

CONSTITUTION OF
Queensland Cane Growers Organisation Ltd.
ACN 089 992 969

31 May 2006

History:			
Adopted on:	/	/	/
Amended:	/	/	/

A COMPANY LIMITED BY GUARANTEE

CONSTITUTION

of QUEENSLAND CANE GROWERS ORGANISATION LTD.

ACN 089 992 969

1. GENERAL

1.1 Name of Company

The name of the Company is Queensland Cane Growers Organisation Ltd.

1.2 Replaceable Rules

The Replaceable Rules do not apply to the Company.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In these rules unless it is inconsistent with the subject or context in which it is used:

‘ASIC’ means the Australian Securities and Investments Commission;

‘Board’ means the Directors for the time being of the Company;

‘Chairman’ includes an acting Chairman under **rule 10.5**;

‘Committee’ means a committee to which powers have been delegated by the Board pursuant to **rule 15.7**;

‘Company’ means Queensland Canegrowers Organisation Ltd ACN 089 992 969;

‘Constitution’ means the constitution of the Company, as amended from time to time;

‘Director’ means a person appointed or elected from time to time to the office of director of the Company in accordance with these rules and includes any alternate director duly appointed as a member of the Board;

‘Directors’ Nomination Entitlement’ means the right of a Local CANEGROWERS Company to nominate a person or persons for appointment to the Board as a Director or Directors of the Company where any nominated person must be an appointed director of that relevant Local CANEGROWERS Company and must also a Member;

‘Financial Member’ means a Member who has paid all membership fees, levies and other moneys payable by the Member to the Company;

‘Grower’ means a person who is a member of a Local CANEGROWERS Company and who grows sugar cane for delivery or supply to a Mill;

‘Law’ means the *Corporations Act 2001* and the *Corporations Regulations 2001*;

‘Local CANEGROWERS Company’ means a company registered under the Law or corporation registered under any statute or Act of a State or of the Commonwealth of Australia and approved by the Company which has common objects to:

- (a) represent and advance the interests of its members;

- (b) enhance the profitability and sustainability of sugar cane growing; and
- (c) be part of a strong state-wide organisation representing the interests of Members (and in circumstances where there is commonality of membership between a member of a Local CANEGROWERS Company and the Company). For the purposes of clarification, the current Local CANEGROWERS Companies are set out and described in **Schedule 1** where such schedule also identifies the relevant Mill or Mill location by district supplied with sugar cane by each member of a Local CANEGROWERS Company.

‘**Member**’ means a person who becomes a member in accordance with **rule 5.2**;

‘**Members present**’ means Members present at a general meeting of the Company in person or, if applicable, by duly appointed corporate representative, proxy or attorney;

‘**Mill**’ means a mill or sugar cane processing factory in the district proximate to the areas at which sugar cane may be farmed or grown by a Grower and where, for identification purposes, Mill district is identified with a Local CANEGROWERS Company in **Schedule 1**;

‘**Office**’ means the registered office from time to time 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;

‘**QCGO**’ means Queensland Cane Growers Organisation Ltd. ACN 089 992 969;

‘**Register**’ means the register of Members of the Company established pursuant to the Law;

‘**Registered address**’ means the address of a Member specified in the Register or any other address of which the Member notifies the Company as a place at which the Member will accept service of notices;

‘**Replaceable Rules**’ means all or any of the replaceable rules contained in the Law from time to time and includes any replaceable rule that was or may become, a provision of the Law;

‘**rules**’ means the rules of this Constitution as altered or added to from time to time;

‘**Seal**’ means the common seal, if any, from time to time of the Company;

‘**Secretary**’ means a person appointed as secretary of the Company and includes any person appointed to perform the duties of secretary;

‘**securities**’ includes shares, rights to shares, options to acquire shares and other securities with rights of conversion to equity;

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

2.2 Interpretation

- (a) Words and phrases which are given a special meaning by the Law have the same meaning in these rules, unless the contrary intention appears.
- (b) Words in the singular include the plural and vice versa.
- (c) Words importing a gender include each other gender.
- (d) A reference to the Law or any other statute or regulations is to be read as though the words ‘as modified or substituted from time to time’ were added to the reference.
- (e) The headings and sidenotes do not affect the construction of these rules.
- (f) An expression used in a particular Part, Division, Schedule or regulation of the Law that is given by that Part, Division, Schedule or regulation a special meaning for the purpose of that Part, Division Schedule or regulation has, in any of these rules that deals with a

matter dealt with by that Part, Division, Schedule or regulation, unless the contrary intention appears, the same meaning as in that Part, Division, Schedule or regulation.

3. OBJECTS AND POWERS

3.1 Objects of Company

The objects of the Company are to:

- (a) represent and advance the interest of its Members;
- (b) enhance the profitability and sustainability of sugar cane growing;
- (c) be part of and be the peak body for a strong State-wide network representing the interests of Members;
- (d) establish services of a commercial or a non-commercial nature for the purposes of assisting Members and maintaining services as required;
- (e) carry out any functions and obligations required by government legislation;
- (f) promote and develop the sugar industry.
- (g) investigate and manage sugar industry problems;
- (h) deal with matters concerning the production of sugar cane and/or manufacture of sugar;
- (i) approach governments about promoting or amending legislation concerning the sugar industry;
- (j) help to remedy Members' genuine grievances and to improve the position of Members;
- (k) help Members to achieve a fair return on their investments;
- (l) develop Member risk management schemes to stabilise fluctuations in returns to Members;
- (m) seek and secure markets for sugar cane products;
- (n) study markets, gather information about marketing processes and costs and make market information available to anyone the Company considers appropriate;
- (o) reduce unnecessary marketing costs;
- (p) improve distribution, storage, handling and transport of sugar cane products;
- (q) promote combined action by Members and others interested in the sugar industry;
- (r) decide policy for the direction of sugar industry research and carry out supporting research for the policy;
- (s) take action to control sugar cane diseases and pests;
- (t) help the development and use of technological innovation in the sugar industry;
- (u) advise and instruct Members about farm management, accountancy and economics and the cost of production;
- (v) help to promote farmers cooperatives and enterprises concerning the production and marketing of sugar cane products;
- (w) collect and keep information of value to the sugar industry;
- (x) provide legal advice and assistance to Local CANEGROWERS Companies about any matter of importance to the sugar industry;
- (y) improve rural life and education;

- (z) anything else it considers appropriate to protect or advance the sugar industry or Members;
- (aa) assist Local CANEGROWERS Companies to carry out their functions;
- (bb) and such other functions as the Board may determine from time to time.

3.2 Separate objects

Each of the above objects constitutes a separate object of the Company, and no such object may be construed by reference to any other such object.

3.3 Powers of the Company

In carrying out its objects, the Company may, without limiting its powers under the Law:

- (a) enter into contracts;
- (b) acquire, hold, dispose of and deal with property;
- (c) appoint and act through agents or attorneys; and
- (d) do anything else necessary or convenient to be done for its functions.

3.4 Corporate structure

The Board shall be constituted by persons who are nominated by Local CANEGROWERS Companies having regard to the Directors' Nomination Entitlements, in recognition that a Member of the Company shall also be a member of a Local CANEGROWERS Company and that such structure, until varied, shall be recognised as the means to best achieve the objects of the Company, having regard to the Company's standing as a recognised industry body and where its objects may involve local, State, national and international issues.

3.5 No power to issue shares

The Company has no power to issue nor allot fully or partly paid shares to any person.

4. NON-PROFIT NATURE OF THE COMPANY

4.1 Non-profit

- (a) The income, property, profits and financial surplus of the Company, whenever derived, must be applied solely towards the promotion of the objects of the Company as set out in this Constitution.
- (b) The Company is a non-profit organisation and shall not carry on business for the purpose of profit or gain to its individual Members and no portion of its income, property, profits and financial surplus may be paid, distributed to or transferred, directly, indirectly, by way of dividend, property, bonus or otherwise by way of profit, to the Members, or the Board, or their relatives, except as provided by this Constitution.
- (c) Nothing in this Constitution prevents:
 - (i) the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Company, or to any Member or Director of the Company, in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
 - (ii) the payment of interest at a rate not exceeding interest at the rate for the time being charged by the Company's bankers for overdrawn accounts on money borrowed from a Member; or

- (iii) reasonable and proper rent for premises demised or let by any Member to the Company.

