



ALMOND BOARD OF AUSTRALIA INCORPORATED CONSTITUTION

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Constitution

of

Almond Board of Australia Incorporated

1. Name

The name of the Association is **Almond Board of Australia Incorporated**.

The Association

2. Objects and Powers

- 2.1. The objects of the Association are:
- 2.1.1. to represent and promote the interests of Australian almond growers, processors and marketers in matters of general interest that may affect the well being and viability of the Industry;
 - 2.1.2. to co-ordinate the efforts of the Industry in order to give unity of purpose and strength to foster the development of the Industry;
 - 2.1.3. to provide a channel for communication and dissemination of information between stakeholders in the Industry and other sectors of the horticultural industry;
 - 2.1.4. to facilitate the development and implementation of a strategic national industry plan including the definition of national R & D and marketing priorities; and
 - 2.1.5. to do all other lawful things as are incidental or conducive to the attainment of these objects of the Association.
- 2.2. Each of the above objects constitutes a separate object of the Association, and no such object may be construed by reference to any other such object.
- 2.3. For the purpose of carrying out its objects, the Association may, subject to the Act and this Constitution, exercise all the powers conferred on it by the Act.

3. Not for profit nature of the Association

- 3.1. The income, property, profits and financial surplus of the Association, whenever derived, must be applied solely towards the promotion of the objects of the Association as set out in this Constitution.
- 3.2. The Association is a non-profit organisation and shall not carry on business for the purpose of profit or gain to any specific individual Member(s) or class of 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.

- 3.3. Where property remains after the winding-up or dissolution of the Association and satisfaction of all its debts and liabilities, it may not be paid to nor distributed among the Members of the Association but must be given to or transferred to another fund, authority or institution having objects similar to the objects of the Association, 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 Association under or by virtue of this Constitution, which fund, authority or institution is to be determined by the Grower Members of the Association at or before the time of the winding up or dissolution.
- 3.4. Each Member of the Association shall have no liability in respect of nor any obligation to contribute to:
- 3.4.1. the assets of the Association; or
 - 3.4.2. the debts and liabilities of the Association; or
 - 3.4.3. the costs, charges and expenses of winding up or the dissolution of the Association,
- except only to pay its Fees in accordance with **Rule 14** and in respect of any other debts or liabilities that it incurs to the Association.

4. Financial Records

- 4.1. Proper books and financial records, including the Accounts, shall be kept and maintained by the Board showing correctly the financial affairs of the Association. The Board shall ensure that the relevant accounting and auditing requirements of the Act and other applicable legislation are duly complied with, including:
- 4.1.1. preparing, keeping, maintaining and causing the Association's Accounts to be audited in accordance with the requirements of the Act; and
 - 4.1.2. causing to be attached to the Accounts after the end of each Financial Year, before the auditor reports on the accounts, the prescribed statement and particulars required under the Act and made in accordance with a resolution of the Board and signed by two or more Directors of the Board.
- 4.2. All the monies of the Association shall be banked in the name of the Association in a bank account at such bank as the Board may from time to time direct.

The Membership

5. Membership

- 5.1. The Association consists of the following four **classes** of Member:
- 5.1.1. Grower Members (as further sub-divided into **categories** as specified in **Rule 8.6**);
 - 5.1.2. Marketer Members;
 - 5.1.3. Associate Members; and
 - 5.1.4. Life Members.

6. Eligibility criteria for Membership

Any person that meets the requirements set out in this Constitution in respect of a class of Membership shall be eligible (subject to and in accordance with this Constitution and the Regulations) to apply to become a Member in that class on payment of the applicable Fees.

Grower Members

- 6.1. Grower Membership is open to all Australian Almond Growers.
- 6.2. A company that is a Responsible Entity of a Registered Scheme that otherwise meets the requirements of **Rule 6.1** may only apply to become a Grower Member in respect of each such Registered Scheme and shall be entitled to apply to become a Grower Member in respect of each such Registered Scheme. A Responsible Entity that becomes a Grower Member in respect of more than one Registered Scheme shall be entitled to all the rights and benefits, and shall be subject to all the responsibilities and obligations, of Grower Membership in respect of each Registered Scheme.

Marketer Members

- 6.3. Marketer Membership is open to processing and packing houses that service the Industry.

Associate Members

- 6.4. Associate Membership is open to the following persons:
- 6.4.1. employees and other parties related to Grower and Marketer members;
 - 6.4.2. hullers and shellers;
 - 6.4.3. almond wholesalers (including agents of wholesalers);
 - 6.4.4. almond retailers;
 - 6.4.5. almond exporters;
 - 6.4.6. almond transporters;
 - 6.4.7. any producer, or participant in a service industry allied with the Industry;
 - 6.4.8. consumer groups with an interest in the Industry;

- 6.4.9. educational institutions with an interest in the Industry; and
- 6.4.10. other persons with an interest in the Industry.

Life Members

- 6.5. Life Membership may be offered to any natural person by reason of outstanding and meritorious service to the Association or the Industry. A natural person shall be admitted as a Life Member following that person's acceptance of an offer from the Board and which offer has been approved by a Special Resolution of the Board.

7. Application for Membership

- 7.1. Every applicant for either Grower, Marketer or Associate Membership must complete, sign and date an application form as supplied by the Association. The contents and format of the form shall be determined by the Board from time to time.
- 7.2. The Board shall not deal with any application for Membership unless the Fee in respect of the application has been received by the Association.
- 7.3. The Board has the sole and unfettered discretion as to whether or not a person is eligible for Membership of the Association and the Board may admit or reject any applicant for Membership without assigning any reason. Any such exercise of the discretion of the Board shall be final and shall not be subject to review or appeal. If an applicant is not admitted to Membership, all monies paid by the person to the Association shall be returned forthwith in full.

