



**Tasmanian Farmers  
and Graziers Association**

**ACN 009 477 810**

**Constitution**

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## **1. Introduction**

- 1.1. The name of the TFGA is The Tasmanian Farmers and Graziers Association (TFGA).
- 1.2. The TFGA is a not-for-profit company Limited by Guarantee.
- 1.3. The liability of members is limited to the amount of the guarantee in sub-clause **1.4**.
- 1.4. Each member must contribute an amount not more than ten dollars [\$10] (the guarantee) to the property of the TFGA if the TFGA is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:
  - a. debts and liabilities of the TFGA incurred before the member stopped being a member; or
  - b. costs of winding up.
- 1.5. In this constitution, words and phrases have the meanings set out in clauses **52** and **54**.

## **2. Purpose and Power**

- 2.1. The objects of the TFGA are to:
  - a. to provide innovative and effective leadership for Tasmania's primary industries;
  - b. to be the nationally recognised representative voice of Tasmanian primary producers;
  - c. to advance the development of Tasmania's primary industries;
  - d. to protect the right to farm in an economically, socially and environmentally sustainable manner; and
  - e. to enable members to thrive in a continually evolving operating environment.
- 2.2. Subject to clause **3**, the TFGA has the following powers, which may only be used to carry out its purposes set out in sub-clause **2.1**:
  - a. the powers of an individual; and
  - b. all the powers of a company limited by guarantee under the Corporations Act.
- 2.3. The TFGA does not have the power to issue shares.

## **3. Application of income**

- 3.1. The TFGA must not distribute any income or assets directly or indirectly to its members, except as provided in sub-clauses **3.2** and **51.2**.
- 3.2. Nothing in this constitution shall prevent payment in good faith of remuneration to any officers, servants or members of the TFGA:
  - a. for goods and services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the TFGA; or
  - b. through a formal scholarship or charitable fund that is controlled, administered, or contributed to, by the TFGA either in its own right or conjointly.

## **4. Accounts**

- 4.1. TFGA must keep accurate financial records, including any trust accounts which the TFGA has control or governance of, that:
  - a. record and explain its transactions and financial position and performance; and
  - b. would enable the preparation of true and fair financial statements.
- 4.2. At least once per year the accounts of the TFGA shall be examined by one or more properly qualified Auditor or Auditors who shall report to the members in accordance with the provisions of the Corporations Act.

## **5. Membership**

- 5.1. Any individual, partnership, incorporated body, trust or association, who supports the purpose of the TFGA, is eligible to apply to become a member of the TFGA under clause **6**.
- 5.2. There will be only two classes of membership:
  - a. Voting; and
  - b. Non-voting.

- 5.3. Voting Membership categories will consist of:
  - a. Primary Producers; and
  - b. Life Members.
- 5.4. Non-voting Membership categories will consist of:
  - a. Associate Member: and
  - b. Any other representative or other member as determined by the Board from time to time.
- 5.5. The Board may set any other categories of membership from time to time but must state which class of membership the new category will belong to.

## **6. Application for membership**

- 6.1. The Board shall prescribe the application process and payment methods for members.
- 6.2. Application for membership shall be made to the Chief Executive Officer using the process prescribed by the Board from time to time.

## **7. Refusal of membership application**

- 7.1. The Board may reject an application for membership at the absolute discretion of the Board.
- 7.2. If the Board rejects an application for membership the Chief Executive Officer must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to include reasons.

## **8. Approval of an application for membership**

- 8.1. An applicant shall become a member when approved by the Board and the correct fee or subscription has been received by the TFGA and the applicant's details are entered on the register of members.

## **9. Fees and subscription**

- 9.1. The Board will set fees for all categories of membership at its penultimate board meeting prior to the close of the TFGA financial year.

## **10. Cessation of membership**

- 10.1. A person immediately ceases to be a member if they:
  - a. die;
  - b. are wound up or otherwise dissolved or deregistered (for an incorporated member);
  - c. resign, by writing to the Chief Executive Officer;
  - d. are expelled under clause **12**;
  - e. have not responded within three months to a written request from the Chief Executive Officer that they confirm in writing that they want to remain a member;
  - f. If the subscription of a member remains unpaid for a period of twelve calendar months after it becomes due then the member may, after notice of the default is sent to the member by the CEO, be deemed at the discretion of the Board to have resigned at the expiration of 31 days from the date of service of the notice.

