



AUSTRALIAN PORK LIMITED

# Constitution

November 2015



# Constitution

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## Constitution of Australian Pork Limited ACN 092 783 278

### 1. Preliminary

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#### 1.1 Name

The name of the Company is Australian Pork Limited.

#### 1.2 Type

The Company is a company limited by guarantee.

#### 1.3 Replaceable Rules

The replaceable rules in the Corporations Law do not apply to the Company.

#### 1.4 Definitions

In this Constitution unless the context requires otherwise:

**Act** means the Pig Industry Act 2001 (Cth) including any subordinate legislation under that Act.

**Agri-Political Activity** means engaging in or financing any form of external or internal political campaigning, but does not include an activity required or authorised under the *Corporations Act 2001* (Cth), the Act or other law. For the avoidance of doubt, activities which are not considered to be Agri-Political Activity include the following:

- (a) Strategic Policy Development;
- (b) the Company, or an officer of the Company:
  - (i) recommending a candidate for election to the board of the Company;
  - (ii) making statements, providing information or undertaking activities related to the Company's objects in the proper performance of the Company's functions and the proper furtherance of its objects;
- (c) the use by an officer of the Company or an employee of the Company of his or her own funds to conduct a campaign for election to the board of the Company or any entity engaging, or that may engage, in Agri-Political Activity; or
- (d) the use by another person, for political purposes, of a report or other publication prepared or financed by the Company in accordance with any statutory funding agreement between the Company and the Commonwealth of Australia.

**Application Form** means a form approved by the Board from time to time by which a person may apply to be a Member or Associate Member of the Company.

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**Associate Member** means a person admitted as an Associate Member under Rule 8 and who has not ceased to be an Associate Member.

**Australian Pig Industry** means the Australian pig (including pig meat and other pig products) industry, but does not include the Australian wild pig industry.

**Australian Pig Producer** means a person who carries on the business of breeding or growing pigs in Australia for sale.

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

**Committee** means a Committee to which powers have been delegated by the Board under Rule 16.6.

**Company** means Australian Pork Limited (ACN 092 783 278).

**Constitution** means this Constitution as amended.

**Delegate** means an individual selected as a Delegate in accordance with Rule 10.3 or appointed as a Delegate in accordance with Rule 10.4A.

**Delegate Levy Amount** means an amount calculated in accordance with the following formula:

$$\text{Delegate Levy Amount} = \frac{\text{Pig Slaughter Levy} \times 7,000}{\text{Total Sows}}$$

**Where:**

**Pig Slaughter Levy** means the total amount of Pig Slaughter Levy paid to the Company in the previous Financial Year as determined or estimated by the Board; and

**Total Sows** means the total number of breeding sows in Australia in the previous Financial Year as determined or estimated by the Board (having regard to, amongst other things, any relevant statistics published by the Australian Bureau of Agricultural and Resources Economics).

**Delegate Nomination Form** means a form approved by the Board from time to time by which a Member or Members may nominate a Delegate.

**Director** means a person appointed or elected to the office of Director of the Company in accordance with this Constitution.

**Elected Director** means a Director, elected by the Delegates in accordance with Rule 14.3 or appointed in accordance with Rule 14.4.

**Financial Year** means a period commencing on 1 July and ending on the following 30 June.

**Intermediary** means a person who pays an amount of Pig Slaughter Levy under subsection 7(1), (2), (3) or (3A) of the *Primary Industries Levies and Charges Collection Act 1991* (Cth) on behalf of a producer (within the meaning of that Act).

**Law** means the Corporations Law and includes the Corporations Regulations.

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**Marketing** means activities intended to promote and encourage consumer choice of pig meat and other pig products and can include the meeting of customer needs along the supply chain (including processing, handling, transporting, storing, promoting and selling), but does not include R&D;

**Member** means a person whose name is entered in the Register and who has not ceased to be a Member.

**Members present** means Members present at a general meeting of the Company in person or by duly appointed representative, proxy or attorney, and **Delegates present** has a corresponding meaning.

**Minister** means the Commonwealth Minister of State who from time to time has responsibility for the Act.

**Office** means the registered office of the Company.

**person** and words importing persons include partnerships, associations and corporations, unincorporated and incorporated by Ordinance, Act of Parliament or registration, as well as individuals.

**Pig Slaughter Levy** means levy imposed under Part 2 of Schedule 22 of the *Primary Industries (Excise) Levies Act 1999* (Cth).

**Pig Slaughter Levy Amount** at a particular time in relation to a person, means the amount of Pig Slaughter Levy paid by the person, other than as an Intermediary, in the last Financial Year before the particular time, as determined or estimated by the Company in accordance with this Constitution.

**'PigPass'** means the 'PigPass' national tracking system and database, which, amongst other things, records information about the amount of Pig Slaughter Levy paid by Australian Pig Producers.

**PigPass Declaration** means a declaration made by the Board that states that the Board is satisfied that PigPass contains reliable information about the amount of Pig Slaughter Levy paid by Australian Pig Producers.'

**R&D** means systematic experimentation and analysis in any field of science, technology, economics or business (including the study of the social or environmental consequences of the 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 Australian Pig Industry, including knowledge that may be used for the purpose of improving any aspect of the production, processing, storage, transport or marketing of pigs, pig meat or other pig products; or
- (b) applying such knowledge for the purpose of achieving or furthering such an objective.

**Register** means the register of Members of the Company.

**registered address** means the address of which a Member notifies the Company as a place at which the Member is willing to accept service of notices.

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**retiring Director** means a Director who is required to retire or who ceases to hold office under Rule 14.2.

**Return Date**, in relation to a Financial Year, means the date fixed by the Directors under Rule 7.1 for the Financial Year before which persons may notify the Company of the information referred to in Rule 7.1.

**Rule** means a Rule in this Constitution.

**Secretary** means a person appointed as, or to perform the duties of, a Secretary of the Company.

**Specialist Director** means a Director appointed under Rule 14.5.

**Strategic Policy Development** means in relation to any matter which affects or may affect the Australian Pig Industry:

- (a) the collection of information from a range of sources (including consultation within the Australian Pig Industry, and with other industries, government, other stakeholders or the public);
- (b) the balanced analysis of that information in the context of the Australian Pig Industry environment;
- (c) the development of a strategic policy position within the Australian Pig Industry; and
- (d) the advocacy of that position (including within the Australian Pig Industry, and with other industries, government, other stakeholders or the public).

**writing** and **written** includes printing, typing, lithography, facsimile and other modes of reproducing words in a visible form.

## 1.5 Interpretation

In this Constitution unless the context requires otherwise:

- (a) A word or phrase which is given a meaning by the Law has the same meaning in this Constitution.
- (b) Words in the singular include the plural and vice versa.
- (c) A reference to the Law or any other statute or regulation is a reference to the Law, statute or regulation as modified or substituted.
- (d) The headings do not affect the construction of this Constitution.

## 1.6 Joint Members

Where two or more persons are registered as joint Members, they are considered to hold the membership as joint tenants with benefits of survivorship subject to the following provisions:

- (a) Number of holders

The Company is not bound to register more than three persons as joint Members (except in the case of personal representatives of a deceased Member).



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(b) Liability for payments

The joint Members are liable severally as well as jointly in respect of all payments which ought to be made in respect of a membership.

(c) Death of a joint Member

On the death of any one of the joint Members, the survivor is the only person recognised by the Company as having any title to the membership but the Board may require evidence of death and the estate of the deceased joint Member is not released from any liability in respect of the membership.

(d) Notices

Only the person whose name stands first in the Register as one of the joint Members is entitled to receive notices from the Company and any notice given to that person is considered to be notice to all the joint Members.

(e) Votes of joint Members

Any one of the joint Members may vote at any meeting of the Company either personally or by duly authorised representative, proxy or attorney, in respect of the membership as if that joint Member was solely entitled to the membership. If more than one of the joint Members are present personally or by duly authorised representative, proxy or attorney, only the vote of the joint Member whose name appears first in the Register counts.