Appointment of Representative

- 7.4. All Members shall appoint one (1) natural person as its Representative. A Member can have only one (1) natural person at any one time as its Representative (provided that a Grower Member which is a Responsible Entity may appoint a different Representative for each Registered Scheme for which it is the Responsible Entity).

8. Principles governing Grower Members

- 8.1. Grower Members shall be entitled to receive notice of, attend and speak at General Meetings and to receive annual reports of the Association.
- 8.2. Each Grower Member shall have one (1) vote, regardless of its size or which category or Region it falls within.
- 8.3. Subject only to Rule 8.7, each category of Grower Member shall be treated equally with no special rights or privileges.
- 8.4. Subject to and in accordance with Rule 21, Grower Members may nominate other Grower Members and/or Marketer Members as Directors on the Board.
- 8.5. Grower Members do not have day-to-day management or control of the Association, which is the responsibility of the Board and as further delegated to the Executive, provided that the matters set out in Rule 9 are expressly reserved to the Grower Members and require the approval of the Grower Members in General Meeting.

Categories of Grower Members

- 8.6. There are two (2) categories of Grower Members. The definition of and the qualifying criteria for each category of Grower Member is as follows:
 - 8.6.1. **Category 1:** Grower Members with no more than 500 hectares of almond plantings; and
 - 8.6.2. **Category 2:** Grower Members with greater than 500 hectares of almond plantings.
- 8.7. The Fees payable by the Grower Members in each category shall be considered and amended by the Board each year.
- 8.8. The individual categories of Grower Members are not represented directly on the Board. The Board is elected in accordance with the provisions set out in **Rules 19.3** and **21**.

9. Matters reserved to Grower Members

- 9.1. The following matters, powers and functions may only be undertaken by the Association, the Board and the Executive pursuant to and in accordance with either an Ordinary or Special Resolution (as specified in these **Rules**) passed by the Grower Members:
 - 9.1.1. any amendment to this Constitution;
 - 9.1.2. the appointment or removal of a Director;
 - 9.1.3. the expulsion of a Member under **Rule 15.4**;
 - 9.1.4. the appointment of the Association's auditor under **Rule 9.2**;
 - 9.1.5. a material change to the nature of the Association's objects; or
 - 9.1.6. the winding up, dissolution or liquidation of the Association.
- 9.2. The Grower Members must appoint and retain a properly qualified, independent auditor whose duties are determined in accordance with the Act. No Member, Director or Officer may act as auditor of the Association.

10. Principles governing Marketer Members

- 10.1. Marketer Members shall be entitled to receive notice of, attend and speak at General Meetings and to receive annual reports of the Association.
- 10.2. Marketer Members have no individual voting rights.
- 10.3. The Fees payable by Marketer Members shall be considered and fixed by the Board each year.
- 10.4. Marketer Members do not have day-to-day management or control of the Association.

11. Principles governing Associate Members

- 11.1. Associate Members shall be entitled to receive notice of, attend and speak at General Meetings and to receive annual reports of the Association.
- 11.2. Associate Members have no individual voting rights.
- 11.3. The Fees payable by Associate Members shall be considered and fixed by the Board each year.
- 11.4. Associate Members do not have day-to-day management or control of the Association.

12. Principles governing Life Members

- 12.1. Life Members shall be entitled to receive notice of, attend and speak at General Meetings and to receive annual reports of the Association.
- 12.2. Life Members have no individual voting rights.
- 12.3. A Life Member is entitled for life to all the privileges of Life Membership without the payment of any further Fees in respect of his or her Life Membership.
- 12.4. Life Members do not have day-to-day management or control of the Association.
- 12.5. Nothing in this **Rule 12** prevents a Life Member from also being a Member of the Association in another class of Membership and his or her rights under that other class of Membership shall not be limited or affected by this **Rule 12**.

13. Register of Members

- 13.1. Each Member's name, the name of its Representative, address, class of Membership, and category of each Grower Member, shall be recorded and maintained by the Public Officer on the Register.

14. Fees

- 14.1. The Fees for all Members shall be:
 - 14.1.1. considered and fixed by the Board each year; and
 - 14.1.2. payable as determined by the Board.
- 14.2. Any Member whose Fees are outstanding for more than sixty (60) Business Days after the due date for payment shall cease to be a Member of the Association.

15. Expulsion of a Member

- 15.1. The Board may by Special Resolution expel a Member upon a charge of conduct detrimental to the interests and/or the objects of the Association, provided that the Board shall first give the Member twenty (20) Business Days notice of the particulars of the charge and the opportunity to be heard or make a written submission in answer to the charge during the said notice period.
- 15.2. The Board shall notify the Member of its determination in writing and, subject to the right of appeal of the Member as set out in **Rule 15.3**; the Member shall cease to be a Member ten (10) Business Days after receipt of the determination of the Board.
- 15.3. The Member shall have the right of appeal to the Grower Members of the Association in General Meeting. This right shall expire and the Member shall be deemed to have waived irrevocably such right if it has not notified the Board of its appeal within ten (10) Business Days after receipt of the determination of the Board.
- 15.4. The Membership of the appellant Member shall not be terminated unless the Grower Members in General Meeting confirm by Special Resolution the expulsion in which event the Membership shall terminate immediately.