## **11. Dispute resolution**

- 11.1. The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
  - a. one or more members;
  - b. one or more directors; or
  - c. the TFGA.
- 11.2. A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause **12** until the disciplinary procedure is completed in accordance with clause **12**.

- 11.3. Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 11.4. If those involved in the dispute do not resolve it under sub-clause **11.3**, they must within 10 days:
  - a. tell the directors about the dispute in writing;
  - b. agree or request that a mediator be appointed; and
  - c. attempt in good faith to settle the dispute by mediation.
- 11.5. The mediator must:
  - a. be chosen by agreement of those involved; or
  - b. where those involved do not agree:
    - i. for disputes between members, a person chosen by the directors; or
    - ii. for other disputes, a person chosen by the president of the law society of Tasmania.
- 11.6. A mediator chosen by the directors under clause **11.5(b)(i)**:
  - a. may be a member or former member of the TFGA;
  - b. must not have a personal interest in the dispute; and
  - c. must not be biased towards or against anyone involved in the dispute.
- 11.7. When conducting the mediation, the mediator must:
  - a. allow those involved a reasonable chance to be heard;
  - b. allow those involved a reasonable chance to review any written statements;
  - c. ensure that those involved are given natural justice; and
  - d. not make a decision on the dispute.

## **12. Disciplining members**

- 12.1. In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the TFGA if the directors consider that:
  - a. the member has breached this constitution; or
  - b. the member's behaviour is causing, has caused, or is likely to cause harm to the TFGA.
- 12.2. At least 14 days before the directors' meeting at which a resolution under sub-clause **12.1** will be considered, the secretary must notify the member in writing:
  - a. that the directors are considering a resolution to warn, suspend or expel the member;
  - b. that this resolution will be considered at a directors' meeting and the date of that meeting;
  - c. what the member is said to have done or not done;
  - d. the nature of the resolution that has been proposed; and
  - e. that the member may provide an explanation to the directors, and details of how to do so.
- 12.3. Before the directors pass any resolution under sub-clause **12.1**, the member must be given a chance to explain or defend themselves by:
  - a. sending the directors a written explanation before that directors' meeting; and/or
  - b. speaking at the meeting.
- 12.4. After considering any explanation under sub-clause **12.3**, the directors may:
  - a. take no further action;
  - b. warn the member;
  - c. suspend the member's rights as a member for a period of no more than 12 months;
  - d. expel the member;
  - e. refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause); or
  - f. require the matter to be determined at a general meeting.
- 12.5. The directors cannot fine a member.
- 12.6. The Company Secretary must give written notice to the member of the decision under clause **12.4** as soon as possible.

- 12.7. Disciplinary procedures must be completed as soon as reasonably practical.
- 12.8. The TFGA will not be liable for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

### **13. General meetings**

- 13.1. The directors may call a general meeting.
- 13.2. If members with at least 5% of the votes that may be cast at a general meeting make a written request to the TFGA for a general meeting to be held, the directors must:
  - a. within 21 days of the members' request, give all members notice of a general meeting; and
  - b. hold the general meeting within 2 months of the members' request.
- 13.3. The members who make the request for a general meeting must:
  - a. state in the request any resolution to be proposed at the meeting;
  - b. sign the request; and
  - c. give the request to the TFGA.
- 13.4. Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.
- 13.5. If the directors do not call the meeting within 21 days of being requested under sub-clause **13.2**, 50% or more of the members who made the request may call and arrange to hold a general meeting.
- 13.6. To call and hold a meeting under sub-clause **13.5** the members must:
  - a. as far as possible, follow the procedures for general meetings set out in this constitution;
  - b. call the meeting using the list of members on the TFGA's member register, which the TFGA must provide to the members making the request at no cost; and
  - c. hold the general meeting within three months after the request was given to the TFGA.
- 13.7. The TFGA must pay the members who request the general meeting any reasonable expenses, as determined by the TFGA, they incurred because the directors did not call and hold the meeting.