## 2. Objects

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(a) The objects for which the Company is established are:

- (i) to provide leadership on the provision of Strategic Policy Development, Marketing and R&D services that advance the interests of the Australian Pig Industry;
- (ii) to receive funds from the Commonwealth of Australia comprising proceeds from the Pig Slaughter Levy and contributions by the Government to R&D in relation to the Australian Pig Industry and account to Members, Government and Parliament of the Commonwealth of Australia for the expenditure of such funds;
- (iii) to seek funds from other persons for Marketing, R&D, innovation and other activities;
- (iv) to manage funds the Company receives and risks related to the Company's ongoing expenditure and funding;
- (v) to investigate and evaluate the requirements for Strategic Policy Development, Marketing, R&D and innovation in relation to the Australian Pig Industry;
- (vi) to provide funds for or carry out Strategic Policy Development, Marketing, R&D and innovation activities in relation to the Australian Pig Industry;

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- (vii) to provide cost-effective services that enhance the competitiveness of the Australian Pig Industry throughout the Australian Pig Industry's supply chain;
- (viii) to facilitate the dissemination, adoption and commercialisation of the results of Marketing, R&D and innovation in relation to the Australian Pig Industry;
- (ix) to manage, develop and exploit intellectual property from Marketing and R&D activities, and to receive the proceeds of such development and exploitation;
- (x) to provide services to Australian Pig Producers; and
- (xi) to engage in any other activities in the interests of the Australian Pig Industry,

in each case for the benefit of the Australian Pig Industry.

- (b) Each object for which the Company is established as specified in paragraph 2(a) is independent of each other object for which the Company is established. The objects are not limited or restricted (except where otherwise expressed) by reference to or inference from any other provision of this Constitution but may be carried out in as full a manner and construed in as wide a sense as if each object were separate and distinct object of the Company.
- (c) The Company must not make grants, or otherwise provide financial assistance, to a body that represents the Australian Pig Industry. Nothing in this paragraph will prevent the Company from
  - (i) acquiring property, goods or services or funding R&D or Marketing projects on arm's length, transparent and competitive terms from a body that represents the Australian Pig Industry; or
  - (ii) payments by way of membership fees where that membership contributes to the Company pursuing its objects.
- (d) The Company must not engage in Agri-Political Activity.
- (e) If:
  - (i) the Company proposes to engage in an activity; and
  - (ii) any Director is of the opinion that the activity might constitute Agri-Political Activity,

that Director must advise the other Directors accordingly and the Chairperson must consult with the Minister, or his or her nominated representative. The Directors must consider the outcome of that consultation prior to the Company engaging in the activity concerned.

- (f) Nothing in this Rule 2 limits the powers of the Company.

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## **3. Liability of Members**

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The liability of Members is limited.

## **4. Contribution by Members**

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Each Member undertakes to contribute to the Company's property if the Company is wound up while he, she or it is a Member or within 1 year after he, she or it ceases to be a Member, for payment of the Company's debts and liabilities contracted before he, she or it ceases to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding \$1.00.

## **5. No Dividends or Distribution**

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- (a) The income and property of the Company shall be applied solely towards the promotion of the objects of the Company as set forth in this Constitution and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise, to the Members or to any of them or to any person claiming through them except as permitted under paragraph (b).
- (b) Paragraph (a) shall not prevent the payment in good faith of remuneration to any officer or employee of the Company (whether Directors of the Company or not) or to any Member or other person in return for any services actually rendered or to be rendered to the Company or for property or goods supplied or to be supplied in the ordinary and usual way of business nor prevent the payment of interest at a rate not exceeding the rate for the time being payable by the Company's bankers for commercial overdrafts on money borrowed from any Member of the Company or reasonable rent for premises leased by any Member to the Company.

## **6. Admission of Members**

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### **6.1 Persons eligible to be Members**

A person is eligible to be a Member of the Company if the person:

- (a) is an Australian Pig Producer; and
- (b) paid (other than as an Intermediary) Pig Slaughter Levy during the previous Financial Year.

### **6.2 Application for Membership**

- (a) A person may apply to be a Member of the Company by completing and giving to the Company:
  - (i) an Application Form that includes:
    - (A) the person's name and address;

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- (B) a statement that the person is an Australian Pig Producer;
  - (C) a statement that the person paid (other than as an Intermediary) Pig Slaughter Levy in the previous Financial Year;
  - (D) a statement that the person agrees to be bound by the Constitution of the Company;
  - (E) such other matters as the Board may determine; and
  - (F) a statement that to the best of the person's knowledge and belief all statements in the Application Form are correct; and
- (ii) either:
- (A) a statutory declaration stating the amount of Pig Slaughter Levy the person paid (other than as an Intermediary) in the previous Financial Year; or
  - (B) if a PigPass Declaration has been made, a consent allowing the Company to access PigPass records to determine the amount of Pig Slaughter Levy the person paid (other than as an Intermediary) in the previous Financial Year.'
- (b) Where persons applying to be a Member comprise a partnership, one or more of those partners may, on behalf of the other partners, sign an Application Form and make or give a statutory declaration or consent to access PigPass records. Where a body corporate applies to be a Member, a director or secretary of the body corporate must sign the Application Form and make or give a statutory declaration or consent to access PigPass records.
- (c) When a person becomes a Member, or at any time thereafter, the person may give the Company a standing consent allowing the Company to access PigPass records to determine the amount of Pig Slaughter Levy a person pays (other than as an Intermediary) for any purpose where that information is required under this Constitution.

## **6.3 Admission to Membership**

The Board must after considering the application:

- (a) if it is satisfied that the person is eligible to be a Member of the Company – admit the person as a Member of the Company; or
- (b) otherwise – decline to admit the person as a Member of the Company.

## **6.4 Decisions on Membership**

The Company must give the person written notice of the Board's decision on the application.

## **6.5 Members to notify changes in information**

- (a) A Member must give the Company notice of any change in the Member's name or address within 60 days of the change occurring.

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- (b) A Member must give the Company notice if it has ceased to be eligible to be a Member within 60 days of it ceasing to be eligible.

## **6.6 Audit of information**

- (a) The Company may by notice given to a Member require the Member to provide the Company within 28 days of the date on which the notice is given evidence in writing of information relevant to establishing:
  - (i) that the Member continues to be eligible to be a Member; and
  - (ii) where the Member has provided information to the Company under Rule 6.2 or Rule 7.1, the accuracy of the information provided.
- (b) The Company may require that information referred to in Rule 6.6(a) be verified by statutory declaration made by the Member or an officer of a Member or by a certificate given by an independent person approved by the Company.
- (c) If:
  - (i) a Member fails to provide the Company with the information required under Rule 6.6(a) within the period specified in the notice; or
  - (ii) the Board, after considering the information provided by a Member under Rule 6.6(a) is satisfied that the Member has ceased to be eligible to be a Member,

the Member will cease to be a Member of the Company and the Company must give the person notice that it has ceased to be a Member with effect from the date of the notice.
- (d) If the Board, after considering the information provided by the Member under Rule 6.6(a), is satisfied that the amount of Pig Slaughter Levy that the Member paid during the Financial Year preceding the date on which notice was given under Rule 6.6(a) differs from the amount (if any) previously determined or estimated by the Company, then the Company must alter its record of the Member's Pig Slaughter Levy Amount accordingly.

## **6.7 Expulsion of Members**

The Board may expel, and remove from the Register, any person whom the Board is satisfied has ceased to be eligible to be a Member and the Company must give the person notice that it has ceased to be a Member with effect from the date of the notice.