4.2 No distribution of profits to Members on winding up

Where property remains after the winding-up or dissolution of the Company and satisfaction of all its debts and liabilities, it may not be paid to nor distributed among the Members of the Company but must be given to or transferred to another fund, authority or institution having objects similar to the objects of the Company, and whose Constitution prohibits 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 Constitution, which fund, authority or institution is to be determined by the Members of the Company at or before the time of the dissolution.

4.3 Limited liability on winding up

Each Member of the Company undertakes to contribute to the assets of the Company in the event of its being wound up while he is a Member or within one year after he ceases to be a Member for the payment of the debts and liabilities of the Company contracted before he ceases to be a Member and of the costs charges and expenses of winding up and for adjustment of the rights of the contributors among themselves, such amount as may be required, not exceeding \$2.

4.4 Amalgamation

Where it furthers the objects of the Company to amalgamate with any one or more other organisations having similar objects as the Company, the other organisation(s) must have rules prohibiting the distribution of its (their) assets and income to members, and must be exempt from income tax.

5. MEMBERSHIP

5.1 Types of membership

- (a) The Company shall have Growers as Members.
- (b) The Board in accordance with **rule 5.3** may recognise an associate.
- (c) The Board in accordance with **rule 5.4** may also recognise affiliates.

5.2 Members

- (a) Any person who before this Constitution came into effect, was a Financial Member of the Company shall continue to be a Financial Member of the Company.
- (b) The Board may admit as a Member of the Company any person who:
 - (i) applies to become a current member of QCGO; and
 - (ii) grows sugar cane for delivery to a Mill; and
 - (iii) completes an application in the form directed by the Board.
- (c) As the Board will be empowered to determine the form and content requirement of the form of application for membership and to require the payment in full of any joining or membership fee associated with an application for admission as a Member, the Board may establish any criteria in determining eligibility for admission as a Member or its associates or affiliates.
- (d) Notwithstanding **rule 5.2(b)**, the Board may in its absolute discretion admit or reject any applicant for Membership without the necessity of assigning any reason therefore. If the

applicant is not admitted as a Member in due course, all monies paid by him or her to the Company must be returned forthwith in full.

5.3 Associates

- (a) The Board may from time to time in their absolute discretion recognise, as an associate of the Company, any person who is:
 - (i) connected with the production or delivery of cane to a Mill, but is unable to be admitted as a Member in accordance with **rule 5.2**.
 - (ii) any other such person in the Boards absolute discretion.
- (b) An associate shall be liable to pay fees as determined by the Board.
- (c) Associates are not entitled to:
 - (i) the rights and privileges of a Member;
 - (ii) receive notice of a general meeting;
 - (iii) vote at a general meeting; and
 - (iv) hold office in the Company.

5.4 Affiliates

- (a) The Board may from time to time in their absolute discretion recognise, as an affiliate of the Company, any person.
- (b) An affiliate shall be liable to pay fees as determined by the Board.
- (c) Affiliates are not entitled to:
 - (i) the rights and privileges of a Member;
 - (ii) receive notice of a general meeting; and
 - (iii) vote at a general meeting; and
 - (iv) hold office in the Company.

5.5 Status verification

- (a) Having regard to the date which this Constitution is adopted as the replacement Constitution by the Members all persons who are Members, associates or affiliates at the time shall continue to be Members, associates or affiliates as the case may be.
- (b) Local CANEGROWERS Companies identified in **Schedule 1** are recognised as having been approved by the Company as Local CANEGROWERS Companies.

5.6 Voting rights of Members

The entitlement of Members to vote on a show of hands and on a poll is as follows:

- (a) each Member has the right to one vote;
- (b) no associate has the right to vote; and
- (c) no affiliate has the right to vote.

5.7 Changes to Local CANEGROWERS Companies

- (a) Having regard to any potential for any of the Local CANEGROWERS Companies mentioned in **Schedule 1** to merge, to rationalise its operations, to cease to conduct business or to cease (in the opinion of the Board) to have sufficient Members or cease to be an approved Local CANEGROWERS Company, the Board shall be empowered to make such necessary amendments to the Register and to **Schedule 1** to record, as the case may be, the cessation of approval of a Local CANEGROWERS Company.

- (b) The closure or cessation of business of any Mill supplied by Growers and in circumstances where the Board reasonably believe that for a period of not less than 12 months, that the balance of probability is that it is unlikely for that Mill or a replacement Mill to operate on the existing site of the relevant Mill supplied by Growers, shall also constitute a basis for the Board to rescind approval given to a Local CANEGROWERS Company.
- (c) The decision to recognise any merger between one or more Local CANEGROWERS Companies with another or others, the substitution of a new company or corporation for the currently named Local CANEGROWERS Company by reason of a merger, takeover, reconstruction, scheme of arrangement or other process recognised by Law (including administrative changes affecting the Local CANEGROWERS Company) shall be a matter for the Board to determine at its discretion in terms of ability, adequacy and proximity to represent Members of the Company in relation to the location of a Mill or Mills.

5.8 Directors' Nomination Entitlement

Having regard to the provisions of **rule 13** and the Directors' Nominations Entitlements of each Local CANEGROWERS Company, the Board shall have the discretion at any time to make appropriate changes to the Directors' Nomination Entitlements identified in **Schedule 1** as a result of any of the circumstances referred to in **rule 5.7** occurring and may:

- (a) eliminate any existing Directors' Nomination Entitlement identified in **Schedule 1**;
- (b) increase or decrease the Directors' Nomination Entitlement for some one or more Local CANEGROWERS Companies in **Schedule 1**;
- (c) to make such other changes as the Board reasonably believes is necessary to equitably justify a change to the Directors' Nomination Entitlements recorded against a Local CANEGROWERS Company in **Schedule 1**.

5.9 Board approval - New Local CANEGROWERS Company

In order to foster a strong industry-wide group of corporate members, the Board may approve a company as a new company ('New Local CANEGROWERS Company') to represent Growers who deliver sugar cane to a specified Mill, mills or sugar cane processing factories. The Board may approve a New Local CANEGROWERS Company provided the constitution of the New Local CANEGROWERS Company contains provisions which:

- (a) provide a name for the New Local CANEGROWERS Company which is appropriate;
- (b) set out functions and powers which are appropriate for the New Local CANEGROWERS Company as a company representing the interests of Growers;
- (c) provide that the New Local CANEGROWERS Company is a not for profit, company limited by guarantee;
- (d) provide, as a condition for the membership of the New Local CANEGROWERS Company, that:
 - (i) a Grower may only be a member of the New Local CANEGROWERS Company if the Grower supplies sugar cane to either a stipulated Mill or mills or other sugar cane processing factory (as the case may be);
 - (ii) in agreeing to become a Member of the New Local CANEGROWERS Company, the Grower acknowledges that the Company may collect membership fees on behalf of the New Local CANEGROWERS Company; and
 - (iii) if a Grower ceases to be a Member of the Company, the Grower also ceases to be a member of the New Local CANEGROWERS Company; and

- (e) despite clause 5.9(d), a New Local CANEGROWERS Company may recognise associates and affiliates.

5.10 Requirement for reciprocal membership

This Constitution shall be construed as requiring a Grower to become a member of a Local CANEGROWERS Company or New Local CANEGROWERS Company that the Grower is entitled to become and remain a member of, and failing to become and remain a member of a Local CANEGROWERS Company or New Local CANEGROWERS Company (as the case may be) will result in that Grower ceasing to be a Member of the Company. Accordingly:

- (a) within 3 months of becoming eligible for membership of a Local CANEGROWERS Company or New Local CANEGROWERS Company (as the case may be) the Grower shall apply to become a member of the Local CANEGROWERS Company or New Local CANEGROWERS Company (as the case may be); and
- (b) while a Grower remains eligible for membership of a Local CANEGROWERS Company or New Local CANEGROWERS Company (as the case may be), the Grower shall maintain the Grower's membership of the Local CANEGROWERS Company or the New Local CANEGROWERS Company (as the case may be),

failing which the Grower shall cease to be a Member of the Company.

5.11 Effect on this Constitution - New Local CANEGROWERS Company

Upon the approval of a company as a New Local CANEGROWERS Company, to the greatest extent possible, it shall enjoy all the rights and privileges that are enjoyed by a Local CANEGROWERS Company under this Constitution.

5.12 Changes to Name or Constitution

The name of the Company and Constitution of the Company can not be altered unless 75% of the Members present and voting at a general meeting called in accordance with this Constitution agree.

