills and experiences, having regard to the nature of the business and affairs of the Company. The Board is to review and publicise skills and experience needed as required under rule 27.3(a).

26.1. Qualifications for Directors

- (a) A Director need not be a Member Representative. The auditor of the Company or a partner or employee of the auditor is not eligible to be appointed as a Director. Staff or employees of an Industry Representative Organisation are not eligible to be appointed as a Director.
- (b) A majority of Directors are to be of independent status as defined in the current ASX Corporate Governance Council's Corporate Governance Principles and Recommendations (or successor documents).
- (c) For Sugar Research Australia, a Skills Based Board means a Board that can demonstrate collective expertise against each of the following:
 - (i) corporate governance including in chairing a company;
 - (ii) Sugarcane growing;
 - (iii) Sugarcane processing for any product;
 - (iv) R&D, technology, technology transfer, commercialisation and adoption;
 - (v) conservation and management of natural resources;
 - (vi) administration of Research and Development; and
 - (vii) finance and business management.
- (d) The Board will annually review the skills required to effectively lead and manage the Company and to contribute to Board processes and advise these to each Director Selection Committee.

27. DIRECTOR SELECTION COMMITTEES

27.1. Establishing Director Selection Committees

- (a) The Board will ensure a Director Selection Committee is formed to operate in advance of the next Annual General Meeting at which an election of Directors will be required to be held. The Director Selection Committee will be five people, comprising:
 - (i) an independent chair appointed by the Board;
 - (ii) two Group G Members nominated by the Industry Peak Organisation; and
 - (iii) two Group M Members nominated by the Industry Peak Organisation.
- (b) An independent chair of a Director Selection Committee is not to be a Member Representative of this Company, or a Levy Payer or an employee of either of these, or an employee of an Industry Representative Organisation.
- (c) The Board is to notify all Member Representatives of the opportunity to nominate for election by Group G or Group M Delegates as a Director Selection Committee member and of need for management, selection or board skills as well as industry knowledge.

27.2. Casual vacancies

If a casual vacancy arises for a member of the Director Selection Committee, the Board should follow the process set out in rule 27.1 for the election and appointment of a replacement Director Selection Committee member.

27.3. Terms of reference and process

- (a) In establishing a Director Selection Committee, the Board must specify the skills and experiences that in its view are appropriate for incoming Directors, having regard to rule 27.
- (b) The Board must publish generally the specification of the skills and experiences that in its view are appropriate for Directors, having regard to rule 26.
- (c) Each Director Selection Committee must provide its report to the Board within four months of the Director Selection Committee being established.

27.4. Function of selection committee

- (a) The function of a Director Selection Committee is to identify, and nominate the number of persons needed for election to the Board as Directors of the Company and identify if they should be appointed for a term of less than 3 years.
- (b) The Director Selection Committee must choose from the available candidates for nomination those persons who will in its view best ensure that the Board collectively has an appropriate balance of skills and experience in the areas identified under rule 26.
- (c) If the Chair is a retiring Director, the Director Selection Committee should identify a person with appropriate skills for election to the Board as Chair of the Company.
- (d) Each Director Selection Committee may take any action it thinks appropriate to advertise vacancies and using a transparent process, to identify persons suitable for appointment or re-election to the office of Director.
- (e) The Director Selection Committee is to be assisted by an independent individual or organisation specialising in identification, selection and recruitment of skills-based directors.

27.5. Report of Director Selection Committee

- (a) A Director Selection Committee must report to the Board, with a nomination or nominations, no later than the day specified under rule 27.3(c) and not less than two months prior to the next Annual General Meeting.
- (b) The Director Selection Committee is to make only 1 nomination for each vacancy.
- (c) The Director Selection Committee report must include:
 - (i) details of each nominee's qualifications and experience;
 - (ii) whether the Director Selection Committee is proposing that the nominee's election is for a term of less than 3 years; and
 - (iii) a statement how, in the Director Selection Committee's opinion, the election of the person as a Director will result in the Board having an appropriate balance of skills and experience in the areas specified under rule 26.
- (d) If the Board asks for further information in relation to a report, the Director Selection Committee must comply with the request.
- (e) If a Director Selection Committee has been established but fails to make a recommendation by the required date, the Board may establish another Director Selection Committee with reference to rule 27.1 and rule 27.2.

27.6. Director Selection Committee meetings

Subject to this constitution, a Director Selection Committee is to regulate its procedures:

- (a) in accordance with the Board's directions;
- (b) subject to those directions, so far practicable, in accordance with the provisions of this constitution and the Corporations Act relating to Board meetings; and
- (c) subject to those directions and provisions, as it determines.

28. ELECTION OF DIRECTORS

Note Rule 28 replaces the Corporations Act sections 201G and 201H.

28.1. How Directors are elected

- (a) The independent chair of a Director Selection Committee should provide the report of the Director Selection Committee prepared under rule 27.5 to the next Annual General Meeting.
- (b) Members of the Company may, by Ordinary Resolution, elect any natural person who has been recommended by a Director Selection Committee as a Director of the Company.
- (c) A person elected in accordance with this rule becomes a Director with effect from the end of the General Meeting at which the election is conducted.