General Meetings

16. Calling and Notice of General Meetings

- 16.1. The Board shall call and convene an Annual General Meeting (**AGM**) of the Members to be held within five (5) months of the end of each Financial Year. Not less than fifteen (15) Business Days notice of an AGM must be given by the Board.
- 16.2. A Special General Meeting (**SGM**):
 - 16.2.1. may be called at any time by the Board upon giving not less than fifteen (15) Business Days notice to Members; and
 - 16.2.2. shall be held within twenty (20) Business Days of a requisition by not less than fifteen percent (15%) of the Grower Members of the Association.
- 16.3. Notice of every General Meeting is to be given to:
 - 16.3.1. each Member;
 - 16.3.2. the auditor for the time being of the Association; and
 - 16.3.3. to such persons as are entitled under these **Rules** or the Act to receive notice.No other person is entitled to receive notices of General Meetings.
- 16.4. The non-receipt of a notice of any General Meeting by, or the accidental omission to give notice to, any person entitled to receive a notice does not invalidate any resolution passed at that meeting.
- 16.5. Members are entitled to attend, speak and, in the case of Grower Members only, vote at General Meetings, provided that a Grower Member is not entitled to vote (whether by its Representative or proxy) at a General Meeting unless all Fees due and payable by that Grower Member in respect of its Membership have been paid.

- 16.6. The auditors and their representative are entitled to attend and be heard on any part of the business of a General Meeting which concerns the auditors.

17. Appointment of Proxy

- 17.1. A Grower Member shall be entitled to appoint either:
- 17.1.1. another Grower Member (who is entitled in their own right to vote at a General Meeting); or
 - 17.1.2. a named Director,
- as its proxy to attend and vote on its behalf at any General Meeting.
- 17.2. The provisions governing the appointment of a proxy and other matters concerning proxies shall be determined by the Board and set out in the Regulations.

18. Proceedings at General Meetings

Quorum

- 18.1. A quorum for a General Meeting is fifteen percent (15%) of the Grower Members entitled to vote attending at the place designated in the notice of the meeting.
- 18.2. No business may be transacted at any General Meeting except the election of a Chairperson (when **Rule 18.5** applies) and the adjournment of the meeting unless the requisite quorum is present at, or within 15 minutes of, the time specified in the notice for the commencement of the meeting.
- 18.3. If 15 minutes after the time specified for a General Meeting a quorum is not present, the meeting, if convened upon a requisition of Grower Members under **Rule 16.2.2**, shall be dissolved, and in any other case it shall 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 30 minutes after the time specified for commencement of the meeting, the meeting is to be dissolved.

Chairperson of the Meeting

- 18.4. The Chairperson of the Board shall be entitled to chair every General Meeting.
- 18.5. The provisions governing the election of a person to chair a General Meeting (in the absence of the Chairperson) shall be determined by the Board and set out in the Regulations.
- 18.6. In the case of an equality of votes, the Chairperson shall not have, either on a show of hands or on a poll, a casting vote.

Business and Special Business of a General Meeting

- 18.7. The ordinary business of an AGM is to:
- 18.7.1. receive the Accounts of the Association for the preceding Financial Year;
 - 18.7.2. receive and consider the Board's report on the affairs of the Association for the preceding Financial Year;
 - 18.7.3. to declare the results of the election of Directors in the place of those retiring under these **Rules**;

- 18.7.4. when relevant, to appoint the Association's auditor;
- 18.7.5. consider and deal with any other matters required under the Act; and
- 18.7.6. consider and deal with such other matters as presented in the agenda for the AGM.
- 18.8. All other business transacted at an AGM and all business transacted at other General Meetings is deemed to be special.
- 18.9. Except with the approval of the Board, with the permission of the Chairperson or pursuant to the Act, no person may move at any General Meeting either:
 - 18.9.1. in regard to any special business, any resolution or any amendment of a resolution; or
 - 18.9.2. any other resolution which does not constitute part of ordinary business.
- 18.10. The auditors or their representative, if present at the General Meeting, may be questioned by the Members, as a whole, about the audit.

Conduct and Procedures at General Meetings

- 18.11. Except as provided by the Act or in these **Rules**, the general conduct of each General Meeting and the procedures to be adopted at the meeting are as set out in the Regulations.

19. Voting Rules

- 19.1. The Voting Rules at a General Meeting depend on the nature of the resolution that is being proposed.
- 19.2. A Special Resolution of Grower Members entitled to vote is required to:
 - 19.2.1. amend this Constitution or
 - 19.2.2. expel a Member under **Rule 15.4**; or
 - 19.2.3. remove a Director under **Rule 26.3**.
- 19.3. A resolution of Grower Members to elect a Director where there is a Contested Ballot (under **Rule 21.6.2**) shall be decided and deemed to be passed in favour of the Nominee who receives the highest aggregate percentage of votes cast in each category of Grower Members, as defined in **Rule 8.6**. If the aggregated total of the percentages is equal as between two (or more) Nominees then the Contested Ballot shall be decided and deemed to be passed in favour of the Nominee who receives the highest number of actual votes cast by all Grower Members entitled to vote.
- 19.4. All other resolutions in relation to matters requiring the approval of the Grower Members as set out in **Rule 9** or otherwise the subject of a proposed resolution of the Grower Members requires an Ordinary Resolution of the Grower Members entitled to vote.
- 19.5. The general principles applying to all proposed resolutions are:
 - 19.5.1. Grower Members must be given at least fifteen (15) Business Days notice of any proposed resolution together with material particulars of the issues and circumstances relating to the resolution (as well as any further information specified in the Regulations); and
 - 19.5.2. only Grower Members that have paid all their respective outstanding Fees may vote.