## **6.8 Cessation of Membership**

A person ceases to be a Member:

- (a) if the Member ceases to be a Member under Rule 6.6 [Audit of Information], 6.7 [Expulsion of Members] or 7.1 [Information about Pig Slaughter Levy paid];
- (b) if the Member resigns from membership by notice in writing to the Company;

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- (c) if (being a natural person) the Member dies or the Member becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (d) if the Member becomes bankrupt or insolvent or is wound up or makes any arrangement or compromise with its creditors; or
- (e) in any other circumstances prescribed in the terms of membership applicable to the Member or in any undertaking given by the Member upon its admission to membership.

## **6.9 Membership not transferable**

- (a) Unless otherwise provided by the terms of membership, membership of the Company is personal to a Member and is not transferable.
- (b) Where the terms of membership permit the transfer of membership, a Member must not transfer or purport to transfer its membership if the transfer would contravene those terms.

## **6.10 Equitable and other claims**

Except as otherwise required by law or provided by this Constitution, the Company is not:

- (a) compelled in any way to recognise a person as holding a membership upon any trust, even if the Company has notice of that trust; or
- (b) compelled in any way to recognise, or bound by, any equitable, contingent, future or partial claim to or interest in a membership on the part of any other person except an absolute right of ownership in the registered Member, even if the Company has notice of that claim or interest.

## **7. Rights of Members**

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### **7.1 Information about Pig Slaughter Levy paid**

For the purposes of determining a Member's voting rights:

- (a)
  - (i) the Board must fix a Return Date for each Financial Year;
  - (ii) the Return Date must not be earlier than the next 31 August after the end of the Financial Year;
  - (iii) each Member may, not later than the Return Date for each Financial Year, provide either:
    - (A) a statutory declaration to the Company stating the amount of Pig Slaughter Levy the Member paid (other than as an Intermediary) in the Financial Year concerned; or
    - (B) if a PigPass Declaration has been made, a consent allowing the Company to access PigPass records to determine the amount of Pig Slaughter Levy the person paid (other than as an Intermediary)

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in the Financial Year concerned. This consent may be a standing consent provided under Rule 6.2(c);'

- (b) (i) once every three Financial Years (with the first Financial Year for this purpose being the Financial Year 1 July 2003 to 30 June 2004) the Company must no later than 2 months prior to the Return Date for that Financial Year send a notice to each Member:
    - (A) requiring each Member to either:
      - (1) a statutory declaration to the Company stating that the Member is an Australian Pig Producer and the amount of Pig Slaughter Levy paid by that Member (other than as an Intermediary) in the relevant Financial Year; or
      - (2) if a PigPass Declaration has been made, a consent allowing the Company to access PigPass records to determine the amount of Pig Slaughter Levy the person paid (other than as an Intermediary) in the Financial Year concerned. This consent may be a standing consent provided under Rule 6.2(c); and
    - (B) advising the Member that if such a statutory declaration or consent is not provided by the Member to the Company, and a standing consent has not previously been given under Rule 6.2(c), by the Return Date, the person will cease to be a Member;
  - (ii) each Member must, not later than the Return Date for the Financial Year in question (or such later date as the Board in its absolute discretion may allow), provide:
    - (A) a statutory declaration to the Company stating that the Member is an Australian Pig Producer and the amount of Pig Slaughter Levy paid by that Member (other than as an Intermediary) in the relevant Financial Year; or
    - (B) if a PigPass Declaration has been made, a consent allowing the Company to access PigPass records to determine the amount of Pig Slaughter Levy the person paid (other than as an Intermediary) in the Financial Year concerned. This consent may be a standing consent provided under Rule 6.2(c); and
  - (iii) if a Member does not provide to the Company such a statutory declaration or consent and has not given standing consent under Rule 6.2(c), by the date required in sub-paragraph 7.1(b)(ii) the Member will cease to be a Member and the Company must give the person notice that it has ceased to be a Member with effect from the date of the notice; and'
- (c) the Board may also obtain information about Pig Slaughter Levy payments from the Minister or from such other persons as it considers appropriate.

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## 7.2 Voting Rights

At a general meeting, a Member has a number of votes determined as follows:

- (a) as soon as practicable after the Return Date for each Financial Year, the Board must determine, or if there is a difficulty, estimate, the Pig Slaughter Levy Amount for each Member having regard to:
  - '(i) any information received by the Company pursuant to Rule 6.2(a)(ii), including information accessed by the Company from PigPass records;
  - (ii) any information received by the Company pursuant to Rule 7.1, including information accessed by the Company from PigPass records;'
  - (i) such other information as the Board considers appropriate;
- (b) the Board must keep a record of each Member's Pig Slaughter Levy Amount;
- (c) a Member will have one vote for each whole \$1.00 Pig Slaughter Levy Amount recorded by the Company at the time of the vote;
- (d) for the purposes of Rule 7.2(a), if the Company does not for a given Financial Year (other than a Financial Year to which the procedures set out in Rule 7.1(a)(iii) apply) receive information under Rule 7.1(a), the Board may assume that the Pig Slaughter Levy Amount for such Member for that Financial Year equals the Pig Slaughter Levy Amount for that Member in the last Financial Year for which a Pig Slaughter Levy Amount was recorded by the Company;
- (e) a determination by the Board under this Rule 7.2 is final and conclusive. Neither the Directors nor the Company are liable for any loss or damage to any person arising out of any such determination.

## 7.3 Annual Report

Each Member is entitled to receive an annual report. Subject to the Law, the form of the annual report, and the time the annual report is sent to the Members, will be determined by the Board from time to time.

## 7.4 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 Constitution including any change to the Constitution;
  - (ii) any matter relating to Pig Slaughter Levy; and
  - (iii) any other matters reserved to Members by the Law;



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- (ca) to appoint a Delegate, or together with other Members to appoint a Delegate, in accordance with Rule 10; and
- (d) to such other rights conferred on Members by the Law.

## **8. Associate Members**

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### **8.1 Associate Members**

The Board may in its absolute discretion admit a person who has a relationship with the Australian Pig Industry as an Associate Member of the Company.

### **8.2 Application for Associate Membership**

- (a) A person may apply to be an Associate Member by:
  - (i) completing and giving to the Company an Application Form that includes:
    - (A) a statement of the person's relationship with the Australian Pig Industry;
    - (B) a statement that the person agrees to be bound by the Constitution of the Company;
    - (C) such other matters as the Board may determine; and
    - (D) a statement that to the best of the person's knowledge and belief all statements in the Application Form are correct; and
  - (ii) paying any Associate Membership application fee set by the Board from time to time.
- (b) Where persons applying to be an Associate Member comprise a partnership, an Application Form may be signed by one or more of those partners on behalf of the other partners. Where an Application Form is signed by a body corporate, it may be signed by a director or secretary of the body corporate or other authorised person.

### **8.3 Admission to Associate Membership**

The Board may after considering the application admit or not admit the person as an Associate Member of the Company in its absolute discretion.

### **8.4 Decisions on Associate Membership**

The Company must give the person written notice of the Board's decision on the application.

### **8.5 Annual fee**

An Associate Member must pay an annual Associate Members' fee (if any) and renewal fee (if any), as determined by the Board from time to time, by the due date determined by the Board from time to time.