5.13 Board's power to withdraw approval

- (a) The Board shall withdraw its approval of a Local CANEGROWERS Company or a New Local CANEGROWERS Company (as the case may be) where the Local CANEGROWERS Company or the New Local CANEGROWERS Company (as the case may be):
 - (i) alters its company, business or trading name;
 - (ii) alters any provision in its constitution regarding:
 - (A) the definition of Mill;
 - (B) the requirements for membership of that company;
 - (C) the collection and reimbursement of membership fees;
 - (D) the appointment of directors to the board of the Company; or
 - (E) the qualifications required to be a director of that company; or
 - (iii) acts in a manner which is detrimental to the interests of the Company,unless the Board is satisfied, in its absolute discretion, that there are reasonable grounds why the Local CANEGROWERS Company or the New Local CANEGROWERS Company (as the case may be) should not have its approval withdrawn.
- (b) Notwithstanding **rule 5.9**, in the event that the approval of the Board is withdrawn in accordance with **rule 5.13(a)**, for the purposes of this Constitution, a Local CANEGROWERS Company or a New Local CANEGROWERS Company (as the case

may be) shall no longer be treated as a Local CANEGROWERS Company or a New Local CANEGROWERS Company (as the case may be). For example:

- (i) this Constitution will no longer be construed as if the relevant reference to the Local CANEGROWERS Company or the New Local CANEGROWERS Company (as the case may be) were a Member; and
 - (ii) a Grower may remain a Member of the Company notwithstanding that they are no longer a member of a Local CANEGROWERS Company or a New Local CANEGROWERS Company (as the case may be).
- (c) In the event that the approval of the Board is withdrawn in accordance with **rule 5.13(a)**, the following will apply:
- (i) a director of the Company, approved or nominated by or through the Local CANEGROWERS Company or the New Local CANEGROWERS Company (as the case may be), will immediately cease to be a Director of the Company;
 - (ii) the Board of the Company may fill any casual vacancy caused as a result of **rules 5.13(a)** and **5.13(c)(i)**, with the appointee to hold office until the earlier of the next general meeting or the approval of a New Local CANEGROWERS Company in accordance with **rule 5.9**; and
 - (iii) the Board may exercise such other powers as are required to ensure that the interests of Growers in the area affected by the withdrawal of approval of a Local CANEGROWERS Company or a New Local CANEGROWERS Company (as the case may be) are represented.'

5.14 Board discretions

The discretions conferred upon the Board with respect to **Schedule 1** and Local CANEGROWERS Companies under **rules 5.7 to 5.13** shall apply with respect to any New Local CANEGROWERS Company to the extent that the Board may at its discretion:

- (a) enter the name of a New Local CANEGROWERS Company in **Schedule 1** together with its ACN and Directors' Nomination Entitlement and applicable Mill/district;
- (b) delete the existing name of a Local CANEGROWERS Company (if applicable) and where a New Local CANEGROWERS Company has adopted, assumed or subsumed the functions or role of a Local CANEGROWERS Company, recognise the adoption, assumption or subsumption of the role of a Local CANEGROWERS Company.

5.15 Becoming a Member evidence of agreement to Constitution

The fact of a person becoming a Member shall be conclusive evidence that the person agrees to be bound by the Constitution of the Company and any regulations which may be made under the Constitution.

5.16 Rights of Grower Members (Financial)

Every Grower Member who is also a Financial Member:

- (a) has the right to receive notices of and to attend and be heard at any general meeting of the Company; and
- (b) has the right to vote at any general meeting of the Company.

5.17 Rights of Grower Members (Unfinancial)

Every Grower Member who is not a Financial Member:

- (a) has the right to receive notices of and to attend any general meeting of the Company, but shall not have the right:

- (i) to be heard at any general meeting of the Company;
- (ii) to vote at any general meeting of the Company; and
- (iii) to receive benefits and services otherwise provided or made available to a Member who is a Financial Member.

5.18 Member to notify change of details

A Member must give written notice to the Secretary of the Company of any change in the Member's name, address, telephone or facsimile number within one month after the change.

5.19 Rights of other Members

Other Members of the Company (not including Grower Members) shall have the rights assigned to that class of membership as determined by the Board.

5.20 Register of Members

A Register of the Members of the Company must be kept in accordance with the Law. The following details must be entered in the Register in respect of each Member:

- (a) the Member's full name;
- (b) the Member's address;
- (c) in the case of a Member who is not a natural person, the full name of its corporate representative;
- (d) the Member's telephone and facsimile number and email address (if any);
- (e) the category or class of membership;
- (f) the date of admission to and cessation of membership;
- (g) the Mill relevant for processing the sugar cane produced by the Member; and
- (h) details of payment of membership fees and levies.

5.21 Number and Appointment of representatives

A Member may not appoint more than one authorized representative at any time.

A Member other than a natural person must appoint an individual as its authorised representative:

- (a) for a corporation – an officer or member of the corporation;
- (b) for an estate – a personal representative or beneficiary of the estate;
- (c) for a trust – a trustee or beneficiary of the trust.

5.22 Power to appoint an authorised representative

An authorised representative may be appointed only by giving the appointee a signed certificate ('Representative Authority') stating the appointee is the Member's authorised representative. The Representative Authority must be signed as follows:

- (a) if the appointor is a corporation - by an officer of the corporation;
- (b) if the appointor is an estate - by each personal representative of the estate;
- (c) if the appointor is a partnership - by each partner;
- (d) if the appointor is a trust - by each trustee of the trust.

5.23 Other representative capacities

- (a) If a Member holds his/her membership jointly with or in partnership with another person or persons, the person first recorded in the register shall be entitled to exercise the right to vote on behalf of all joint Members in the absence of any authorisation in writing signed by the Member to the contrary. In any instance where a membership is held jointly with or in partnership with another person or persons and the first person recorded in the register is absent or unable to vote and in the absence of any authorisation in writing signed by the Member to the contrary, the person next named in the register (or, as applicable, consequentially named thereafter) and who is present and able to vote shall be entitled to exercise the right to vote on behalf of all such Members.
- (b) The instrument of appointment must be in writing and lodged with the Company.

5.24 Effect of representative authority

A representative authority is evidence of the matters stated in it.

5.25 Cancellation of representative authority

The appointment of a Member's authorised representative may be cancelled by signed notice given to the former authorized representative. The notice may only be signed as follows:

- (a) if the Member is a corporation-by an officer of the corporation;
- (b) if the Member is an estate-by each personal representative of the estate;
- (c) if the Member is a partnership-by each partner;
- (d) if the Member is a trustee-by each trustee of the trust.

6. CEASING TO BE A MEMBER

6.1 Resignation

A Member may resign from membership of the Company by giving written notice to the Secretary. Subject to **rule 6.4**, the resignation takes effect from the date of receipt of the notice of resignation or any later date specified in the notice.

6.2 Removal from membership

A Member may be expelled from the Company by a resolution of the Board in any of the following circumstances:

- (a) where the Member is a Grower Member, that Member ceases to be a Grower;
- (b) the Member ceases to satisfy the eligibility requirements for membership;
- (c) the Member has failed to discharge the Member's obligations to the Company, whether under this Constitution or a contract;
- (d) membership fees, levies and other monies payable by the Member to the Company under this Constitution have not been paid within 60 days after the due date;
- (e) the Member acts detrimentally to the interests of the Company;
- (f) the Member acts in a way that has prevented or hindered the Company in carrying out its objects or any one or more of them;
- (g) the Member brings the Company into disrepute; or

- (h) in the opinion of the Board, the Member's conduct or actions have caused, or are likely to cause, harm or damage to the Company's reputation or goodwill, or impede or interfere with the attainment of the objects or performance of the functions of the Company.
- (i) the Member fails to comply with the reciprocal membership requirements of **rule 5.10**.

6.3 Pre-condition to removal

The Board must not expel a Member under **rule 6.2** unless:

- (a) it gives written notice to the Member stating the Board's intention to expel the Member and specifying the reasons. The notice must also state that the Member has a period of 28 days after receiving the notice to show cause in writing why the Member should not be expelled; and
- (b) the Member either fails to show cause in writing within the specified time, or does show cause as required, and the Board after considering the written information submitted by the Member, is satisfied that the Member should be expelled from the Company.

6.4 Liabilities on ceasing membership

In addition to any continuing liability pursuant to **rule 4.3** of this Constitution, a Member who is not required by law to be a Member and who ceases to be a Member but at the time of ceasing membership is still a Grower, remains liable for all membership fees, levies and other monies payable by the Member for the whole of the sugar cane crushing season in which the cessation of membership takes place.