The Board

20. Membership of the Board

- 20.1. The Board is limited to a maximum of twelve (12) Directors comprising:
- 20.1.1. seven (7) Grower Member Representatives (**Grower Directors**) as follows:
 - 20.1.1.1. one (1) Grower Member Representative in respect of each of the Adelaide, Riverina and Swan Regions; and
 - 20.1.1.2. two (2) Grower Member Representatives in respect of each of the Riverland and Sunraysia Regions;
 - 20.1.2. four (4) Marketer Member Representatives (**Marketer Directors**),
who are each nominated and elected to the Board by the Grower Members in accordance with **Rules 19.3** and **21**; and
 - 20.1.3. one (1) other independent natural person who may be appointed by the Directors pursuant to a Special Resolution (**Chairperson**).
- 20.2. Each Director (other than the Chairperson appointed under **Rule 20.1.3**) must:
- 20.2.1. be the representative of a fully paid-up Grower or Marketer Member; and
 - 20.2.2. contribute to the Association's voluntary marketing levy.

21. Election Process

- 21.1. The Directors (other than a Chairperson appointed under **Rule 20.1.3**) shall be elected by postal vote to be declared at each AGM.
- 21.2. The Board shall call for nominations for Grower Directors and Marketer Directors not less than forty (40) Business Days prior to each AGM.
- 21.3. At least two (2) Grower Members (**Nominators**) shall be required to nominate a person to serve as a Director (**Nominee**).
- 21.4. No person is eligible for election to the Board unless the person has been nominated in accordance with **Rule 21.3** and the Nominators have given a notice in writing to the Association that:
- 21.4.1. nominates the Nominee;
 - 21.4.2. is signed by each of the Nominators; and
 - 21.4.3. is signed by the Nominee giving consent for nomination and signifying candidature for the office of Director.
- 21.5. To be valid, the notice under **Rule 21.4** must be received at the Office not less than twenty (20) Business Days prior to the date set by the Board for holding the AGM.
- 21.6. If, on the close of the nomination period, the number of Nominees for any vacant Board position:
- 21.6.1. is less than or equal to the number of vacant Board positions:

- 21.6.1.1. the Nominees shall be deemed to be elected unopposed and shall be appointed to the Board with effect on and from the close of the relevant AGM, without the need to count votes; and
 - 21.6.1.2. the Board may fill any remaining vacant position or positions in accordance with **Rule 27**;
- 21.6.2. exceeds the number of vacant Board positions (a **Contested Ballot**), then:
 - 21.6.2.1. voting papers shall be sent to the Grower Members in accordance with **Rules 21.7** and/or **21.8** (as the case may be); and
 - 21.6.2.2. the Contested Ballot provisions set out in **Rule 19.3** shall apply
- 21.7. Voting papers in respect of Grower Member Nominees shall be:
 - 21.7.1. prepared in respect of each Region, listing in alphabetical order the Nominees' names for that Region; and
 - 21.7.2. forwarded to all Grower Members at least fifteen (15) Business Days prior to the date set by the Board for holding the AGM.
- 21.8. Voting papers in respect of Marketer Member Nominees shall:
 - 21.8.1. list in alphabetical order the Nominees' names; and
 - 21.8.2. be forwarded to all Grower Members at least fifteen (15) Business Days prior to the date set by the Board for holding the AGM.
- 21.9. Completed voting papers must be returned to the Office not later than two (2) Business Days prior to the date set by the Board for holding the AGM.

22. General principles applying to the Directors

- 22.1. Each Director shall have a single and equal voting right on the Board and the Chairperson shall not have a casting vote.
- 22.2. The tenure of Directors is specified in and governed by **Rule 25**.
- 22.3. Neither the holding of office as a Director nor the duties and obligations resulting from holding that office shall (subject to compliance with the following provisions of this **Rule 22**) of itself:
 - 22.3.1. disqualify any Director from entering into any arrangement, contract or dealing with the Association in any capacity;
 - 22.3.2. avoid or vitiate any arrangement, contract or dealing entered into by or on behalf of the Association in which a Director has an interest; or
 - 22.3.3. render any Director or any corporation of which a Director is an officer or member or in any way interested or any partnership of which a Director is a member or in any way interested liable to account for any profit arising out of the holding of any such office or place of profit or any such arrangement, contract or dealing.

Conflict of Interest

- 22.4. A Director who has a direct or indirect pecuniary interest in a matter that relates to the business or affairs of the Association must give the Board notice of the interest. A notice required by this **Rule 22.4**:
- 22.4.1. must give details of the interest, and the relation of the interest to the business or affairs of the Association;
 - 22.4.2. must be given at a Board Meeting as soon as practicable after the Director becomes aware of his or her interest in the matter; and
 - 22.4.3. may be given either orally or in writing;
- 22.5. Details provided by a Director under **Rule 22.4** must be recorded in the minutes of the Board Meeting.
- 22.6. A Director who has a direct or indirect pecuniary interest in a matter that is being considered at a Board Meeting must not:
- 22.6.1. be present while the matter is being considered at the meeting; or
 - 22.6.2. vote on the matter,
- unless:
- 22.6.3. **Rule 22.7** applies; or
 - 22.6.4. the interest does not need to be disclosed under the Act.
- 22.7. A Director may be present and vote if the Directors who do not have a direct or indirect pecuniary interest in the matter pass a resolution that:
- 22.7.1. identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the business or affairs of the Association; and
 - 22.7.2. states that those Directors are satisfied the interest should not disqualify the Director from voting or being present.
- 22.8. Provided the provisions of **Rules 22.4 to 22.7** are otherwise complied with, a Director who has a direct or indirect pecuniary interest in a matter may participate in the signing of any instrument by or on behalf of the Association and whether by signing or by affixing or witnessing the affixing of the seal or otherwise.