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## **8.6 Renewal of Associate Membership**

- (a) No more frequently than once every three Financial Years, the Company may, not less than 2 months prior to the Return Date for the relevant Financial Year, send a notice to each Associate Member:
  - (i) requiring each Associate Member to:
    - (A) complete and provide to the Company an Application Form that includes the matters set out in Rule 8.2(a)(i)(A) to (D); and
    - (B) pay any Associate Membership application renewal fee set by the Board from time to time; and
  - (ii) advising the Associate Member that if such an Application Form is not provided and any such renewal fee is not paid by the Associate Member to the Company by the relevant Return Date, the person will cease to be an Associate Member.
- (b) Each Associate Member who wishes to remain an Associate Member must, not later than the Return Date for the Financial Year in question (or such later date as the Board in its absolute discretion may allow), provide the completed Application Form, and pay any renewal fee, to the Company.
- (c) If an Associate Member does not provide the completed Application Form, and pay any renewal fee, to the Company by the date required in sub-paragraph 8.6(b) the Associate Member will cease to be an Associate Member and the Company must give the person notice that it has ceased to be an Associate Member with effect from the date of the notice.
- (d) If an Associate Member does provide the completed Application Form, and pay any renewal fee, to the Company by the date required in sub-paragraph 8.6(b), the Associate Member will continue to be an Associate Member unless the Board considers the person has ceased to have a relationship with the Australian Pig Industry (in which case the Company must give the person notice that it has ceased to be an Associate Member with effect from the date of the notice).

## **8.7 Cessation of Associate Membership**

A person ceases to be an Associate Member:

- (a) if the Associate Member ceases to have a relationship with the Australian Pig Industry;
- (b) if the Associate Member resigns from associate membership by notice in writing to the Company;
- (c) if (being a natural person) the Associate Member dies or the Associate Member becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (d) if the Associate Member becomes bankrupt or insolvent or is wound up or makes any arrangement or compromise with its creditors;

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- (e) if the Associate Member fails to pay any annual Associate Member's fee determined by the Board from time to time by the due date; or
- (f) in the circumstances set out in Rule 8.6(c) or 8.6(d) or in any other circumstances prescribed in the terms of membership applicable to the Associate Member or in any undertaking given by the Associate Member upon its admission to associate membership.

## **8.8 Associate Members to notify changes in information**

An Associate Member must give the Company notice of any change in the Associate Member's name or address within 60 days of the change occurring.

## **9. Rights of Associate Members**

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### **9.1 No Voting Rights**

Associate Members will have no voting rights.

### **9.2 Annual Reports**

Each Associate Member is entitled to receive an annual report.

### **9.3 Meeting Rights**

Each Associate Member is entitled:

- (a) to receive notices of general meetings and all other documents sent to Members in respect of general meetings; and
- (b) to attend and speak at general meetings.

### **9.4 Associate Members not Members**

An Associate Member is not a Member of the Company for the purposes of the Law or this Constitution. An Associate Member's only rights and obligations are the rights and obligations set out in this Constitution. This Constitution is intended to operate as a contract between the Company and an Associate Member.

## **10. Delegates**

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### **10.1 Delegates**

- (a) A Member who has a Pig Slaughter Levy Amount equal to or greater than the Delegate Levy Amount or a group of Members who together have a Pig Slaughter Levy Amount equal to or greater than the Delegate Levy Amount may, pursuant to this Rule 10, appoint a Delegate to represent them at general meetings in relation to matters not reserved to Members under Rule 7.4.
- (b) Only a natural person may be a Delegate. A Delegate may but need not be a Member or Director.

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## 10.2 Nomination of Delegates

- (a) Prior to the date 2 months prior to the Return Date:
  - (i) for each Financial Year preceding the Financial Year ending on 30 June 2013; and
  - (ii) for every third Financial Year (with the first Financial Year for this purpose being the Financial Year ending on 30 June 2013),the Company must send to each Member a Delegate Nomination Form.
- (b) A member may nominate a Delegate by completing and giving to the Company prior to the relevant Return Date a Delegate Nomination Form that includes the name of the person nominated by the Member as a Delegate and such other information as the Board may require from time to time.

## 10.3 Appointment of Delegates

- (a) A person will be appointed a Delegate if:
  - (i) that person is nominated as a Delegate by a Member or Members (whether directly or through the application of Rule 10.3(b)) whose Pig Slaughter Levy Amount, in the aggregate, equals or exceeds the Delegate Levy Amount; and
  - (ii) that person consents by notice in writing to the Company to their appointment as a Delegate.
- (b)
  - (i) In the event that any person is nominated as a Delegate by a Member or Members whose Pig Slaughter Levy Amount, in the aggregate, exceeds the Delegate Levy Amount, that nominee may allocate the excess to another nominee.
  - (ii) In the event that any person is nominated as a Delegate by a Member or Members whose Pig Slaughter Levy Amount, in the aggregate, is less than the Delegate Levy Amount, that nominee may allocate that Member or Members' Pig Slaughter Levy Amount to another nominee.

## 10.4 Term of Delegates Appointment

- (a) A person who is appointed as a Delegate in accordance with Rule 10.3(a) will:
  - (i) if the Delegate was nominated pursuant to the process set out in Rule 10.2(a)(i) and 10.2(b), serve as a Delegate from the Return Date occurring in the Financial Year in which they are appointed until the next Return Date; and
  - (ii) if the Delegate was nominated pursuant to the process set out in Rule 10.2(a)(ii) and 10.2(b), serve as a Delegate from the Return Date occurring in the Financial Year in which they are appointed until the third Return Date after the Return Date on which they commenced serving as a Delegate.

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- (b) A person may serve as a Delegate for as many terms as they are appointed in accordance with Rule 10.3.

## **10.4A Retirement of Delegates**

- (a) A person appointed as a Delegate in accordance with Rule 10.3(a) or Rule 10.4A (f)(v) will cease to serve as a Delegate if the person:
  - (i) resigns by notice in writing to the Company; or
  - (ii) dies.
- (b) Any Delegate who resigns pursuant to Rule 10.4A (a)(i) must, in his or her written notice of resignation to the Company in accordance with that Rule, nominate a person to serve out the remainder of his or her term. The person nominated must be ratified by the Board first prior to becoming a Delegate.
- (c) The Board must nominate a person to serve out the remainder of the term of any Delegate who dies or if the resigning Delegate does not nominate a replacement.
- (d) The Board must convene a meeting within 30 days of the death of a Delegate or the receipt of a Delegate's notice of resignation pursuant to Rule 10.4A(b) for the purpose of:
  - (i) considering ratifying the appointment of the person nominated in a Delegate's notice of resignation to serve out the remainder of the resigning Delegate's term; or
  - (ii) nominating a person to serve out the remainder of the term of any Delegate who dies, or who resigns and does not nominate a replacement, pursuant to clause 10.4A(c); or
- (e) If the Board does not ratify the appointment of a person nominated in a Delegate's notice of resignation the Board must advise the resigning Delegate accordingly and the resigning Delegate may nominate another person for the Board to consider. Paragraphs (d) and (e) will reapply as relevant to any such nominee.
- (f) A person nominated under Rule 10.4A(b) or 10.4A(c):
  - (i) must be a natural person;
  - (ii) may, but need not be, a Member or a Director;
  - (iii) may, but need not be, a former Delegate;
  - (iv) must not be a current Delegate; and
  - (v) following receipt of an invitation from the Company to serve as a Delegate, will be appointed as a Delegate if and when he or she consents, in writing to the Company, to his or her appointment.
- (g) A person who is appointed in accordance with Rule 10.4A(e) will serve as a Delegate from the date of his or her appointment until the Return Date at which the term of the Delegate they are replacing would have expired.

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## **10.5 Rights of Delegates**

- (a) Each Delegate is entitled:
  - (i) to receive notices of general meeting and all other documents sent to Members in respect of general meetings; and
  - (ii) to attend and speak at general meetings.
- (b) Delegates may vote at a general meeting on any matter other than matters reserved to Members under this Constitution or the Law, including, but not limited to:
  - (i) the election of Elected Directors;
  - (ii) the ratification of Specialist Directors appointments;
  - (iii) the total remuneration payable to the Directors of the Company;
  - (iv) resolutions proposed by Members or Delegates under Rule 11.3; and
  - (v) procedural resolutions.
- (c) When voting at a general meeting on any matter, each Delegate is entitled to one vote.
- (d) Each Delegate is entitled to receive an annual report.

