

# Constitution of the Royal National Capital Agricultural Society

Australian Company Number (ACN) 12 008 514 912  
Australian Business Number (ABN) 008 514 912

A company limited by guarantee

*November 2017*

## Preliminary

### **1 Name of the company**

1.1 The name of the **company** is the Royal National Capital Agricultural Society (the **Society**).

### **2 Type of company**

2.1 The **Society** is a not-for-profit public **company** limited by guarantee which is established to be, and to continue as, a charity.

### **3 Limited liability of members**

3.1 The liability of members is limited to the amount of the guarantee in clause 4.

### **4 The guarantee**

4.1 Each member must contribute an amount limited to the annual membership fee (the guarantee) to the property of the **Society** if the **Society** is wound up while the member is a member, or within 12 months after the member stops being a member, and this contribution is required to pay for the:

4.1.1 debts and liabilities of the **Society** incurred before the member stopped being a member; or

4.1.2 costs of winding up.

### **5 Definitions**

5.1 In this constitution, words and phrases have the meaning set out in clause 33.

## Charitable purposes and powers

### **6 Object**

6.1 The **Society's** object is to pursue the following charitable purposes:

6.1.1 to promote the development of agricultural, pastoral and horticultural industries in the Australian Capital Territory and the surrounding region; and

6.1.2 to conduct exhibitions and competitions for:

6.1.2.1 agricultural, pastoral and horticultural products; and

6.1.2.2 arts, crafts, inventions, machinery and techniques used in industry; and

6.1.2.3 community activities and pastimes; and

6.1.3 to establish relations, and promote the exchange of views and information, with similar organisations in Australia and in other countries; and

6.1.4 to encourage, and provide facilities for, research and study in agriculture and related industries; and

6.1.5 to purchase, lease or otherwise acquire any real or personal property, or any rights or privileges, that may be required for the **Society's** purposes; and

6.1.6 to construct, alter and maintain buildings and works for the **Society's** purposes; and

6.1.7 to sell, transfer or otherwise deal with all or any part of the **Society's** property and assets in a way that the **Society** considers appropriate; and

6.1.8 to invest any money of the **Society** not immediately required for its purposes in the way decided by the **Society** from time to time; and

- 6.1.9 to borrow, raise or secure the payment of money in a way the **Society** considers appropriate for the **Society's** purposes; and
- 6.1.10 to employ people for the **Society's** purposes; and
- 6.1.11 to do anything else incidental or conducive to the advancement of any of the **Society's** purposes.

## **7 Powers**

- 7.1 Subject to clause 8, the **Society** has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:
  - 7.1.1 the powers of an individual; and
  - 7.1.2 all the powers of a **company** limited by guarantee under the **Corporations Act**.

## **8 Not-for-profit**

- 8.1 The **Society** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 20.
- 8.2 Clause 8.1 does not stop the **Society** from doing the following things, provided they are done in good faith:
  - 8.2.1 paying a member for goods or services the member has provided or expenses the member has properly incurred at fair and reasonable rates or rates more favourable to the **Society**; or
  - 8.2.2 making a payment to a member in carrying out the **Society's** charitable purposes.

## **9 Amending the constitution**

- 9.1 Subject to clause 9.2, the members may amend this constitution by passing a **special resolution**.
- 9.2 The members must not pass a **special resolution** that amends this constitution if passing it causes the **Society** to no longer be a charity.

## Members

### **10 Membership and registration of members**

- 10.1 The members of the **Society** are the **initial members at the date this constitution comes into effect**, and any other person that the Board allows to be a member, in accordance with this constitution and by-laws.
- 10.2 Details of the register of members, application for membership, approval of applications and the cessation of membership, are set out in the by-laws.

## General meetings of members

### **11 General meetings**

- 11.1 The Directors or members may call a **general meeting**.
- 11.2 Details of the frequency, notice, quorum, representative attendance, use of technology and the role of the chairperson at meetings is set out in the by-laws.

## Members' resolutions and statements

### **12 Distribution of statements and resolutions**

- 12.1 Members may have a statement or resolution distributed to the members of the **Society**.