23. Powers and responsibilities of the Board

- 23.1. Except only in respect of matters requiring the approval of the Grower Members as set out in **Rule 9**, and subject to this **Rule 23**, a Board Meeting 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.
- 23.2. Without limiting the generality of **Rule 23.1**, the powers and responsibilities of the Board include:
- 23.2.1. establishing, publishing and amending the Regulations in relation to all matters delegated to it under these **Rules**;
 - 23.2.2. considering and amending each year the Fees payable by the Members;
 - 23.2.3. specifying in writing, amending and revoking from time-to-time the specific powers and responsibilities of the Executive;

- 23.2.4. requesting respective chairpersons or representatives from Almond Board Committees and the Industry Advisory Committee to attend Board Meetings in an ex-officio capacity; and
- 23.2.5. convening regional meetings for Members within specific Regions.

Review by the Board

- 23.3. The Board shall monitor and review relevant information concerning and developments and changes in and to the Membership and the Industry (**Review**) and, having regard to such matters, shall at least every four (4) years and at least 3 months prior to the AGM in that year consider and recommend to Grower Members:
 - 23.3.1. whether to add to, reduce, sub-divide, merge or amalgamate, re-define or otherwise amend the definition and qualifying criteria of the categories of Grower Membership;
 - 23.3.2. whether to add to, reduce, sub-divide, merge or amalgamate, re-define or otherwise amend the definition of the Regions; and
 - 23.3.3. whether to amend the number of Directors to be appointed to the Board.
- 23.4. The provisions governing the process for conducting the Review are set out in the Regulations.
- 23.5. The Board shall notify all Members of the results of the Review.

24. Elected Officers of the Board and other Appointments

- 24.1. Subject to **Rule 24.2**, the Chairperson (unless already appointed under **Rule 20.1.3**), Deputy Chairperson, Public Officer and other persons holding a designated office, function or responsibility on the Board (**Officer of the Board**) shall be chosen by the Board from amongst the members of the Board at the first meeting of the Board after each AGM.
- 24.2. The Officers of the Board continue to hold office until the earlier of:
 - 24.2.1. their resignation from that office, including by virtue of the operation of **Rule 26**;
 - 24.2.2. their removal from that office under **Rule 24.3**;
 - 24.2.3. their office as Director becomes vacant in accordance with this Constitution; or
 - 24.2.4. the date of the first meeting of the Board after the first anniversary of their appointment to that office.
- 24.3. The Board has the sole power at any time and from time to time to appoint any Director as an Officer of the Board and to remove any Director appointed under this **Rule 24** from any of those offices but not from the office of Director.
- 24.4. The Board may also appoint:
 - 24.4.1. a Chief Executive Officer (CEO);
 - 24.4.2. a Secretary to the Board; and
 - 24.4.3. other members of the Executive as it thinks fit,

whose respective responsibilities and terms of engagement shall be set out in a letter from the Chairperson.
- 24.5. The Board may remove any of the appointees referred to in **Rule 24.4** and may appoint a replacement.

25. Tenure of Office of Directors

- 25.1. In the period between the adoption of this Constitution and the Association's AGM in 2008, all members of the board of directors appointed under the Replaced Constitution shall continue to hold office as Directors under this Constitution. In reckoning the length of tenure of a Director, the period during which a person served on the board of directors under the Replaced Constitution shall be taken into account.
- 25.2. Subject to **Rule 25.3**, each Director shall have a maximum tenure of office of 2 years from the date of their respective appointment. At the end of their tenure, a Director may be nominated and elected to the Board by the Grower Members in accordance with **Rules 19.3** and **21**.
- 25.3. The Chairperson shall hold office until the end of the next Annual General Meeting after his / her appointment (unless expressly appointed for some other period in accordance with **Rule 20.1.3**).

26. Vacation of Office

- 26.1. A Director shall cease to hold office and shall be deemed to have resigned if:
 - 26.1.1. the Director or the Grower or Marketer Member of which he / she is the Representative is disqualified by the Act;
 - 26.1.2. the Director dies;
 - 26.1.3. the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - 26.1.4. the Director is removed from office under **Rule 26.3**;
 - 26.1.5. the Director does not attend three consecutive Board Meetings without leave of absence;
 - 26.1.6. the Director is not, or is no longer a validly appointed Representative of a Grower or Marketer Member; or
 - 26.1.7. the Director or the Grower or Marketer Member of which he / she is the Representative becomes subject to an Insolvency Event.
- 26.2. Any Director may resign at any time as a Director by notice in writing delivered to the Public Officer but such resignation only takes effect at the time when such notice is received by the Public Officer unless some later date is specified in the notice when it shall take effect on the later date.
- 26.3. A Director may be removed from office by Special Resolution of the Grower Members at a General Meeting. At any such General Meeting the Director must be given the opportunity fully to present his / her case either orally or in writing or by both of these means.
- 26.4. A Director who is removed from office under **Rule 26.3** is deemed to cease to be a Director and his / her position shall be declared to be vacant immediately upon the declaration of the result of a Special Resolution passed under **Rule 26.3**.