## **10.6 Delegates not Members or Directors**

A Delegate is not a Member or Director of the Company for the purposes of the Law or this Constitution. A Delegate's only rights and obligations are the rights and obligations set out in this Constitution. This Constitution is intended to operate as a contract between the Company and a Delegate.

## **11. General Meetings**

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### **11.1 Calling of general meetings**

The Board may call a general meeting of the Company to be convened at the time and place or places (including at two or more venues using technology that gives Members a reasonable opportunity to participate) and in the manner determined by the Board. No Member or other person may convene a general meeting of the Company except where entitled under the Law to do so. By resolution of the Board any general meeting may be cancelled or postponed prior to the date on which it is to be held, except where the cancellation or postponement would be contrary to the Law. The Board may give notice of cancellation or postponement as it thinks fit, but any failure to give notice of cancellation or postponement does not invalidate the cancellation or postponement or any resolution passed at a postponed meeting.

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## **11.2 Advance notice of Annual General Meeting**

- (a) Advance notice of an annual general meeting (other than the first annual general meeting) must be given to each Member prior to the day 2 months prior to the Return Date for a Financial Year.
- (b) The advance notice must:
  - (i) specify the day, time and place of the meeting;
  - (ii) state the general nature of the meeting's business (to the extent known);
  - (iii) specify the Return Date and advise members of:
    - (A) their right to nominate a Delegate in accordance with Rule 10 prior to the Return Date;
    - (B) their right or obligation to provide a statutory declaration or, if a PigPass Declaration has been made, a consent in accordance with Rule 7.1(a) or 7.1(b) prior to the Return Date.
- (c) The advance notice must be sent with:
  - (i) a Delegate Nomination Form (as required by Rule 10.2(a)); and
  - (ii) a notice issued under Rule 7.1(a)(iii) (if applicable).

## **11.3 Members' and Delegates' Resolutions**

Any Member or Delegate may by giving written notice to the Company prior to the Return Date propose a resolution for consideration at the next annual general meeting. Any such resolution if passed will be a recommendation to the Board but will not be binding on the Board or the Company.

## **11.4 Notice of general meeting**

- (a) Subject to the provisions of the Law relating to shorter notice, at least 28 days notice of a general meeting must be given in the manner outlined by Rule 18 to each person who is at the date of the notice:
  - (i) a Member;
  - (ii) an Associate Member;
  - (iii) a Delegate;
  - (iv) a Director; or
  - (v) the auditor of the Company.

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

- (b) A notice of general meeting must:
  - (i) specify, the day, time and place of the meeting;
  - (ii) state the general nature of the meeting's business;

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- (iii) specify the terms of:
  - (A) any special resolution;
  - (B) any resolution proposed by a Member or Delegate under Rule 11.3 or under Division 4, Part 2G.2 of the Law;
  - (C) any resolution relating to the Pig Slaughter Levy; and
  - (D) any resolution to remove or appoint a Director of the Company,to be considered at the general meeting. The terms of any such resolution may not be altered or modified at the general meeting.

## 12. Proceedings of meetings

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### 12.1 Business of general meetings

The business of a general meeting of the Company is to receive and consider the accounts and reports required by the Law to be laid before each general meeting, for the Delegates to elect Directors, when relevant to appoint an auditor and fix the auditor's remuneration, and to transact any other business which, under this Constitution, is required to be transacted at any general meeting. All other business transacted at a general meeting and all business transacted at other general meetings is special. Except with the approval of the Board, with the permission of the Chairman or under the Law or this Constitution, no person may move at any meeting either any resolution or any amendment of any resolution.

### 12.2 Quorum

- (a) Ten Delegates or Members present constitute a quorum for a meeting. No business may be transacted at any meeting except the election of a Chairman (if necessary) and the adjournment of the meeting unless a quorum is present at the commencement 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 Chairman acting under Rule 12.6 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.

### 12.3 Chairman

- (a) The Chairman of the Board is entitled to chair every general meeting.
- (b) If at any general meeting:
  - (i) the Chairman of the Board is not present at the specified time for holding the meeting; or
  - (ii) the Chairman of the Board is present but is unwilling to act as chairman of the meeting,the Deputy Chairman of the Board is entitled to chair the meeting.



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- (c) If at any general meeting:
  - (i) there is no Chairman of the Board or Deputy Chairman of the Board;
  - (ii) the Chairman of the Board and Deputy Chairman of the Board are not present at the specified time for holding the meeting; or
  - (iii) the Chairman of the Board and the Deputy Chairman 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 chosen by the Members present may chair the meeting.

## **12.4 Acting Chairman**

If during any general meeting the Chairman acting under Rule 12.3 is unwilling to chair any part of the proceedings, the Chairman may withdraw during the relevant part of the proceedings and may nominate any person who immediately before the general meeting was a Director or who has been nominated for election as a Director at the meeting to be Acting Chairman of the meeting during the relevant part of the proceedings. On the conclusion of the relevant part of the proceedings the Acting Chairman is to withdraw and the Chairman is to resume to chair the meeting.

## **12.5 General conduct of meeting**

- (a) The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the Chairman.
- (b) The Chairman or a person acting with the Chairman's authority may require any person who wishes to attend the meeting to comply with searches, restrictions or other security arrangements the Chairman or a person acting with the Chairman's authority considers appropriate. The Chairman or a person acting with the Chairman's authority may refuse entry to any person who does not comply with the arrangements, any person who possesses a recording or broadcasting device without the consent of the Chairman or a person acting with the Chairman's authority, or any person who possesses an article which the Chairman or person acting with the Chairman's authority considers to be dangerous, offensive or liable to cause disruption. At any time the Chairman considers it necessary or desirable for the proper and orderly conduct of the meeting, the Chairman may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members or Delegates present.
- (c) The Chairman may require the adoption of any procedures which are in the Chairman's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.

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- (d) Any determination by the Chairman in relation to matters of procedure (including any procedural motions moved at, or put to, any meeting) or any other matter arising directly or indirectly from the business is final (including any procedural motions moved at or put to, any meeting). Any challenge to a right to vote (whether on a show of hands or on a poll) may only be made at the meeting and may be determined by the Chairman whose decision is final.

## **12.6 Adjournment**

During the course of the meeting the Chairman may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting. If the Chairman exercises a right of adjournment of a meeting under this Rule, the Chairman has the sole discretion to decide whether to seek the approval of the Members present to the adjournment and, unless the Chairman exercises that discretion, no vote may be taken by the Members present in respect of the adjournment. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

## **12.7 Voting**

- (a) The Chairman may determine that any question to be submitted to a general meeting be determined by a poll without first submitting the question to the meeting to be decided by a show of hands.
- (b) Unless the Chairman makes the determination referred to in paragraph (a) each question submitted to a general meeting is to be decided in the first instance by a show of hands by Members (in the case of a matter reserved to Members under Rule 7.4) or Delegates (in any other case).
- (c) In the case of an equality of votes, the resolution is lost.
- (d) Unless a poll is demanded, a declaration by the Chairman following a vote on a show of hands that a resolution has been passed or lost is conclusive, without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (e) A poll may be demanded by a Member in accordance with the Law (and not otherwise), by at least five Delegates or by the Chairman. No poll may be demanded on the election of a chairman of a meeting or, unless the Chairman otherwise determines, the adjournment of a meeting. A demand for a poll may be withdrawn.

## **12.8 Taking a poll**

- (a) If a poll is demanded as provided in Rule 12.7, it is to be taken in the manner and at the time and place as the Chairman directs, and the result of the poll is the meeting's resolution of the motion on which the poll was demanded. In the case of any dispute as to the admission or rejection of a vote, the Chairman's determination in relation to the dispute is final.

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- (b) A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.
- (c) The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) as the Chairman considers appropriate.

## **12.9 Special meetings**

All the provisions of this Constitution as to general meetings apply to any special meeting of any class of Members which may be held under the operation of this Constitution or the Law.