- 12.2 Details of the notice, distribution, conditions and type of resolution and/or members message that can be distributed are set out in the by-laws.

## Voting at general meetings

### **13 Member voting**

- 13.1 Members can vote on the business of the **Society** at **general meetings**.
- 13.2 Details on the manner of voting, appointment of proxies, notifications and recording of voting, is set out in the by-laws.

## Office Holders

### **14 Types of Office Holders**

- 14.1 The **Society** elects or appoints Directors and Councillors to manage the operations of the **Society**. Details of the election and appointment of Directors and Councillors are set out in the by-laws.

### **15 Board**

- 15.1 The **company** must have at least five (5) and no more than seven (7) Directors.
- 15.2 The Directors form the Board of the **Society**.

### **16 Council**

- 16.1 The Council consists of no more than 60 councillors.
- 16.2 The Council's functions are:
- 16.2.1 to assist and advise the Board in pursuing the purposes set out in clause 6; and
- 16.2.2 to nominate members of the Audit and Risk Committee; and
- 16.2.3 to carry out any functions given to the Council under the by-laws.

### **17 Powers of Board**

- 17.1 The Board elects a Chairperson and Deputy Chairperson.
- 17.2 The Board appoints a Company Secretary and a Chief Executive Officer. The Chief Executive Officer may be appointed as a Company Secretary.
- 17.3 The Board is responsible for managing and directing the activities of the **Society** to achieve the purposes set out in clause 6.
- 17.4 The Board directs the Company Secretary and the Chief Executive Officer to oversee the affairs of the **Society**.
- 17.5 The Board may use all the powers of the **Society** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.
- 17.6 The Board must decide on the responsible financial management of the **Society** including:
- 17.6.1 any suitable written delegations of power under clause 19; and
- 17.6.2 how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 17.7 The Board cannot remove a Director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

## **18 Audit and Risk Committee**

- 18.1 The Board must appoint an Audit and Risk Committee consisting of:
- 18.1.1 a Director, appointed as Chair of the Committee; and
  - 18.1.2 the Chief Executive Officer; and
  - 18.1.3 two members from amongst the members nominated by the Council.

## **19 Delegation of Board's powers**

- 19.1 The Board may delegate any of its powers and functions to a committee, a Director, an employee of the **Society** or any other person, as it considers appropriate.
- 19.2 The delegation must be recorded in the **Society's** minute book.

## **20 Payments to Directors**

- 20.1 The **Society** must not pay fees to a Director for acting as a Director.
- 20.2 The **Society** may:
- 20.2.1 pay a Director for work the Director does for the **Society**, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
  - 20.2.2 reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the **Society**.
- 20.3 Any payment made under clause 20.2 must be approved by the Board.
- 20.4 The **Society** may pay premiums for insurance indemnifying Directors, as allowed for by law (including the **Corporations Act**) and this constitution.

## **21 Execution of documents**

- 21.1 The **Society** may execute a document without using a common seal if the document is signed by:
- 21.1.1 two Directors of the **Society**; or
  - 21.1.2 a Director and the secretary.

## **22 Duties of Directors**

- 22.1 A Director must comply with the Director's duties as a Director under legislation and common law (judge-made law), and with the duties described in Governance Standard 5 of the regulations made under the **ACNC Act** which are:
- 22.1.1 to exercise the Director's powers and discharge the Director's duties with the degree of care and diligence that a reasonable individual would exercise if the individual were a director of the **Society**; and
  - 22.1.2 to act in good faith in the best interests of the **Society** and to further the charitable purposes of the **Society** set out in clause 6; and
  - 22.1.3 not to misuse the Director's position as a Director; and
  - 22.1.4 not to misuse information the Director gains in the role as a Director; and
  - 22.1.5 to disclose any perceived or actual material conflicts of interest in the manner set out in clause 23; and
  - 22.1.6 to ensure that the financial affairs of the **Society** are managed responsibly; and
  - 22.1.7 not to allow the **Society** to operate while it is insolvent.