27. Casual Vacancies

- 27.1. The Board has the power at any time and from time to time to appoint a qualified person to the Board to fill a casual vacancy but so that the total number of Directors does not at any time exceed the maximum number specified in **Rule 20.1**.

- 27.2. In relation to a casual vacancy resulting from the retirement, removal or death of a Director who was a Grower Member or the Representative of a Grower Member (**Outgoing Director**), the Board must appoint a Grower Member Representative from the same Region as the Outgoing Director.
- 27.3. In relation to a casual vacancy resulting from the retirement, removal or death of a Director who was an Marketer Member or the Representative of an Marketer Member, the Board must appoint a Marketer Member Representative.
- 27.4. Any person appointed under this **Rule 27** holds office until the next AGM when an election will be held to fill the vacancy but such person is not to be taken into account in determining the number of Directors who are to retire by rotation at the meeting. Any person appointed under this **Rule 27** is eligible for election at that AGM.

28. Board Meetings

- 28.1. The Board shall meet not less than four (4) times each year and the provisions governing the proceedings of the Board are set out in the Regulations.

Quorum

- 28.2. One half plus one of the Grower Directors plus two Marketer Directors shall constitute a quorum for a Board Meeting. A Director may not appoint an alternate Director, proxy or representative. The quorum must be present at all times during the Board Meeting.

29. Committees

- 29.1. The Board may, subject to the constraints imposed by law, delegate any of its powers to Committees as set out in the Regulations.

30. Validity of Acts

- 30.1. All acts done at any Board Meeting or by a Committee or by any person acting as a Director are, notwithstanding 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).
- 30.2. A resolution or Regulation made by the Board may be disallowed by the Grower Members in a later General Meeting, provided that a resolution by the Grower Members in General Meeting cannot invalidate prior acts of the Board which would have been valid if the resolution of the Grower Members had not been passed or made.

31. The Seal

- 31.1. The Association may have a Seal.
- 31.2. If the Association has a Seal, the Board is to provide for its safe custody and it should only be used by the authority of the Board.

32. Relationship of the Association and the Members

- 32.1. Nothing in this Constitution shall be construed to constitute the Association and the Members as the principal, agent, employee, partner or legal representative of the other for any purpose other than as expressly set out in this Constitution or in the Regulations.
- 32.2. Except as expressly provided in this Constitution, neither the Association nor any Member has any actual or implied authority or permission to:
 - 32.2.1. create, assume or incur obligations, debt, encumbrances or other liability; or
 - 32.2.2. make representations,for or on behalf of the other in any manner whatsoever.

33. No Representation or Reliance

- 33.1. Each Member acknowledges and agrees that no person has made any representation or other inducement to it to become a Member (either on the terms of this Constitution or otherwise), except for representations or inducements expressly set out in this Constitution.
- 33.2. Each Member further acknowledges and agrees that it has not become a Member in reliance on any representation or other inducement by or on behalf of any other person, except for representations or inducements expressly set out in this Constitution.

34. Insurance and Indemnity

- 34.1. The Association must endeavour to arrange and maintain insurance against each of the following risks with a reputable insurer authorised under the Insurance Act 1973:
 - 34.1.1. reasonable loss of or damage to its assets, as determined by the Board;
 - 34.1.2. liability for personal injury, death, loss or damage resulting from anything done or not done by the Association, or by a Director, Officer or employee of the Association, in relation to the business of the Association; and
 - 34.1.3. Directors' and Officers' liability, as determined by the Board.

- 34.2. Subject to the law, the Association may arrange and maintain additional insurance for the benefit of every person who is or has been a Director or Officer acting in that capacity against:
- 34.2.1. costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
 - 34.2.2. a liability arising from negligence or other conduct.
- 34.3. Subject to the law, the Association shall indemnify every person who is or has been a Director or Officer of the Association against a liability incurred by the person acting in their capacity as a Director or Officer to a person other than the Association for the costs and expenses incurred by the person:
- 34.3.1. in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
 - 34.3.2. in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the law.
- 34.4. Every employee of the Association who is not a Director or Officer of the Association may be indemnified out of the property of the Association against a liability incurred by the employee acting in that capacity to a person other than the Association for the costs and expenses incurred by an employee:
- 34.4.1. in defending proceedings, whether civil or criminal, in which judgment is given in favour of the employee or in which the employee is acquitted; or
 - 34.4.2. in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the law.
- 34.5. Provided that nothing in this **Rule 34** shall require the Association to procure insurance or provide an indemnity to any person in respect of a liability incurred by the person and arising out of his or her acts or omissions involving:
- 34.5.1. a lack of good faith;
 - 34.5.2. a wilful breach of duty in relation to the Association;
 - 34.5.3. a breach of the provisions of the Act;
 - 34.5.4. the improper use of information; or
 - 34.5.5. the improper use of his or her position.
- 34.6. If the Board or any Director or any Officer of the Association becomes personally liable for the payment of any sum primarily due from the Association, the Board may execute or cause to be executed any charge or security over or affecting the whole or any part of the assets of the Association by way of indemnity to secure the persons or person so becoming liable as aforesaid from any loss in respect of such liability.