## **13. Votes of Members and Delegates**

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### **13.1 Voting rights of Members**

- (a) On a show of hands:
  - (i) subject to paragraph (ii), each Member present has one vote; and
  - (ii) where a Member has appointed more than one person as representative, proxy or attorney for the Member, none of the representatives, proxies or attorneys is entitled to vote;
- (b) Subject to paragraph (c), on a poll, each Member present has the number of votes determined in accordance with Rule 7.2(c);
- (c) On a poll only Members present may vote unless, consistently with the Law, the Board has approved other means (including electronic) for the casting and recording of votes by Members on any resolution to be put to a general meeting.
- (d) For the avoidance of doubt, a Member may vote only on a matter set out in Rule 7.4(c) and may not vote on any other matter (including without limitation a matter set out in Rule 10).

### **13.2 Voting rights of Delegates**

- (a) On a show of hands or a poll a Delegate has one vote.
- (b) On a poll only Delegates present may vote unless, consistently with the Law, the Board has approved other means (including electronic) for the casting and recording of votes by Delegates on any resolution to be put to a general meeting.
- (c) For the avoidance of doubt, a Delegate may vote on any matter not set out in Rule 7.4(c) (including without limitation a matter set out in Rule 10) and may not vote on any matter set out in Rule 7.4(c).

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## **13.3 Appointment of proxies**

- (a) Any Member or Delegate may appoint a proxy to vote at a general meeting on that Member's or Delegate's behalf and may direct the proxy to vote either for or against each or any resolution.
- (b) A proxy need not be a Member of the Company.
- (c) A Delegate may not give his or her proxy to another Delegate or a Director.
- (d) The instrument appointing a proxy (and the power of attorney, if any, under which it is signed or proof of the power of attorney to the satisfaction of the Board) must be deposited duly stamped (if necessary) at the Office, or any other place the Board may determine from time to time, not later than 48 hours (or a lesser period as the Board may determine) before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument proposes to vote.
- (e) No instrument appointing a proxy is, except as provided in this Rule, valid after the expiration of 12 months after the date of its execution.
- (f) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument or proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.

## **13.4 Validity, revocation**

- (a) The validity of any resolution is not affected by the failure of any proxy or attorney to vote in accordance with instructions (if any) of the appointing Member or Delegate.
- (b) A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid despite the previous death or mental incapacity of the appointing Member or Delegate or revocation of the instrument of proxy or power of attorney, provided no notice in writing of the death, mental incapacity or revocation has been received at the Office at least 48 hours before the relevant meeting or adjourned meeting.
- (c) A proxy is not revoked by the appointing Member or Delegate attending and taking part in the meeting, unless the appointing Member or Delegate votes at the meeting on the resolution for which the proxy is proposed to be used.

## **13.5 Board may issue forms of proxy**

The Board may issue with any notice of general meeting forms of proxy for use by the Members and Delegates. Each form may include the names of any of the Directors or of any other persons willing to act as proxies or as persons who are to be proxies where the Member does not specify in the form the name of the person or persons to be appointed as proxies. The forms may be worded so that a proxy may be directed to vote either for or against each or any of the resolutions to be proposed.

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## **13.6 Attorneys of Members**

Any Member may, by properly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Company. Before the attorney is entitled to act under the power of attorney, the power of attorney or proof of the power of attorney to the satisfaction of the Board must be produced for inspection at the Office or any other place the Board may determine together, in each case, with evidence of the proper execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

## **14. Directors**

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### **14.1 Number of Directors**

- (a) The minimum number of Directors in the Company is three.
- (b) All Directors are to be natural persons.
- (c) The number of Directors' positions is nine. Five of the Directors' positions will be Elected Director positions. Four of the Directors' positions will be Specialist Director positions.

### **14.2 Rotation of Directors**

- (a) At each annual general meeting of the Company, Directors will retire as set out in Rules 14.2(b) and 14.2(c).
- (b)
  - (i) An Elected Director must retire not later than the third annual general meeting after his or her appointment.
  - (ii) In addition, subject to Rules 14.4(c) and 14.6(b), Elected Directors will retire as follows:
    - (A) at the second annual general meeting, two Elected Directors must retire;
    - (B) at the third annual general meeting, one Elected Director must retire;
    - (C) at the fourth annual general meeting, two Elected Directors must retire; and
    - (D) with the three year pattern set out in sub-paragraphs (A), (B) and (C) repeating thereafter.
  - (iii) Subject to Rule 14.4(c), the Elected Directors to retire under Rule 14.2(b)(ii) are the Directors or Director longest in office since last being elected or appointed. As between Directors who were elected or appointed on the same day, the Directors to retire are (in default of agreement between them) determined by lot. The length of time a Director has been in office is calculated from the Director's last election or appointment.

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- (iv) A retiring Director is eligible for re-election.
- (c)
  - (i) A Specialist Director must retire not later than the third annual general meeting after the ratification of his or her appointment.
  - (ii) In addition, subject to Rule 14.5(g), Specialist Directors will retire as follows:
    - (A) at any annual general meeting at which two Elected Directors must retire in accordance with Rule 14.2(b)(ii), one Specialist Director must retire; and
    - (B) at any annual general meeting at which one Elected Director must retire in accordance with Rule 14.2(b)(ii), two Specialist Directors must retire.
  - (iii) Subject to Rule 14.5(g), the Specialist Directors to retire under Rule 14.2(c)(ii) are the Directors or Director longest in office since his or her appointment. As between Directors who were appointed on the same day, the Directors to retire are (in default of agreement between them) determined by lot. The length of time a Specialist Director has been in office is calculated from the last ratification of the Director's appointment.
  - (iv) A retiring Specialist Director is eligible for re-appointment.

## **14.3 Elected Directors**

- (a) The five Elected Director positions are to be elected by the Delegates.
- (b) A person (other than a retiring Director) is eligible for election to the office of Director at any general meeting only if:
  - (i) there is a vacancy to be filled;
  - (ii) the person is nominated by a Member or the Board;
  - (iii) the person consents to the nomination; and
  - (iv) the nomination and consent are received by the Company not less than 35 days before the meeting.
- (c) The number of vacancies to be filled at any general meeting will be the number of Elected Director positions (determined under Rule 14.1) less the number of Elected Directors in office not retiring at the general meeting.
- (d) If at a general meeting the number of candidates for Elected Director positions is equal to or less than the number of vacancies, all candidates who receive a majority of votes cast by the Delegates will be elected Directors. In the event that not all vacancies are filled, a new election will be held at the next Annual General Meeting to fill the remaining vacancies.
- (e) If at a general meeting the number of candidates for Elected Director positions is greater than the number of vacancies the election shall be by ballot of the Delegates conducted in the following manner:
  - (i) the election will be conducted at the Annual General Meeting;

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- (ii) at the Annual General Meeting a returning officer and a scrutineer will be appointed by the Board to ensure the proper conduct of the ballot;
- (iii) each Delegate present at the meeting will be given a voting paper containing a statement of the number of vacancies to be filled at the election and the names of the nominated candidates with provision for a number to be placed against the name of each candidate;
- (iv) the method of voting shall be as follows:
  - (A) each Delegate must mark his or her voting paper by writing a number opposite the names of each of the candidates. The voting papers will be collected by the returning officer;
  - (B) no number may appear twice on the voting paper. A voting paper not complying with this regulation will be informal and will not be counted in the ballot;
  - (C) the returning officer will count the total number of first preference votes given for each candidate. If any candidate upon the count of first preferences has a clear majority of the votes cast then that candidate shall be elected;
  - (D) if no candidate has upon the first preferences being counted a clear majority the candidate with the least number of first preference votes will be excluded and that candidate's votes must be allocated according to the second preference on each ballot paper on which that candidate was the first preference and added to the first preference votes given in favour of those candidates to whom second preferences are allocated;
  - (E) where the number of votes obtained by a candidate following this procedure is raised above a clear majority of the votes cast that candidate shall be elected;
  - (F) if no candidate has then received a clear majority the procedure set out in sub-paragraph (D) is continued until a candidate has a clear majority of votes;
  - (G) upon the election of each candidate all voting papers shall be sorted back to first preference votes. The voting papers containing the first preference votes of each elected candidate will be sorted to second preference votes and distributed among the remaining candidates (including any candidate previously excluded). A candidate receiving a clear majority of votes cast after this procedure will be elected;
  - (H) if no candidate has a clear majority the procedures set out above are to continue until a candidate has a clear majority and the required number of candidates have been elected;