28.2. Maximum number of Directors

This rule 28 does not authorise the number of Directors for the time being fixed under rule 25 to be exceeded.

29. INITIAL DIRECTORS

29.1. Initial Directors

- (a) The Directors as at the date this constitution is adopted are:
 - (i) Paul Wright;
 - (ii) Helen Garnett;
 - (iii) Mike Gilmour;
 - (iv) Steve Guazzo;
 - (v) Ian Johnsson;
 - (vi) John Pollock; and
 - (vii) Ron Swindells.
- (b) As soon as possible after the commencement of the Company and the date this constitution is adopted, and within seven months, the Board must call a Delegate meeting and form a Director Selection Committee under rule 27.1, to appoint a full Company Board consistent with rule 26.

30. DIRECTORS' TERMS OF OFFICE

30.1. Cessation of Directors' office

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;
- (b) resigns by written notice to the Company;
- (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;
- (d) fails to attend Board meetings for two consecutive meetings without leave of absence from the Board; or
- (e) is removed from office under rule 30.3.

Note Rule 30.1(b) replaces the Corporations Act section 203A.

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

30.2. Casual vacancies

- (a) If a casual vacancy arises on the Board, the Board may appoint a person qualified under rule 26.1 as a Director to fill a casual vacancy.
- (b) Any person appointed under this rule holds office until the conclusion of the next General Meeting following their appointment, when an election must be held to fill the position, subject to the process set out in rule 28. Any person appointed under this rule is eligible to apply to the Director Selection Committee for selection for a term as Director at that General Meeting.

30.3. Removal from office

The Member Representatives of the Company may by Ordinary Resolution remove a Director from office.

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

30.4. Rotation of Directors

- (a) A Director must retire from office at the earlier of:
 - (i) conclusion of the third Annual General meeting after the Director was last elected or re-elected; or
 - (ii) expiry of the term, if any, recommended by the Director Selection Committee pursuant to rule 27.527.5(c)(ii) (whether before or after the date this rule 30.4(a)(ii) is included in this constitution).
- (b) The positions of the Directors retiring under this rule 30.4 will be open for selection by the Director Selection Committee established under rule 27.1.

30.5. Eligibility for re-election

- (a) Subject to this constitution and the Corporations Act, a Director whose period of office ends as provided in rules 30.1(b), 30.2, 30.3 or 30.4 is, unless otherwise disqualified, eligible for re-election and may apply to the Director Selection Committee for selection for a further term as a Director.
- (b) A person may serve a maximum of 11 years as a Director of this Company.

31. DIRECTORS' REMUNERATION

Note Rule 31 replaces the Corporations Act section 202A.

31.1. Remuneration of Directors

- (a) The Directors 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 of Member Representatives.
- (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 taking into account additional duties of the Chair and of chairs and members of Committees.
- (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 31.1.

31.2. 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 31.1.

31.3. 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.

31.4. Directors' retirement benefits

Subject to any applicable law, the Company must not give any benefit in connection with a Director's retirement from or loss of office.

31.5. Interpretation

In this rule 31, **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
- (b) an insurance premium paid by the Company, or an indemnity, under rule 37.

32. DIRECTORS' RIGHT TO INFORMATION AND ADVICE

32.1. Right to information

Each Director has, for the purpose of enabling the Director to carry out their 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.

32.2. 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 32.1 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.

32.3. 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 32.3 applies in addition to rule 34.

Note Rule 34 deals with Directors' and officers' indemnity and insurance.

33. COMPLIANCE WITH DUTIES UNDER THE CORPORATIONS ACT

Each Director must comply with the Corporations Act sections 180 to 183 (General Duties), 191 (Duty to disclose personal interests) and 195 (restrictions on voting when personal interests).

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.

34. PROTECTIONS AND OTHER PROVISIONS

34.1. Director not disqualified from holding other offices etc

A Director is not disqualified, just 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.

34.2. Director interested in a matter

In accordance with section 191 of the Corporations Act, a Director must notify the Company where they have, or will expect to have, a material personal interest in, or an actual or potential conflict with, a matter that relates to the affairs or business of the Company.

- | | |
|------|--|
| Note | The Corporations Act section 191(1) says that Directors have a duty to disclose all material personal interests that do not fall within the exceptions set out in section 191(2). A failure to disclose is a strict liability offence. Sections 192-196 set a process to be followed. |
| Note | Section 191(3) states that the notice must give details of the nature and extent of the interest and the relation of the interest to the affairs of the Company and must be given at a Board meeting as soon as possible after the Director becomes aware of their interest in the matter. The details must be recorded in the minutes of the meeting. |

34.3. Restrictions on voting for interested Directors

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 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 just because of existence of the interest.

If the interest must be disclosed under Corporations Act section 191 and rule 34.2 of this constitution, rule 34.3(c) applies only if the interest is disclosed before the transaction is entered into.

- | | |
|------|--|
| Note | See rule 24 Code of Conduct. |
| Note | For Corporations Act provisions see rule 33. |

34.4. Agreements with third parties

The Company cannot avoid an agreement with a third party just 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.