35. Notices

- 35.1. All communications between the Association and the Membership (including notices, consents, approvals, requests and demands) under or in connection with this Constitution:
- 35.1.1. must be in writing in English;

- 35.1.2. must be addressed to the applicable address provided by each Member or to the Office of the Association (as the case may be);
 - 35.1.3. must be signed by a Director of the Association or by the Member (as the case may be) making the communication or (on its behalf) by the solicitor for, or any Representative, attorney, director, secretary or authorised agent of, the Association or the Member; and
 - 35.1.4. must be delivered by hand; sent by email or facsimile transmission; or posted by prepaid post, to the address of the addressee in accordance with Rule 35.1.2 and in each case the communication is deemed for all purposes to be received by the addressee on the second Business Day after the date on which it is delivered, emailed, faxed or posted.
- 35.2. Every Member must notify the Public Officer of any change of its, his or her address and any such new address must be entered in the Register and upon being so entered becomes the Member's registered address.
- 35.3. Where a Member does not have a registered address or where the Association has bona fide reason to believe that a Member is not known at the Member's registered address, all future notices are deemed to be given to the Member if the notice is exhibited in the Office for a period of 48 hours (and is deemed to be duly served at the commencement of that period) unless and until the Member informs the Association of a registered place of address.
- 35.4. The signature to any notice to be given by the Association may be written or printed.
- 35.5. Where a given number of days notice or notice extending over any other period is required to be given, the day of service is not to be reckoned in the number of days or other period.
- 35.6. A notice delivered or sent by post to the registered address of a Member pursuant to this **Rule 35** is (notwithstanding that the Member is then dead and whether or not the Association has notice of the Member's death) deemed to have been duly served and the service is for all purposes deemed to be sufficient service of the notice or document on the Member's heirs, executors or administrators.

36. Governing Law and Jurisdiction

- 36.1. This Constitution is governed by and must be construed according to the Act and generally the law applying in South Australia.
- 36.2. If any Rule or any part of any Rule of this Constitution (or any regulation or any part of any regulation in the Regulations) is prohibited, void, invalid or inconsistent with the Act, the Rule or regulation, or the relevant part of the Rule or regulation, shall be deemed to be read subject to the Act and severed to the extent that it is prohibited, void, invalid or inconsistent with the Act, but the remainder (if any) of that Rule or regulation shall remain in full force and effect.
- 36.3. The Association and each Member and Director irrevocably:
- 36.3.1. submits to the non-exclusive jurisdiction of the courts of South Australia and the courts competent to determine appeals from those courts, with respect to any legal proceedings that may be brought at any time relating to the subject matter of this Constitution; and
 - 36.3.2. waives any objection it, he or she may now or in the future have to the venue of any proceedings, and any claim it, he or she may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within **Rule 36.3.1**.

37. Definitions

In this Constitution and in the Regulations the following words and phrases mean as follows:

Accounts of the Association means:

- a) a combination of:
 - i. an account of receipts and payments recording the total receipts and payments of the Association based on the cash method of accounting; and
 - ii. a statement of assets and liabilities of the Association; or
- b) a combination of:
 - i. an account of income and expenditure recording the total income and expenditure of the Association based on the accrual method of accounting; and
 - ii. a balance sheet of the Association,

together with such statements, reports and notes, other than auditors' reports, as are attached to and intended to be read with the account, statement or balance sheet, as the case may be.

Act means the *Associations Incorporation Act 1985* (SA).

Adelaide means all areas of Australia west of Murray Bridge (longitude 139°16'25.62"E).

Associate Member means a person that meets the requirements set out in **Rule 6.4** for Associate membership of the Association and has been granted Membership as such by the Board pursuant to **Rule 7.3**.

Association means Almond Board of Australia Incorporated (SA A22739 / ARBN 073 588 084), being an association incorporated under the Act.

Australian Almond Grower means an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership or a trust that grows almonds in Australia as a business or for commercial benefit and who either:

- a) paid levies to the Department of Agriculture, Fisheries and Forestry, its successor or assigns, in the immediately preceding Financial Year; or
- b) has not less than 0.5 hectares of almonds under plantation under its management and control.

Board means the board of Directors of the Association.

Board Meeting means a duly convened meeting of the Board in accordance with **Rule 28**.

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

Chairperson means the person appointed in accordance with these **Rules** to chair a Board Meeting or a General Meeting.

Committee means a committee to which powers have been delegated by the Board pursuant to **Rule 29**.

Director means a person appointed or elected from time to time to the office of director of the Association in accordance with these **Rules**.

Election Process means the process for nominating and electing a Director as set out in **Rule 21**.

Executive means the persons appointed by the Board under **Rule 24.4.3** to conduct the day-to-day executive management of the Association.

Fees means the membership fees, levies and other prescribed payments determined by the Board and set out in the Regulations.

Financial Year means the 12 month period beginning on 1 July and ending on 30 June in the next calendar year.

Grower Member means a person that meets the requirements set out in **Rule 6.1** for Grower membership of the Association and has been granted Membership as such by the Board pursuant to **Rule 7.3**.

General Meeting means a duly convened meeting of the Membership in accordance with **Rule 16** and includes an Annual General Meeting (**AGM**) and a Special General Meeting (**SGM**).

Industry means the almond industry in Australia.