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- (I) a candidate is elected when he or she has a majority of votes calculated in accordance with these regulations and whether or not the returning officer has declared that candidate elected;
  - (J) if in any count two or more candidates have the same number of votes, the candidate to remain in the count or be elected will be determined by lot conducted by the returning officer;
  - (K) in determining which candidate is second in order of the voters' preference, any candidate who has been declared elected or who has been excluded (as the case may be) will not be considered and the order of the voter's preference will be determined as if the names of such candidates had not been on the voting papers;
  - (L) a declaration as to the result of such election including the number of votes received for each candidate shall be made by the Chairman of the Annual General Meeting.
- (f) The Directors may publish rules and procedures concerning the voting system. The decision of the Directors as to the rules or procedures applicable is final and conclusive.

## 14.4 Casual vacancies

- (a) The Board must, within 6 months following a vacancy in an Elected Director position (including as a result of termination under Rule 14.6), appoint any person as an Elected Director to fill the vacancy, but so that the number of Elected Directors does not exceed the number of Elected Director positions determined under Rule 14.1.
- (b) The Board must establish under Rule 16.6 a selection committee to, amongst other things, make recommendations to the Board on the appointment of Directors under this Rule 14.4.
- (c) Any Elected Director appointed under this Rule 14.5 (referred to in this Rule 14.4(c) as a **Replacing Elected Director**):
  - (i) may hold office only until the next general meeting of the Company and, subject to this Rule 14.4(c), is then eligible for election at that meeting if nominated under Rule 14.3;
  - (ii) if the Replacing Elected Director replaced a Director whose term would have expired at the next annual general meeting in accordance with Rule 14.2, then the Replacing Elected Director:
    - (A) will be counted as one of the Directors who must retire at the next annual general meeting for the purposes of Rule 14.2(b)(ii); and
    - (B) must retire at the next annual general meeting; and
  - (iii) if the Replacing Elected Director replaced a Director whose term would not have expired at the next annual general meeting in accordance with Rule 14.2, then the Replacing Elected Director:



- (A) will not be counted as one of the Directors who must retire at the next annual general meeting for the purposes of Rule 14.2(b)(ii);
- (B) will, despite having his or her casual appointment confirmed by being elected at the annual general meeting, be required to next retire when the Director that he or she replaced would have had to retire under Rule 14.2(b); and
- (C) in the year in which he or she is required to retire pursuant to sub-paragraph (B), will be counted as one of the Directors who must retire in that year for the purposes of Rule 14.2(b)(ii).

## **14.5 Appointment of Specialist Directors**

- (a) Subject to this Rule 14.5, the Board may at any time appoint a person as a Specialist Director, provided that the number of Specialist Directors does not at any time exceed the number of Specialist Director positions determined under Rule 14.1.
- (b) The Board must establish under Rule 16.6 a selection committee as contemplated by any statutory funding agreement between the Company and the Commonwealth of Australia and whose functions must include making recommendations to the Board on the appointment of Specialist Directors under this Rule 14.5.
- (c) At the next general meeting after the appointment of a Specialist Director, that appointment must be ratified by a majority of Delegates present at the general meeting.
- (d) In the event that a majority of Delegates fails to ratify the appointment of a Specialist Director, the Specialist Director will cease to be a Specialist Director and may not be reappointed by the Board.
- (e) In appointing persons as Specialist Directors the Board must endeavour to ensure that after the appointment of those persons the Directors will collectively have skills and experience in the following areas:
  - (i) corporate governance;
  - (ii) pig production;
  - (iii) production or processing of pig meat;
  - (iv) product promotion and retail marketing;
  - (v) market development and international trade;
  - (vi) R&D, technology transfer, commercialisation of R&D and innovation;
  - (vii) conservation and management of natural resources;
  - (viii) administration of R&D; and
  - (ix) business and financial management.
- (f) If at any time the number of Specialist Directors is less than the number of Specialist Director positions determined under Rule 14.1, the Board must within six

months appoint additional Specialist Directors so that the number of Specialist Directors equals the number of Specialist Director positions under Rule 14.1.

- (g) Any Specialist Director appointed under Rule 14.5(f) (referred to in this rule 14.5(g) as a **Replacing Specialist Director**):
- (i) may hold office only until the next general meeting of the Company and, subject to this Rule 14.5(g), his or her appointment will then be eligible for ratification at that meeting under Rule 14.5(c);
  - (ii) if the Replacing Specialist Director replaced a Director whose term would have expired at the next annual general meeting in accordance with Rule 14.2, then the Replacing Specialist Director:
    - (A) will count as one of the Directors who must retire at the next annual general meeting for the purposes of Rule 14.2(c)(ii); and
    - (B) must retire at the next annual general meeting; and
  - (iii) if the Replacing Specialist Director replaced a Director whose term would not have expired at the next annual general meeting in accordance with Rule 14.2, then the Replacing Specialist Director:
    - (A) will not be counted as one of the Directors who must retire at the next annual general meeting for the purposes of Rule 14.2(c)(ii);
    - (B) will, despite having his or her casual appointment confirmed by being elected at the annual general meeting, be required to next retire when the Director that he or she replaced would have had to retire under Rule 14.2(c); and
    - (C) in the year in which he or she is required to retire pursuant to sub-paragraph (B), will be counted as one of the Directors who must retire in that year for the purposes of Rule 14.2(c)(ii).

### 14.6 Termination of office of Director

- (a) The office of a Director is terminated:
- (i) on the Director being absent from meetings of the Board during a period of three consecutive calendar months without leave of absence from the Board where the Board has not, within 14 days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
  - (ii) on the Director resigning office by notice in writing to the Company;
  - (iii) on the Director being removed from office under the Law;
  - (iv) on the Director being prohibited from being a Director by reason of the operation of the Law;
  - (v) on the Director ceasing to hold office under Rule 14.5(d).

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- (b) A Director whose office is terminated under paragraph (a) is not to be taken into account in determining the number of Directors who are to retire by rotation at any general meeting.

## **14.7 Remuneration of Directors**

Subject to the Law, each Director is to be paid or provided remuneration for services, determined by the Board, at the time and in the manner determined by the Board. The total amount or value of such remuneration that may be paid or provided to the Directors in any Financial Year shall not exceed, in aggregate, \$360,000, or such larger amount as is approved by a vote of the Delegates at a general meeting. The expression **remuneration** in this Rule does not include any amount which may be paid by the Company under any of Rules 14.8, 14.9, 14.10 and 20.

## **14.8 Remuneration of Directors for extra services**

Any Director who serves on any committee, who devotes special attention to the business of the Company, who otherwise performs services which in the opinion of the Board are outside the scope of the ordinary duties of a Director or who, at the request of the Board, engages in any journey on the business of the Company, may be paid extra remuneration as determined by the Board.

## **14.9 Travelling and other expenses**

Every Director is, in addition to any other remuneration provided for in this Constitution, entitled to be paid from Company funds all reasonable travel, accommodation and other expenses incurred by the Director in attending meetings of the Company or of the Board or of any Committees or while engaged on the business of the Company.