7. FEES AND LEVIES

7.1 Unpaid Fees and Levies

If:

- (a) a Member fails to pay a fee or levy and that fee or levy remains unpaid for 2 months after it becomes payable; and
 - (b) a notice of default is given to that Member pursuant to a resolution of the Directors,
- then the Member ceases to be entitled to any of the rights or privileges of a Financial Member but these may be reinstated on payment of all arrears if the Directors think fit to do so.

7.2 Making levies

The Board may make levies on Members. These may be administration levies or particular levies.

7.3 General Levies

The Board may, subject to **rule 7.7**, make a general levy or levies on Members for the support of the Company where any levy shall be used for the purposes consistent with the imposition of any such levy or levies.

7.4 Particular Levies

In addition to general levies, the Board may, subject to **rules 7.5 and 7.7**, make levies on Members for particular purposes including, but not limited to, such things as cane testing and crop insurance. The levies may be made on:

- (a) named Members;
- (b) Members who may be members of a Local CANEGROWERS Company;

- (c) Growers who may be members and who are also persons who grow sugar cane for delivery to a Mill;
- (d) Members in a particular area;
- (e) Members in a particular class;
- (f) Growers in a particular area;
- (g) Growers in a particular class;
- (h) all Members; or
- (i) all Growers

and the rates of levies may vary according to the particular Member, grower or class identified with respect to which the levy or levies are made.

7.5 Objection to particular levy

In the case of a particular levy (but not otherwise) may, by notice in writing to the Secretary, request that a poll be taken of Members liable to pay the particular levy as to whether the Members should pay the levy. The poll will be taken in the manner determined by the Board. If a majority of the Members who vote in the poll cast votes against paying the levy, then the levy will cease to apply as from the day upon which the returning officer declares the result of the poll.

7.6 Rate of levy

The Board may at any time and from time to time:

- (a) fix the amount of a levy for sugar cane supplied by Members;
- (b) determine the method of calculation of a levy;
- (c) amend, vary or otherwise alter the method of calculation of a levy rate; and
- (d) increase or decrease the amount of any levy.

7.7 Procedure for making a levy

The Board may pass a resolution making a levy and must give notice of the making of a levy to each Member, as the case may be grower, by either posting a written notice to the Member at that Member's address as recorded in the Register of Members, or publishing a notice in the Company's periodic publication. The notice must specify:

- (a) the nature and purpose of the levy;
- (b) the rate of the levy;
- (c) the person who must pay the levy;
- (d) the time within which each amount of levy must be paid; and
- (e) the season to which the levy applies.

7.8 Authority for Mills to deduct and pay

A Member who supplies sugar cane to a Mill unconditionally and irrevocably authorises, directs and requests the Mill to:

- (a) deduct the levy payable by the Member in relation to the sugar cane from the cane payment proceeds the Mill holds to the credit of the Member;
- (b) pay the levy payable by the Member in relation to the sugar cane direct to the Company within 7 days after making the deduction, or such other time determined by the Board;
- (c) supply information to the Company about the cane supplied by that Member including:

- (i) the name of the Mill;
- (ii) the name of the Mill to which the land on which the sugar cane supplied is grown is assigned;
- (iii) the period over which the sugar cane was supplied;
- (iv) the tonnage of sugar cane supplied;
- (v) any amount deducted,

and any other information requested by the Company to assist it to calculate levies.

7.9 Member must not stop payment authority

A Member must not:

- (a) purport to cancel or revoke the payment authority;
- (b) give any written or oral direction to a Mill to the effect that the Mill should not comply with the payment authority or should not pay the levy payable by the Member; and
- (c) make any threat, promise, inducement or representation which has the effect, or is likely to have the effect, of causing the Mill not to deduct and pay the levy payable by the Member.

7.10 Payment of levy by Member (default by Mill)

A Member who supplies sugar cane through or to a Mill, but the Mill fails to deduct and pay the levy in accordance with the payment authority, must pay the levy within one month after the Company sends a written notice to the Member requiring payment.

7.11 Member to supply information

A Member must answer any written request by the Company for information concerning sugar cane grown by or on behalf of the Member within 14 days of the date of the request.

7.12 Recovery of unpaid levies

If an amount of a levy is not paid by a person in compliance with this Constitution, the amount is recoverable by the Company as a debt due to the Company by the Member in a court of competent jurisdiction.

A certificate by the Secretary specifying the amount owing is conclusive evidence unless the contrary is proven.

7.13 Goods and Services Tax

All fees, levies and other monies payable by a Member are calculated without regard to any goods and services, consumption, valued added or similar tax ('GST'). To the extent that any fees, levies or other money is consideration for a taxable supply under GST legislation, the Board may increase the fee, levy or other money by an amount not exceeding the amount calculated by applying the GST rate to the fee, levy or other money.

8. FINANCIAL RECORDS

8.1 Keeping of financial records

- (a) The financial year of the Company commences on the first day of July and ends on the 30th day of June in the following calendar year.

- (b) Proper books and financial records must be kept and maintained showing correctly the financial affairs of the Company. The Company must ensure the relevant accounting and auditing requirements of the Law are duly complied with.
- (c) The Board must distribute to all Members copies of the financial report including a copy of the auditor's report and any other documentation, in the form and manner required or permitted under the Law.
- (d) The Board must cause to be made out and laid before each annual general meeting a statement of financial performance, statement of financial position, profit and loss statement and statement of cash flows made up to a date not more than 6 months before the date of the meeting.

8.2 Banking of monies

All the monies of the Company shall be banked in the name of the Company in a bank account at such bank as the Board may from time to time direct.

8.3 Appointment of auditor

The Company must appoint and retain a properly qualified auditor whose duties are determined in accordance with the Law. No Member may act as auditor of the Company.

8.4 Inspection of records of the Company

- (a) The Board may at its sole discretion determine whether and to what extent, and at what time and place and under what conditions the financial records and other documents of the Company or any of them will be open to the inspection of Members other than the Board.
- (b) No Member other than a Director has the right to inspect any document of the Company except as provided by Law or as authorised by the Board.

9. GENERAL MEETINGS

9.1 General meetings

- (a) General meetings of the Company may be called and held at the times and places and in the manner determined by the Board. Except as permitted by the Law, the Members may not convene a meeting of the Company. By resolution of the Board any general meeting (other than a general meeting which has been requisitioned or called by Members in accordance with the Law) may be cancelled or postponed prior to the date on which it is to be held.
- (b) The Chairman of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:
 - (i) in possession of a pictorial-recording or sound-recording device;
 - (ii) in possession of a placard or banner;
 - (iii) in possession of an object considered by the Chairman to be dangerous, offensive or liable to cause disruption;
 - (iv) who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;
 - (v) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or

- (vi) who is not:
 - (A) a Member or a proxy, attorney or, if applicable, a corporate representative of a Member;
 - (B) a Director; or
 - (C) the auditor of the Company.
- (c) A person, whether or not a Member, who is requested by the Board or the Chairman to attend a general meeting, is entitled to be present.

9.2 Notice of general meeting

- (a) Not less than 21 days' notice of a general meeting must be given by the Board in the form and in the manner the Board thinks fit including notice of any general meeting at which the Board proposes or these rules require that an election of the Board be held. Notice of meetings shall be given to the Members and to such persons as are entitled under these rules or the Law to receive notice. 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) If the meeting is to be held at 2 or more places the notice is to set out details of the technology that will be used to facilitate such a meeting and any other matters required to be stated by the Law in relation to the use of such technology.

10. PROCEEDINGS OF MEETINGS

10.1 Business of Annual General Meetings and General Meetings

- (a) The business of an annual general meeting is to receive and consider the financial and other reports required by the Law to be laid before each annual general meeting, to announce the results of Directors nominations, when relevant, to consider resolutions required by law to be put to Members to appoint an auditor, and to transact any other business which, under these rules, is required to be transacted at any annual general meeting. All other business transacted at an annual general meeting and all business transacted at other general meetings is deemed to be special.
- (b) Except with the approval of the Board, with the permission of the Chairman or pursuant to the Law, no person may move at any meeting either:
 - (i) in regard to any special business of which notice has been given under **rule 9.2**, any resolution or any amendment of a resolution; or
 - (ii) any other resolution which does not constitute part of special business of which notice has been given under **rule 9.2**.
- (c) The auditors and their representative are entitled to attend and be heard on any part of the business of a meeting which concerns the auditors. The auditors or their representative, if present at the meeting, may be questioned by the Members, as a whole, about the audit.