35. CONFIDENTIALITY

- (a) 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:
 - (i) in the course of duties as an officer of the Company; or

- (ii) by the Board or the Company in General Meeting; or
- (iii) by law.
- (b) 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 35. A Director or Secretary must comply with the direction.

36. CHIEF EXECUTIVE OFFICER

36.1. Appointment of Chief Executive Officer

- (a) The Board must appoint a person to be Chief Executive Officer of the Company. The Chief Executive Officer will not be a Director of the Company. Appointment may be indefinite or for a specified term, but not for life.
- (b) Subject to any contract between the Company and the Chief Executive Officer, the Board may fix the remuneration and other benefits to which the Chief Executive Officer 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.

36.2. Termination of appointment of Chief Executive Officer

Whether or not the appointment was expressed to be for a specified term, the appointment of a Chief Executive Officer terminates if the Board removes the Chief Executive Officer from office which (without affecting the rights of the Chief Executive Officer under an employment contract with the Company) the Board has power to do.

36.3. Powers and functions of the Chief Executive Officer

- (a) The Board may by resolution delegate to, or confer on, the Chief Executive Officer, any of the powers of the Board on terms, and subject to the restrictions, specified the resolution; and so as to be concurrent with, or to the exclusion of, the powers of the Board.
- (b) The Board may revoke or vary a delegation or conferral at any time.

Note Rule 36 replaces Corporations Act section 198C.

37. OFFICERS' INDEMNITY AND INSURANCE

37.1. Indemnity in favour of Directors, Secretaries and Officers

Subject to the Corporations Act and rule 37.2, the Company must indemnify each Director, Secretary and officer to the maximum extent permitted by law, against any liability incurred by them because of their holding office as, and acting in the capacity of, Director, Secretary or officer of the Company, other than:

- (a) a liability owed by the person to the Company or a related body corporate of the Company;
- (b) a liability for a pecuniary penalty order under section 1317G Corporations Act or a compensation order under section 1317H Corporations Act; or
- (c) a liability owed to a person other than the Company that did not arise out of conduct in good faith.

37.2. Indemnity for legal costs

The Company must indemnify each Director, Secretary and officer to the maximum extent permitted by law, against any liability for legal costs incurred by them because of their holding

office as, and acting in the capacity of, Director, Secretary or officer of the Company other than for legal costs incurred:

- (a) in defending or resisting proceedings, in which the Director, Secretary or officer is found to have a liability for which they could not be indemnified under rule 37.1;
- (b) in defending or resisting criminal proceedings in which the Director, Secretary or officer is found guilty;
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this rule 37.2(c) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in proceedings for relief to the Director, Secretary or officer under the Corporations Act in which the court denies the relief.

37.3. Proceedings

For the purposes of rule 37.2, 'proceedings' includes the outcomes of the proceedings and any appeal about the proceedings.

37.4. When insurance may not be provided by the Company

The Company must not pay, nor agree to pay, a premium for a contract insuring a person who is or has been a Director, Secretary or officer of the Company, against a liability (other than one for legal costs) arising out of:

- (a) conduct involving a wilful breach of duty about the Company; or
- (b) a contravention of section 182 or section 183 Corporations Act.

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.

37.5. 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 sections 182 and 183 prohibit 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 (see also rule 33).

37.6. 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.

37.7. 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.

38. SECRETARY

Note The Corporations Act sections 204A and 204D say that there must be at least one 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) the Board decides. The Board may vary a 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

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 minutes of the meetings of its members and of resolutions of its members.

40. FINANCIAL REPORTS AND AUDIT

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

40.1. 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 three 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.

40.2. Inspection of financial records and books

A Member Representative 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 of Member Representatives.

- | | |
|------|---|
| Note | The Corporations Act sections 247A and 290 allow the court to authorise access by a member or another person. |
| Note | Rule 40.2 replaces the Corporations Act section 247D. |

41. AUDITOR ROTATION

The Company must not engage a person as auditor of the Company for a period that exceeds, or for consecutive periods that together exceed, five years.

42. NOTICES

42.1. 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 either:
 - (i) delivered personally; or
 - (ii) sent by prepaid mail (by airmail, if 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.

- | | |
|------|--|
| Note | For other ways of service on corporations, Corporations Act section 601CX. |
|------|--|

- (c) A Member Representative whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

42.2. 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 42.2(a)(i) replaces the Corporations Act section 249J(4). |
|------|--|

42.3. Business days and counting days

- (a) For the purposes of rule 42.2, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.
- (b) 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.

42.4. Notices to lost Members or Member Representatives

- (a) If:
 - (i) on two or more consecutive occasions a notice served on a Member or Member Representative in accordance with this rule 42 is returned unclaimed or with an indication that the Member or Member Representative is not known at the address to which it was sent; or
 - (ii) the Board believes on other reasonable grounds that a Member is not at the address shown in the Members Register or notified to the Company under rule 42.1,

the Company may give effective notice to that Member or Member Representative by exhibiting the notice at the Company's registered office for at least 48 hours.

- (b) This rule 42.4 ceases to apply if the Member or Member Representative gives the Company notice of a new address.

43. 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, fund, authority or institution:

- (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.