## **23 Conflicts of interest**

- 23.1 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):

- 23.1.1 to the other Directors; or
- 23.1.2 if all of the Directors have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.
- 23.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 23.3 Each Director who has a material personal interest in a matter that is being considered at a meeting of the Board (or that is proposed in a circular resolution) must not, except as provided under clauses 23.4:
  - 23.3.1 be present at the meeting while the matter is being discussed, or
  - 23.3.2 vote on the matter.
- 23.4 A Director may still be present and vote if:
  - 23.4.1 the Director's interest arises because the Director is a member of the **Society**, and the other members have the same interest; or
  - 23.4.2 the Director's interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the **Society** (see clause 28); or
  - 23.4.3 the Director's interest relates to a payment by the **Society** under clause 28, or any contract relating to an indemnity that is allowed under the **Corporations Act**; or
  - 23.4.4 the Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter; or
  - 23.4.5 the Directors who do not have a material personal interest in the matter pass a resolution that:
    - 23.4.5.1 identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the **Society**; and
    - 23.4.5.2 the Directors are satisfied that the Director's interest should not stop the Director being present and voting on the matter.

## Minutes and records

### **24 Minutes and records**

- 24.1 The **Society** must make and keep records that detail the activities of the **Society** and satisfy statutory and legal obligations.
- 24.2 Details of the type, frequency, storage and access of these records are set out in the by-laws.

## By-laws

### **25 By-laws**

- 25.1 The Board may pass a resolution to make by-laws to give effect to this constitution.
- 25.2 Members and Directors must comply with by-laws as if they were part of this constitution.

## Society Notices

### **26 Notices**

- 26.1 Anything written to or from the **Society** under any clause in this constitution or the by-laws is written notice and is subject to the Notice clauses set out in the by-laws, unless specified otherwise.
- 26.2 Details as to the type, audience, format and manner of delivery of notices is set out in the by-laws.

## Financial year

### **27 Society financial year**

- 27.1** The **Society's** financial year is from 1 April to 31 March, unless the Board passes a resolution to change the financial year.

## Indemnity, insurance and access

### **28 Indemnity**

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

### **29 Insurance**

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

### **30 Directors' access to documents**

- 30.1** A Director has a right of access to the financial records of the **Society** at all reasonable times.
- 30.2** If the Board agrees, the **Society** must give a Director or former Director access to:
- 30.2.1** documents agreed by the Board, including documents provided for, or available to the Directors; and
- 30.2.2** any other documents referred to in those documents.

## Winding up

### **31 Surplus assets not to be distributed to members**

- 31.1** If the **Society** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **Society**, unless that member or former member is a charity described in clause 32.1.

### **32 Distribution of surplus assets**

- 32.1** Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **Society** is wound up must be distributed to one or more charities:

- 32.1.1 with charitable purpose(s) similar to, or inclusive of, the purposes in clause 6; and
- 32.1.2 which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **Society**.
- 32.2 The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **Society** may apply to the Supreme Court to make this decision.

## Definitions and interpretation

### 33 Definitions

- 33.1 In this constitution:
  - 33.1.1 **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).
  - 33.1.2 **Society** means the **company** referred to in clause 1.
  - 33.1.3 **Corporations Act** means the *Corporations Act 2001* (Cth).
  - 33.1.4 **general meeting** means a meeting of members and includes the annual **general meeting**.
  - 33.1.5 **initial member** means a person who is a member on the date this constitution takes effect.
  - 33.1.6 **member present** means, in connection with a **general meeting**, a **member present** in person, by representative or by proxy at the venue or venues for the meeting.
  - 33.1.7 **registered charity** means a charity that is registered under the **ACNC Act**.
  - 33.1.8 **special resolution** means a resolution:
    - 33.1.8.1 of which notice has been given; and
    - 33.1.8.2 that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution.
  - 33.1.9 **surplus assets** means any assets of the **Society** that remain after paying all debts and other liabilities of the **Society**, including the costs of winding up.

### 34 Reading this constitution with the Corporations Act

- 34.1 The replaceable rules set out in the **Corporations Act** do not apply to the **Society**.
- 34.2 While the **Society** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.
- 34.3 If the **Society** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.
- 34.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

### 35 Interpretation

- 35.1 In this constitution:
  - 35.1.1 the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and
  - 35.1.2 reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).