10.2 Quorum

20 Members present constitute a quorum for a general meeting except if the Company at any time has only one Member or where a class of Members is constituted by one Member. No business may be transacted at any meeting except the election of a Chairman and the adjournment of the meeting unless the requisite quorum is present at the commencement of the business.

10.3 Adjournment in absence of quorum

If within 15 minutes after the time specified for a general meeting a quorum is not present, the meeting, if convened upon a requisition or called by Members, is to be dissolved, and in any other

case it is to be adjourned to the same day in the next week (or, where that day is not a business day, the business day next following that day) at the same time and place and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time specified for holding the meeting, the meeting is to be dissolved.

10.4 Chairman

- (a) The chairman of the Board is entitled to be Chairman at 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 take the chair at the meeting.

- (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 act as Chairman of the meeting,

the Directors present may choose another Director as Chairman of the meeting and if no Director is present or if each of the Directors present are unwilling to act as Chairman of the meeting, a Member chosen by the Members present is entitled to take the chair at the meeting.

10.5 Acting Chairman

If during any general meeting the Chairman acting pursuant to **rule 10.4** is unwilling to take the chair for any part of the proceedings, the Chairman may withdraw from the chair 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. Upon the conclusion of the relevant part of the proceedings the acting Chairman is to withdraw and the Chairman is to retake the chair.

10.6 General conduct of meeting

- (a) Except as provided by the Law, the general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined by the Chairman.
- (b) The Chairman may at any time the Chairman considers it necessary or desirable for the proper and orderly conduct of the meeting 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 present.
- (c) The Chairman may require the adoption of any procedure which is 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.

10.7 Adjournment

The Chairman may at any time during the course of the meeting adjourn from time to time and place to place the meeting or any business, motion, question or resolution being considered or

remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question, resolution, 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 pursuant to 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.

10.8 Voting

- (a) Each question submitted to a general meeting is to be decided in the first instance by a show of hands of the Members present and entitled to vote. Subject to **rule 10.8(b)**, in the case of an equality of votes, the Chairman has, both on a show of hands and at a poll, a casting vote in addition to the vote or votes to which the Chairman may be entitled as a Member or as a proxy, attorney or, if applicable, a duly appointed corporate representative of a Member.
- (b) On a show of hands, where the Chairman has 2 or more appointments that specify different ways to vote on a resolution, the Chairman must not vote as a proxy but has a casting vote in the case of an equality of votes cast by Members entitled to vote at the meeting.

10.9 Declaration of vote on a show of hands - when poll demanded

- (a) At any meeting, unless this constitution requires otherwise, or a poll is demanded, a declaration by the Chairman that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the book to be kept of the proceedings of the Company signed by the Chairman of that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution. A poll may be demanded:
 - (i) before a vote is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (b) A poll may be demanded by:
 - (i) the Chairman;
 - (ii) at least 2 Members present entitled to vote on the resolution.
- (c) No poll may be demanded on the election of a Chairman of a meeting.

10.10 Taking a poll

If a poll is demanded as provided in **rule 10.9**, 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 deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chairman's determination in respect of the dispute made in good faith is final.

10.11 Continuation of business

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 immediately and without adjournment.

10.12 Special meetings

All the provisions of these rules as to general meetings apply to any special meeting of any class of Members which may be held pursuant to the operation of these rules or the Law.

11. VOTES OF MEMBERS

11.1 Voting rights

- (a) The entitlement of Members to vote on a show of hands and on a poll is as set out in **rule 5.6**.
- (b) If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or trustee or such other person as properly has the management of his estate may exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.
- (c) A Member whose annual subscription is more than one month in arrears at the date of the general meeting is not entitled to vote at that meeting.
- (d) Subject to **rule 11.1**, where a person is entitled to vote in more than one capacity, that person is entitled only to one vote on a show of hands.
- (e) If the person appointed as proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands.

11.2 Appointment of proxies

- (a) Any Member entitled to vote at a general meeting may appoint one proxy.
- (b) A proxy shall be a Member of the Company who is entitled in their own right to vote at a general meeting of the Company.
- (c) 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, faxed to the Office or deposited, faxed or sent by electronic mail to any other place specified in the notice of meeting, at least 48 hours (or a lesser period as the Board may determine and stipulate in the notice of meeting) before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument proposes to vote.
- (d) 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. Any Member may deposit at the Office an instrument duly stamped (if necessary) appointing a proxy and the appointment is valid for all or any stipulated meetings of the Company until revocation.

11.3 Validity of vote

A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument of proxy or power of attorney in respect of which the vote is given, provided no notice in writing of the death, unsoundness of mind or revocation has been received at the Office before the meeting or any adjourned meeting. A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

11.4 Form and execution of instrument of proxy

- (a) An instrument appointing a proxy is required to be in writing signed by the appointor or the attorney of the appointor or, if the appointor is a corporation, under its Seal or signed by a duly authorised officer and in the form which the Board may from time to time prescribe to accept.
- (b) The instrument of proxy is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.
- (c) An instrument appointing a proxy, unless the contrary is stated, is valid for any adjournment of the meeting, as well as for the meeting to which it relates. Any duly signed proxy which is incomplete may be completed by the Secretary on authority from the Board and as permitted by the Law and the Board may authorise completion of the proxy by the insertion of the name of any Director as the person in whose favour the proxy is given.

11.5 Board to issue forms of proxy

The Board may issue with any notice of general meeting of Members or any class of Members forms of proxy for use by the Members. Each form is to make provision for the Member to write in the name of the person to be appointed as proxy and may provide that, if the Member does not so write in a name, the proxy is to be a person named on the form. The form may include the names of any of the Directors or of any other person as a suggested proxy. The forms are to be worded so that a proxy may be directed to vote either for or against each or any of the resolutions to be proposed.

11.6 Attorneys of members

Any Member may, by duly 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 from time to time together, in each case, with evidence of the due 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.

12. BOARD OF DIRECTORS

12.1 Constitution of Board

Unless otherwise determined by the Company in general meeting, the Board of Directors shall consist of not less than 3 nor more than 26 members and shall comprise one or more representatives from each Local CANEGROWERS Company (as determined by the Board) having regard to the Directors' Nomination Entitlement set out in **Schedule 1** (as from time to time amended under **rules 5.8** and **5.14**).

12.2 Varying Board representatives

The Board may at any time vary or otherwise alter the number and mix of persons and representatives to be elected or appointed as Directors including (without limitation) representative categories and the basis or criteria for determining them.

12.3 Eligibility to hold office

A person may only be elected as a Director if the person is:

- (a) an appointee who is a Director and member of a Local CANEGROWERS Company; and
- (b) mentally and physically capable of performing the duties of a member; and
- (c) not a person who has within 10 years been found guilty of fraud or an offence involving fraud or dishonesty, whether in the State or elsewhere; and
- (d) not a bankrupt and has not within 5 years been a bankrupt or a person who has taken advantage of the laws in effect relating to bankruptcy.

12.4 Term of Office

- (a) A Director holds office:
 - (i) for 3 years, starting on 1 May in the year of the persons election or re-election; or
 - (ii) until the Director earlier vacates the office.
- (b) However, the Director continues in office until a successor has been appointed or elected if at the end of the 3 years:
 - (i) the successor has not been elected or appointed; and
 - (ii) the person has not earlier vacated the office.

12.5 Director eligible for reappointment

A retiring Director is eligible for reappointment to the Board.

12.6 Election of Chairperson, Senior Vice-Chairperson and Vice-Chairperson

- (a) The officers of the Board must be elected at the first meeting of the Board.
- (b) The Board must have a chairperson, a senior vice-chairperson and vice-chairperson and such other officers as the Board may determine and who shall be elected in accordance with **Schedule 2**.
- (c) A chairperson, senior vice-chairperson and vice-chairperson and each officer holds office until:
 - (i) the officer's appointment as a Director expires;
 - (ii) the officer is removed as a Director or vacates the office of Director;
 - (iii) the officer is removed from the office or vacates the office,
 whichever occurs first.