## **14.10 Retirement benefits; superannuation contributions**

Any person (including any officer of the Company) may be paid a benefit (including a prescribed benefit) in connection with the retirement from office (including a prescribed office) of any officer of the Company, in accordance with the Law. The Board is authorised to make arrangements with any officer with respect to, providing for, or effecting payment of, benefits in accordance with this Rule.

## **14.11 Contract with Company**

- (a) A Director is not disqualified by the office of Director from contracting or entering into any arrangement with the Company either as vendor, purchaser or otherwise and no contract or arrangement entered into with the Company by a Director nor any contract or arrangement entered into by or on behalf of the Company in which a Director is in any way interested may be avoided for that reason. A Director is not liable to account to the Company for any profit realised by any contract or arrangement, by reason only of holding the office of Director or of the fiduciary relationship established by the office.

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- (b) Except where a Director is constrained by the Law, a Director may be present at a meeting of the Board while a matter in which the Director has an interest is being considered and may vote in respect of that matter.
- (c) Despite having an interest in any contract or arrangement a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.

## **14.12 Director may hold other office**

- (a) A Director may hold any other office or position under the Company (except that of auditor or Chief Executive Officer) in conjunction with the office of Director, on terms and at a remuneration in addition to remuneration (if any) as a Director, as the Board approves.
- (b) A Director may be or become a director of or hold any other office or position under any corporation promoted by the Company, or in which it may be interested, whether as a vendor or member or otherwise, or with any other corporation or organisation, and the Director is not accountable for any benefits received as a director or member of, or holder of any other office or position under, the corporation or organisation.

## **14.13 Exercise of voting power in other corporations**

The Board may exercise the voting power conferred by membership in any corporation held or owned by the Company as the Board thinks fit (including the exercise of the voting power in favour of any resolution appointing the Directors or any of them directors of that corporation or voting or providing for the payment of remuneration to the directors of that corporation) and a Director of the Company may vote in favour of the exercise of those voting rights, despite the fact that the Director is, or may be about to be appointed, a director of that other corporation and may be interested in the exercise of those voting rights.

## **15. Appointment of a Chief Executive Officer**

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The Board may appoint a person as Chief Executive Officer for a period ending on the happening of events (if any) stipulated by the Board, and at a remuneration and on terms determined by the Board. The Board may confer on and withdraw from a Chief Executive Officer any of the powers exercisable under this Constitution by the Board as it thinks fit and on any conditions it thinks expedient but the conferring of powers by the Board on a Chief Executive Officer does not exclude the exercise of those powers by the Board.

## **16. Proceedings of Directors**

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### **16.1 Procedures relating to Board meetings**

- (a) The Board may meet together, adjourn and otherwise regulate its meetings as it thinks fit.

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- (b) Until otherwise determined by the Board, a majority of Directors eligible to vote form a quorum. Notice of meeting of the Board may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by all the Directors.

## **16.2 Meetings by telephone or other means of communication**

The Board may meet either in person or by telephone, audio-visual link or by using any other technology consented to by all the Directors. A consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting. A meeting conducted by telephone, audio-visual link or other means of communication is considered held at the place agreed on by the Directors attending the meeting if at least one of the Directors present at the meeting was at that place for the duration of the meeting.

## **16.3 Votes at meetings**

- (a) Each Director has one vote.
- (b) Questions arising at any meetings of the Board are decided by a majority of votes and in the case of an equality of votes the Chairman of the meeting has a second or casting vote (except where only two Directors are eligible to vote in which case the Chairman will not have a second or casting vote).
- (c) A Director with a material personal interest in a matter that is being considered at a meeting of the Board may be counted in a quorum and may vote on the matter, subject to the Law.

## **16.4 Chairman**

The Board may elect a Chairman and a Deputy Chairman of its meetings and determine the period for which each is to hold office. If no Chairman or Deputy Chairman is elected or if at any meeting the Chairman and the Deputy Chairman are not present at the time specified for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.

## **16.5 Powers of meetings**

A meeting of the Board at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

## **16.6 Committees**

- (a) The Board may delegate any of its powers to Committees consisting of any one or more Directors or any other person or persons as the Board thinks fit. In the exercise of delegated powers, any Committee formed or person or persons appointed to the Committee must conform to any regulations that may be imposed by the Board. A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.

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- (b) The meetings and proceedings of any Committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under paragraph (a).

## **16.7 Validity of acts**

- (a) All actions at any meeting of the Board or by a Committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been properly appointed and was qualified and continued to be a Director or a Member of the Committee.
- (b) If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Company but for no other purpose.

## **16.8 Resolution in writing**

A resolution in writing signed by all Directors or a resolution in writing of which notice has been given to all Directors and which is signed by a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Board) is a valid resolution of the Board and is effective when signed by the last of the Directors constituting the majority, as required. The resolution may consist of several documents in the same form each signed by one or more of the Directors. A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered a document in writing signed by the Director.

## **17. Powers of the Board**

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### **17.1 General powers of the Board**

The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred on it by this Constitution) may exercise all powers and do all things as are within the power of the Company and are not by this Constitution or by law required to be exercised or done by the Company in general meeting.

### **17.2 Seal**

The Company may have a common seal and a duplicate common seal which are to be used by the Company as determined by the Board.

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## **18. Notices**

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### **18.1 Service of notices**

A notice may be given by the Company to any Member, Associate Member or Delegate, or in the case of joint holders to the Member whose name appears first in the Register, personally, by leaving it at the Member's, Associate Member's or Delegate's registered address or by sending it by prepaid post or facsimile transmission addressed to the Member's, Associate Member's or Delegate's registered address or, in any case, by other electronic means determined by the Board. If the notice is signed, the signature may be original or printed.

### **18.2 When notice considered to be served**

Any notice sent by post is considered to have been served at the expiration of 72 hours after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a Member, Associate Member or Delegate personally or left at the Member's, Associate Member's or Delegate's registered address is considered to have been served when delivered. Any notice served on a Member, Associate Member or Delegate by facsimile or other electronic transmission is considered to have been served when the transmission is sent.

### **18.3 Member, Associate Member or Delegate not known at registered address**

Where a Member, Associate Member or Delegate does not have a registered address or where the Company has a reason in good faith to believe that a Member, Associate Member or Delegate is not known at the Member's, Associate Member's or Delegate's registered address, a notice is considered to be given to the Member, Associate Member or Delegate if the notice is exhibited in the Office for a period of 48 hours (and is taken to be served at the commencement of that period) unless and until the Member, Associate Member or Delegate informs the Company of a registered place of address.

## **19. Winding up**

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If upon the winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever the same shall not be paid to or distributed among the Members but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Company and which shall prohibit the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Company under or by virtue of this Rule, such institution or institutions to be determined by the Members of the Company at or before the time of dissolution or in default thereof by application to a court of competent jurisdiction for determination.

## 20. Indemnity of officers

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- (a) The Company is to indemnify each officer of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer.
- (b) Where the Board considers it appropriate, the Board may execute a documentary indemnity in any form in favour of any officer of the Company.
- (c) Where the Board considers it appropriate, the Company may:
  - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company in or arising out of the discharge of the duties of the officer; and
  - (ii) bind itself in any contract or deed with any officer of the Company to make the payments.
- (d) Where the Board considers it appropriate, the Company may:
  - (i) give a former Director access to certain papers, including documents provided or available to the Board and other papers referred to in those documents; and
  - (ii) bind itself in any contract with a Director or former Director to give the access.
- (e) In this Rule 20:
  - (i) **officer** means:
    - (A) a Director, Secretary, executive officer or employee; or
    - (B) a person appointed as a trustee by, or acting as a trustee at the request of, the Company,and includes a former officer.
  - (ii) **duties of the officer** includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or, where applicable, a subsidiary of the Company to any other corporation.
  - (iii) to the relevant extent means:
    - (A) to the extent the Company is not precluded by law from doing so;
    - (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and



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- (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.
- (iv) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.