Insolvency Event means the happening of any of the following events:

- a) where the person is a body corporate:
 - i. the person becomes an externally-administered body corporate under the Corporations Act 2001;
 - ii. steps are taken by a third person towards making the person an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);
 - iii. a controller (as defined in section 9 of the Corporations Act 2001) is appointed of any of the property of the person or any steps are taken for the appointment of such a person (but not where the steps taken are reversed or abandoned within 14 days); or
 - iv. the person is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act 2001; or
- b) where the person is a natural person:
 - i. the person authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;
 - ii. a person holding a security interest in assets of the person enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or
 - iii. the person commits an act of bankruptcy or is "insolvent under administration" as defined in the Act.

Life Member means a natural person that meets the requirements set out in **Rule 6.5** for life membership of the Association and has been granted Membership as such pursuant to **Rule 6.5**.

Marketer Member means a person that meets the requirements set out in **Rule 6.3** for Marketer membership of the Association and has been granted Membership as such by the Board pursuant to **Rule 7.3**.

Member means any person who becomes a member of the Association in accordance with this Constitution, and includes a Grower Member, Marketer Member, Associate Member and Life Member (and **Membership** shall be construed accordingly).

Members Present means Members present at a General Meeting in person or, if applicable, by its duly appointed Representative.

Office means the registered office from time to time of the Association.

Officer has the meaning defined in the Act and includes the Directors and the members of the Executive.

Ordinary Resolution:

- a) in the case of a vote of the Grower Members, means a resolution passed by:
 - i. a majority of not less than fifty-one per cent (51%) of the Grower Members of a category of Grower Members; and

- ii. in addition, a majority of not less than fifty-one per cent (51%) of the categories of Grower Members,

voting in favour of a proposed resolution at a duly convened General Meeting;

or

- b) in the case of a vote of the Board, means a simple majority of not less than fifty-one per cent (51%) of the Directors, being entitled to do so, voting in favour of a proposed resolution at a duly convened Board Meeting.

Public Officer means a person appointed as the public officer of the Association and includes any person appointed to perform the duties of the public officer.

Region means each of Adelaide, Riverina, Riverland and Sunraysia.

Register means the register of Members of the Association.

Registered Address means the address of a Member specified in the Register or any other address of which the Member notifies the Association as a place at which the Member will accept service of notices.

Registered Scheme has the same meaning as defined in section 9 of the Corporations Act 2001 (Cth).

Regulations means the regulations promulgated and published by the Board from time-to-time pursuant to its powers under **Rule 23.2.1**.

Replaced Constitution means the Association's Constitution dated November 2005 (as amended), which is replaced by this Constitution.

Representative means a natural person appointed by the Member under **Rule 7.4** who is a partner, director, employee, officer or principal of the Member.

Responsible Entity (or **RE**) has the same meaning as defined in section 9 of the Corporations Act 2001 (Cth).

Riverina means all areas east of Echuca (longitude 144°44'53.44"E).

Riverland means all areas of Australia east of Murray Bridge (longitude 139°16'25.62"E) and west of Lake Cullulleraine (longitude 141°35'38.92"E).

Rules means the **Rules** of the Association as set out in this Constitution and as further particularised or supplemented in the Regulations.

Seal means the seal, if any, from time to time of the Association.

Special Resolution:

- a) in the case of a vote of the Grower Members, means a resolution passed by:
 - i. a majority of not less than sixty-six per cent (66%) of the Grower Members of a category of Grower Members; and
 - ii. in addition, a majority of not less than sixty-six per cent (66%) of the categories of Grower Members,

voting in favour of a proposed resolution at a duly convened General Meeting;

or

- b) in the case of a vote of the Board, means a special majority of not less than sixty-six per cent (66%) of the Directors, being entitled to do so, voting in favour of a proposed resolution at a duly convened Board Meeting.

Sunraysia means all areas of Australia east of Lake Cullulleraine (longitude 141°35'38.92"E) and west of Echuca (longitude 144°44'53.44"E).

Swan means the area as defined for the purposes of Natural Resource Management in Western Australia.

Voting Rules means the provisions set out in **Rule 19** relating to the passing of resolutions by the Grower Members in General Meeting.

38. Interpretation

In this Constitution and in the Regulations:

- 38.1. headings are for convenience only and do not affect its interpretation or construction;
- 38.2. an expression defined in, or given a meaning for the purposes of the Act (except where defined, or given a meaning, in this Constitution) has the same definition or meaning in this Constitution where it relates to the same matters as the matters for which it is defined or given a meaning in the Act;
- 38.3. a reference to a Member, the Members or the Membership means each Member, severally and not jointly;
- 38.4. a **person** includes an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- 38.5. an obligation imposed on a Member that is a corporation shall be deemed to include an obligation on it to procure compliance with that obligation by its directors and employees, and the corporation shall be deemed to be liable for all acts and omissions of such persons as though they were its own acts or omissions;
- 38.6. a reference to any document (including this Constitution) is to that document as amended, varied, novated, ratified or replaced from time to time;
- 38.7. a reference to a Member is a reference only to the person that is the Member and does not include that Member's executors, administrators, successors and assigns, nor persons purporting to take by way of novation;
- 38.8. a reference to a **Rule**, schedule, exhibit, attachment or annexure is a reference to a **Rule**, schedule, exhibit, attachment or annexure to or of this Constitution, and a reference to this Constitution includes all schedules, exhibits, attachments and annexures to it;
- 38.9. a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- 38.10. words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- 38.11. where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has corresponding meaning;
- 38.12. where the day on or by which any sum is payable hereunder or any act, matter or thing is to be done is a day other than a Business Day, that sum will be paid or the act, matter or thing must be done on the next succeeding Business Day; and
- 38.13. the words **includes** and **including** in any form are not words of limitation.