12.7 Vacation of office

In addition to the circumstances in which an office of the Director becomes vacant by virtue of the Law or another provision of this Constitution, the office of Director becomes vacant if the Director:

- (a) dies;
- (b) resigns by signed notice given to the Board;
- (c) ceases to be a director of a Local CANEGROWERS Company;
- (d) becomes an insolvent under administration;
- (e) is prohibited by reason of an order made under the Law; and
- (f) is absent from three consecutive meetings without the leave of the chairperson of the Board and a reasonable excuse.

12.8 Retirement of Director

A Director may retire from office by giving notice in writing to the Company of that Director's intention to retire. A notice of resignation takes effect at the time which is the later of:

- (a) the time of giving notice to the Company; or
- (b) the expiration of the period, if any, specified in the notice.

12.9 How Vacancy in office is filled

- (a) The Board must promptly give the relevant Local CANEGROWERS Company that nominated the Director, notice of the board vacancy.
- (b) The Local CANEGROWERS Company shall have the right to nominate in writing an appointee to fill the board vacancy and subject to that nominee being eligible in terms of **rule 12.3**, such person shall subject to their signing a consent to act as Director providing such consent to the Company shall be elected as the Director from the date such written consent to act as director is received by the Company.
- (c) The person who fills the Board vacancy holds office:
 - (i) for the term that would have been the rest of the former Director's term of office other than for any vacancy by the former member; or
 - (ii) until the person earlier vacates the office.
- (d) If the former Director held the office of chairperson, senior vice-chairperson or vice-chairperson of the Board:
 - (i) the election of a member to hold the office must be placed on the agenda for the first Board meeting after the vacancy happens; and
 - (ii) the vacant office must be filled under **Schedule 1** at the meeting as if the meeting were a first meeting of the Board.

12.10 Vacation of officer's Office on Board

The Office of chairperson, senior vice-chairperson or vice-chairperson becomes vacant if:

- (a) the officer resigns by signed notice given to the Board or ceases to be a Director;
- (b) a majority of all of the Directors resolve that the officer's office is vacant (which majority cannot include a casting vote by the presiding member).

12.11 How officer's vacancy is filled (chairperson, senior vice-chairperson and vice-chairperson)

If at any time the office of chairperson, senior vice-chairperson or vice-chairperson becomes vacant, the Board must elect another Director to fill the vacancy. The election must be made in accordance with **Schedule 2**.

A person who, under this section, fills a vacant office, holds office:

- (a) for the term that would have been the rest of the former officer's term of office other than for any vacancy by the former officer; or
- (b) until the person earlier vacates the office.

12.12 Additions to Board

The Board may, at any time, appoint a person to be a Director (other than a Grower Director), as an addition to the existing Directors, but so that the total number of Directors does not exceed the maximum number specified in this Constitution.

12.13 Age limit for Directors

The office of a Director becomes vacant at the conclusion of the next annual general meeting after the Director attains the age of 72 years and a person over the age of 72 years may not be appointed or re-appointed as a Director except by resolution of the Company according to the Law.

12.14 Removal

- (a) A Director may be removed from office by an ordinary resolution of the Members at a general meeting of the Company convened for that purpose. At any such general meeting the Director must be given the opportunity to fully present their case either orally or in writing or partly by either or both of these means.
- (b) A Director who ceases to be a Director under **rule 12.14** retains office until the dissolution or adjournment of the general meeting at which the member is removed.

12.15 Directors who are employees of the Company

Unless otherwise determined by the Board, the office of director who is an employee of the Company and/or any of its subsidiaries, becomes vacant upon the Director ceasing to be employed (so that they are no longer employed by the Company or any subsidiary of the Company). A person whose office becomes vacant pursuant to this **rule 12.15** is eligible for reappointment or re-election as a Director of the Company.

13. EXERCISE OF VOTING POWER

13.1 Exercise of voting power in other corporations

The Board may exercise the voting power conferred by the shares 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) and a Director of the Company may vote in favour of the exercise of those voting rights notwithstanding 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.

14. ALTERNATE DIRECTORS

14.1 Director may appoint an alternate

- (a) Subject to these rules, each Director has power from time to time to appoint another person who is a Director of the Local CANEGROWERS Company which nominated the relevant Director to be a Director of the company to act as their alternate in the place of that Director, whether for a stated period or periods or until the happening of a specified event or from time to time, whenever by absence or illness or otherwise the Director is unable to attend to their duties.
- (b) The Director must first seek and obtain the consent of the Board to the appointment, which consent is not to be unreasonably withheld or delayed. The appointment is to be in writing and signed by the Director and a copy of the appointment is to be given by the appointing Director to the Company by forwarding or delivering it to the Office.
- (c) The appointment takes effect immediately upon receipt of the appointment at the Office.

14.2 Conditions of office of alternate

The following provisions apply to an alternate Director:

- (a) an alternate may be removed or suspended from office upon receipt at the Office of written notice, letter, facsimile transmission or other form of visible communication from the Director by whom the alternate was appointed to the Company;
- (b) the alternate is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the alternate was appointed is not present;
- (c) the alternate is entitled to exercise all the powers (except the power to appoint an alternate) and perform all duties of a Director, in so far as the Director by whom the alternate was appointed had not exercised or performed them;
- (d) the office of the alternate is vacated upon vacation of office by the Director or written resignation being given to the Company by the Director, by whom the alternate was appointed;
- (e) the alternate is not to be taken into account in determining the number of Directors or rotation of Directors; and
- (f) the alternate is, while acting as a Director, responsible to the Company for the alternate's own acts and defaults and is not to be deemed to be the agent of the Director by whom the alternate was appointed.

15. PROCEEDINGS OF THE BOARD

15.1 Procedures relating to Board meetings

- (a) The Board may meet together, upon each Director being given reasonable notice, for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) Until otherwise determined by the Board, a majority of Directors will form a quorum.
- (c) Notice is deemed to have been given to a Director, and all Directors are hereby deemed to have consented to the method of giving notice, if notice is sent by mail, personal delivery, facsimile transmission or by electronic mail to the usual place of residence, fax number or electronic address of the Director (if any fax number or electronic address is notified to the Company) or at any other address given to the Secretary by the member from time to time subject to the right of the Director to withdraw such consent within a reasonable period before a meeting.

15.2 Meetings by telephone or other means of communication

The Board may meet either in person or by telephone or by other means of communication consented to by all Directors subject to the right of a Director to withdraw their consent within a reasonable period before a meeting. All persons participating in the meeting must be able to hear and be heard by all other participants. A meeting conducted by telephone or other means of communication is deemed to be held at the place agreed upon by the Directors attending the meeting, provided that at least one of the Directors present at the meeting is at that place for the duration of the meeting.

15.3 Votes at meetings

Questions arising at any meeting of the Board are decided by a majority of votes. The Chairman of the meeting of the Board shall, in addition to his deliberative vote, have a second or casting vote in the event of an equality of votes.

15.4 Convening of Board meetings

- (a) The Chairman may call a special meeting of the Board by giving at least 7 days notice to each Director;
- (b) The Chairman or Secretary must call a special meeting of the Board if given a request signed by at least 10 Directors and the request must state the special meeting's purpose;
- (c) A special meeting required to be held under the preceding paragraph must be:
 - (i) called by giving notice of the meeting and a copy of the request for the meeting to each Director within 7 days after the request is received;
 - (ii) be held within 14 days after the notice is given;
- (d) A notice of any special meeting may be waived if a majority of the Directors agree;
- (e) The Board shall determine the calling of any ordinary meeting of the Board;
- (f) Ordinary meetings are to be held at a day, time and place fixed by the Board and:
 - (i) at least 7 clear days notice of an ordinary meeting must be given to each Director;
 - (ii) a notice must state the day, time and place of the meeting; and
 - (iii) notice of an ordinary meeting may be waived if a majority of the Directors agree.

15.5 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 (or, if being present, the relevant Directors refuse to act as Chairman or deputy Chairman), the Directors present may choose one of their number to be Chairman of the meeting.

15.6 Powers of meetings

A meeting of the Board or any adjournment of a meeting 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.

15.7 Delegation of powers

- (a) The Board may delegate the whole or part of its functions or powers to one or more appropriately qualified executive, Director or Committee;
- (b) For the purposes of **rule 15.7(a)**
 - ‘**appropriately qualified**’ for the delegation of a power or function means having the qualifications, experience or standing to exercise the power;
 - ‘**executive**’ means a body consisting of:
 - (i) the Board’s chairperson and each vice-chairperson; and
 - (ii) other Directors decided by the Board;
- (c) Any Committee formed or person or persons appointed to the Committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time 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.

15.8 Proceedings of Committees

- (a) The meetings and proceedings of any Committee are to be governed by the provisions of these rules 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 **rule 15.7**.

- (b) A Committee in the exercise of the duties delegated or assigned to it shall conform to any regulations, directions or instructions that may be imposed or given by the Board.
- (c) A Committee appointed by the Board shall be under the control and direction of the Board and has no direct part or power in the management of the Company.

15.9 Validity of acts

- (a) All acts done at any meeting of the Board or by a Committee or by any person acting as a Director are, notwithstanding 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 duly appointed and was qualified and continued to be a Director or a member of the Committee (as the case may be).
- (b) If the number of Directors is reduced below the minimum number fixed pursuant to these rules, 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.

15.10 Resolution in writing

- (a) A resolution in writing of which notice has been given to all Directors and which is signed by all such members entitled to vote on the resolution is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted and may consist of several documents in the same form each signed by one or more of the Directors.
- (b) For the purposes of this rule the references to ‘**Director**’ include any alternate for the time being present in Australia who is appointed by a Director not for the time being present in Australia but does not include any other alternate Director.
- (c) A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with their authority is deemed to be a document in writing signed by that Director.

16. POWERS OF THE BOARD

16.1 General powers of the Board

- (a) 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 upon them by these rules) may exercise all powers and do all things as are within the power of the Company and are not by these rules or by Law directed or required to be exercised or done by the Company in general meeting.
- (b) The Board may make such regulations and by-laws not inconsistent with the Constitution, as in the opinion of the Board are necessary or desirable for the proper control, administration and management of the Company’s finances, affairs and property or are necessary for the convenience, comfort and well-being of the Members (including the terms of entry of Members to the Company’s premises and any event or function sponsored, promoted, facilitated or conducted by the Company) and amend or rescind from time to time any such regulations and by-laws.
- (c) A regulation or by-law of the Company made by the Board may be disallowed by the Company in a later general meeting.
- (d) A resolution or regulation made by the Company in general meeting cannot invalidate prior acts of the Board which would have been valid if that resolution or regulation had not been passed or made.

16.2 Directors may contract with Company

- (a) A Director is not disqualified by the office of director from contracting or entering into any arrangement with the Company or any other person either as vendor, purchaser or otherwise and no contract or arrangement entered into with the Company or any other person by a Director or any contract or arrangement entered into by or on behalf of the Company or any other person 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 of holding the office of or of the fiduciary relationship established by the office.
- (b) No Director may as a director vote in respect of any contract or arrangement in which the Director has directly or indirectly any material personal interest if to do so would be contrary to the Law and if the Director does vote his vote may not be counted nor shall the Director be counted in the quorum present at the meeting but either or both of these prohibitions may at any time be relaxed or suspended to any extent by an ordinary resolution passed at a general meeting, if permitted by the Law.
- (c) A Director who is interested in any contract or arrangement may, notwithstanding the interest, attest the affixing of the Seal to, or otherwise execute any document evidencing or otherwise connected with the contract or arrangement.

17. REMUNERATION

17.1 Determination of Director's fees

The Directors must be paid by way of fees for their services the amounts, if any, determined from time to time by the Company in general meeting. Directors' fees accrue from day to day. Until otherwise determined by the Company in general meeting, the annual fees payable to the Directors, in the aggregate, shall not exceed an amount of \$250,000.

17.2 Payment for expenses

The Directors must be paid all travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the Directors, or any committee of the Directors or general meetings or otherwise in performing their duties as Directors.

17.3 Other payments to officers and Members

Nothing in this Constitution prevents:

- (a) the payment in good faith of:
 - (i) remuneration to any officers or employees of the Company for services actually rendered to the Company;
 - (ii) an amount to any Member in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual course of business;
 - (iii) reasonable and proper interest on money borrowed from any Member; or
 - (iv) reasonable and proper rent for premises let by any Member to the Company; or
- (b) the distribution of government grant monies to Members where the grant is made on the basis that the monies be used for the benefit of persons including Members; or
- (c) the Company from providing services or information to the Members or classes of Members on terms which are different from the terms on which services or information are provided to other classes of Members or persons who are not Members.

17.4 Restrictions

No remuneration or other benefit in money or money's worth will be paid or given by the Company to any Director or member of any body except:

- (a) reimbursement of out-of-pocket expenses.
- (b) reasonable and proper interest on money lent;
- (c) reasonable and proper rent for premises let to the Company; or
- (d) remuneration or benefits authorised by the Constitution.

18. SECRETARY

18.1 Appointment of Company Secretaries

The Directors may appoint one or more Secretaries of the Company and may at any time terminate the appointment or appointments.

18.2 Terms of appointment of Secretaries

The Directors may determine the terms and conditions of appointment of a Secretary, including remuneration.

18.3 Secretaries may act separately

Any one of the Secretaries may carry out any act or deed required by this Constitution, the Corporations Law or by any other statute to be carried out by the secretary of the Company.

19. OTHER SALARIED OFFICERS

19.1 General Manager/Chief Executive Officer

The Board may appoint a General Manager/Chief Executive Officer at such salary and for such periods and on such terms as it thinks fit and may subject to conditions of the employment of such General Manager/Chief Executive Officer dispense with his/her services and re-appoint or appoint another General Manager/Chief Executive Officer as it thinks fit.

19.2 Other Officers and Employees

The Company's General Manager/Chief Executive Officer, may, subject to any overriding determination of the Board, appoint such officers and employees at such salaries for such periods and on such terms as thought fit and may subject to conditions of employment of such officers and employees dispense with their services and re-appoint or appoint other officers and employees as thought fit.

20. THE SEAL

20.1 Custody of Seal

If the Company has one, the Directors must provide for the safe custody of the Seal.

20.2 Execution of documents

- (a) The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by either:

- (i) a Director and the Secretary; or
 - (ii) a Director and the Chief Executive; or
 - (iii) a Director and some other person appointed by the Directors for the purpose.
- (b) The Company may execute a document without the use of a seal if the document is signed by:
- (i) a Director and the Secretary; or
 - (ii) a Director and the Chief Executive; or
 - (iii) a Director and some other person appointed by the Directors for the purpose.

20.3 Official seals

The Company may have for use in place of the Seal outside the jurisdiction where the Seal is kept one or more official seals, to be used in accordance with procedures approved by the Directors.

20.4 Other ways of executing documents

Notwithstanding the provisions of **rule 20.2**, any document including a deed, may also be executed by the Company in any other manner permitted by law.

21. MINUTES

21.1 Contents of minutes

The Board must ensure that minutes are duly recorded in any manner it thinks fit and include:

- (a) the names of the Directors present at each meeting of the Company, the Board and of any Committees; and
- (b) details of all resolutions and proceedings of general meetings of the Company and of meetings of the Board and any Committees.

21.2 Signing of minutes

The minutes of any meeting of the Board or of any Committee or of the Company, if purporting to be signed by the Chairman of the meeting or by the Chairman of the next succeeding meeting, are prima facie evidence of the matters stated in the minutes.

22. NOTICES

22.1 Persons authorised to give notices

- (a) A notice by either the Company or a Member in connection with this Constitution may be given on behalf of the Company or Member by a solicitor, director or company secretary of the Company or Member.
- (b) The signature of a person on a notice given by the Company may be written, printed or stamped.

22.2 Method of giving notices

In addition to the method for giving notices permitted by statute, a notice by the Company or a Member in connection with this Constitution may be given to the addressee by:

- (a) delivering it to a street address of the addressee;
- (b) sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee; or

- (c) sending it by facsimile or e-mail to the facsimile number or e-mail address of the addressee.

22.3 Addresses for giving notices to Members

- (a) The street address or postal address of a Member is the street or postal address of the Member shown in the Register.
- (b) The facsimile number or e-mail address of a Member is the number which the Member may specify by written notice to the Company as the facsimile number or e-mail address to which notices may be sent to the Member.
- (c) Until a person entitled to a share in consequence of the death or bankruptcy of a Member gives notice to the Company of an address for the giving of notices, the address of that person is the address of the deceased or bankrupt Member.

22.4 Address for giving notices to the Company

- (a) The street and postal address of the Company is the Registered Office.
- (b) The facsimile number or e-mail address of the Company is the number which the Company may specify by written notice to the Members as the facsimile number or e-mail address to which notices may be sent to the Company.

22.5 Time notice of meeting is given

A notice of meeting given in accordance with this Constitution is to be taken as given, served and received:

- (a) if delivered in writing to the street address of the addressee, at the time of delivery;
- (b) if it is sent by post to the street or postal address of the addressee, on the 5th business day after posting; or
- (c) if sent by facsimile or e-mail to the facsimile number or e-mail address of the addressee, at the time transmission is completed.

22.6 Time other notices are given

A notice given in accordance with this Constitution is to be taken as given, served and received:

- (a) if delivered in writing to the street address of the addressee, at the time of delivery;
- (b) if it is sent by post to the street or postal address of the addressee, on the 5th business day after posting; or
- (c) if sent by facsimile or e-mail to the facsimile number or e-mail address of the addressee, at the time transmission is completed.

22.7 Proof of giving notices

The sending of a notice by facsimile or e-mail and the time of completion of transmission may be proved conclusively by production of:

- (a) a transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee; or
- (b) a print out of an acknowledgement of receipt of the e-mail.

22.8 Persons entitled to notice of meeting

- (a) Notice of every general meeting must be given by a method authorised by this Constitution to:

- (i) every Member;
 - (ii) every Director;
 - (iii) every person entitled to a share in consequence of the death or bankruptcy of a Member who, but for the Member's death or bankruptcy, would be entitled to receive notice of the meeting; and
 - (iv) the auditor for the time being of the Company, if any.
- (b) No other person is entitled to receive notices of general meetings.

23. INDEMNITY AND INSURANCE

23.1 Indemnity in favour of Directors, Secretaries and executive officers

Subject to the Law and **rule 23.2**, the Company shall indemnify each Director, Secretary and executive officer to the maximum extent permitted by law, against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of, director, Secretary or executive officer of the Company, other than:

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

23.2 Indemnity for legal costs

The Company shall indemnify each Director, Secretary and executive officer to the maximum extent permitted by law, against any Liability for legal costs incurred by them in respect of a Liability incurred by them by virtue of their holding office as, and acting in the capacity of, director, Secretary or executive officer of the Company other than for legal costs incurred:

- (a) in defending or resisting proceedings, in which the Director, Secretary or executive officer is found to have a Liability for which they could not be indemnified under **rule 23.1**;
- (b) in defending or resisting criminal proceedings in which the Director, Secretary or executive officer is found guilty;
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this **rule 23.2(c)** does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the Director, Secretary or executive officer under the Law in which the court denies the relief.

23.3 Indemnity for employees

Subject to the Law and **rule 23.4**, the Company may indemnify an employee, who is not a Director, Secretary or executive officer of the Company, to the maximum extent permitted by law, against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of, an officer of the Company, other than:

- (a) a Liability owed to the Company or a related body corporate of the Company;
- (b) a Liability for a pecuniary penalty order under section 1317G of the Law or a compensation order under section 1317H of the Law; or

- (c) a Liability owed to a person other than the Company that did not arise out of conduct in good faith.

23.4 Indemnity for legal costs of employees

The Company may indemnify an employee other than a Director, Secretary or executive officer to the maximum extent permitted by law, against any Liability for legal costs incurred in respect of a Liability as, or by virtue of their holding office as, and acting in the capacity of, an officer of the Company other than for legal costs incurred:

- (a) in defending or resisting proceedings, in which the officer is found to have a Liability for which they could not be indemnified under **rule 23.3**;
- (b) in defending or resisting criminal proceedings in which the officer is found guilty;
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this **rule 23.4** does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the officer under the Law in which the court denies the relief.

23.5 Proceedings

For the purposes of **rules 23.2** and **23.4**, ‘**proceedings**’ includes the outcomes of the proceedings and any appeal in relation to the proceedings.

23.6 Insurance for the benefit of Directors, Secretaries and executive officers

- (a) Subject to the Law, the Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company acting in that capacity against:
 - (i) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
 - (ii) a liability arising from negligence or other conduct.

23.7 Insurance for other officers

Subject to the Law, the Company may pay a premium for a contract insuring a person who is or has been an employee and also an officer of the Company, acting in that capacity, but who is not a Director, Secretary or executive officer of the Company against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (b) a Liability arising from negligence or other conduct.

23.8 When insurance may not be provided by the Company

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

- (a) conduct involving a wilful breach of duty in relation to the Company; or
- (b) a contravention of section 182 or section 183 of the Law.

23.9 Definitions for the purposes of rule 22

In this **rule 22**, except to the extent the context otherwise requires:

‘Liability’ includes any claim, action, suit, proceeding, investigation, inquiry, damage, loss, cost or expense;

‘executive officer’ means a person who is concerned, or takes part in, the management of the Company (regardless of the person’s designation and whether or not the person is a director of the Company);

‘officer’ means:

- (a) a director or Secretary of the Company;
- (b) a person:
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company;
 - (ii) who has the capacity to affect significantly the Company’s financial standing; or
 - (iii) in accordance with whose instructions or wishes the Board is accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person’s professional capacity or their business relationship with the Board or the Company).

SCHEDULE 1

Schedule of Local CANEGROWERS Companies

Name of Company	Relevant Mill or district location	Directors' Nomination Entitlement
Mossman Canegrowers Limited ACN 111 943 616	Mossman	1
Tableland Canegrowers Limited ACN 114 759 376	Tableland	1
Mulgrave Canegrowers Limited ACN 111 567 429	Mulgrave	1
Babinda District Cane Growers Organisation Limited ACN 105 260 222	Babinda	1
Innisfail District Cane Growers Organisation Limited ACN 111 471 124	Innisfail	2
Tully Cane Growers Ltd ACN 112 000 414	Tully	1
Herbert River District Cane Growers Organisation Ltd ACN 106 007 925	Herbert River	2
CANEGROWERS Burdekin Limited ACN 114 632 325	Burdekin	2
Invicta Cane Growers Organisation Limited ACN 112 192 917	Invicta	1
Inkerman Cane Growers Organisation Limited ACN 110 648 443	Inkerman	1
Proserpine District Cane Growers Co-operative Limited ABN 41 948 426 763	Proserpine	1
Mackay Canegrowers Limited ACN 111 817 559	Mackay	5
Bundaberg Canegrowers Ltd ACN 110 868 801	Bundaberg	2
CANEGROWERS Isis Limited ACN 110 648 041	Isis	1
Maryborough Canegrowers Limited ACN 111 775 583	Maryborough	1
Rocky Point District Cane Growers Organisation Ltd ACN 111 827 251	Rocky Point	1

SCHEDULE 2

Election of Officers

1 APPLICATION OF THIS SCHEDULE

This schedule applies if the office of chairperson or vice-chairperson of the Board must be filled.

2 WHO PRESIDES

- 2.1 The secretary of the Company (as the case may be) presides over any part of the meeting during which the chairperson of the Board or body is being elected;
- 2.2 The secretary must conduct the election of the chairperson.
- 2.3 The chairperson must conduct the election of any other officer.

3 ORDER OF ELECTIONS

- 3.1 The chairperson must be elected first.
- 3.2 (a) the senior vice-chairperson must be elected next, before the other vice-chairperson; and
(b) the other vice-chairperson must be elected before any other officer.

4 WHEN BALLOT MUST BE HELD

- 4.1 If there is only 1 candidate for an office, the candidate is elected to the office.
- 4.2 If there is more than 1 candidate for an office, a secret ballot must be held to decide the result of the election.

5 HOW BALLOT IS DECIDED

- 5.1 If a ballot is held and a candidate for the office receives more than half the deliberative votes, the candidate is elected to the office.
- 5.2 If no candidate received more than half the deliberative votes, another secret ballot must be held but the person who received the least number of votes is excluded provided that if two or more persons have received the least number of votes, the person to be excluded shall be decided by lot.
- 5.3 If after following the procedures in section 5.2 the number of votes cast for the remaining two candidates is equal, then the secretary must request the equal candidates to draw lots, and if any or all of them decline, the secretary shall draw lots for them, and shall in accordance with the result of the drawing of lots declare which of the candidates is successful, and that candidate is elected to the office. However, if one of these candidates is the immediately preceding chairperson of the Board then that candidate shall be deemed to be elected chairperson and no drawing of lots shall be taken.
- 5.4 If a ballot is held for the election of officers (other than chairperson) and the votes cast for two or more candidates are equal, the chairperson must decide who is elected by exercising a casting vote as well as the chairperson's deliberative vote.

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