### **14. Annual General Meeting**

- 14.1. A general meeting, called the annual general meeting, must be held at least once in every calendar year.
- 14.2. Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
  - a. a review of the TFGA's activities;
  - b. a review of the TFGA's finances;
  - c. any auditor's report;
  - d. the election of directors;
  - e. the ratification of appointment of independent directors;
  - f. ratification of director's remuneration; and
  - g. the appointment of auditors.
- 14.3. Before or at the annual general meeting, the directors must give information to the members on the TFGA's activities and finances during the period since the last annual general meeting.
- 14.4. The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the TFGA.

### **15. Notice of general meetings**

- 15.1. Notice of a general meeting must be given to:
  - a. each member entitled to vote at the meeting;
  - b. each director; and
  - c. the auditor/s.

- 15.2. Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 15.3. Notice may be given:
  - a. by post; or
  - b. by electronic means where a member has nominated in writing to receive notice by this method.
- 15.4. Subject to sub-clause **15.5**, notice of a meeting may be provided less than 21 days before the meeting if:
  - a. for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand; or
  - b. for any other general meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 15.5. Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
  - a. remove a director;
  - b. appoint a director to replace a director who was removed; or
  - c. remove an auditor.
- 15.6. Notice of a general meeting must include:
  - a. the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - b. the general nature of the meeting's business;
  - c. any special resolution that is to be proposed and the words of the proposed resolution; and
  - d. a statement that members may appoint proxies and that, if a member appoints a proxy:
    - i. the proxy does not need to be a member of the TFGA,
    - ii. the proxy form must be delivered to the TFGA at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
    - iii. the proxy form must be delivered to the TFGA at least 48 hours before the meeting.
- 15.7. If a general meeting is adjourned for one month or more, the members must be given new notice of the resumed meeting in accordance with sub-sections 15.6.a and 15.6.b and the notice must clearly state that it is a resumption of an adjourned meeting.

## **16. Quorum at general meetings**

- 16.1. For a general meeting to be held, at least 15 members (a quorum) must be present for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member):
  - a. Members may be present in person (includes attendance via technology in accordance with clause **19**) or by representative;
  - b. Only one person per membership shall count towards a quorum.
- 16.2. No business may be conducted at a general meeting if a quorum is not present.
- 16.3. If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
  - a. if the date is not specified – the same day in the next week;
  - b. if the time is not specified – the same time; and
  - c. if the place is not specified – the same place.
- 16.4. If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.



## **17. Auditor's right to attend meetings**

- 17.1. The auditor is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 17.2. The TFGA must give the auditor any notice and communications relating to the general meeting that a member of the TFGA is entitled to receive.

## **18. Representatives of members**

- 18.1. An incorporated member, partnership member, or trustee member may appoint as a representative:
  - a. one individual to represent the member at meetings and to sign circular resolutions under clause **23**; and
  - b. the same individual or another individual for the purpose of being appointed or elected as a director.
- 18.2. The appointment of a representative by a member must:
  - a. be in writing;
  - b. include the name of the representative;
  - c. be signed on behalf of the member; and
  - d. be given to the TFGA or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 18.3. A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 18.4. The appointment may be standing until withdrawn in writing by the member who made the appointment.

## **19. Using technology to hold general meetings**

- 19.1. The TFGA may hold a general meeting at a venue using any technology that gives members, as a whole, a reasonable opportunity to participate, including to hear and be heard.
- 19.2. Anyone using this technology is taken to be present in person at the meeting.

## **20. Chairperson for general meetings**

- 20.1. The elected Chairperson is entitled to chair general meetings.
- 20.2. The members present and entitled to vote at a general meeting may choose a director or member to be the chairperson for that meeting if:
  - a. there is no elected Chairperson; or
  - b. the elected Chairperson is not present within 30 minutes after the starting time set for the meeting; or
  - c. the elected Chairperson is present but says they do not wish to act as chairperson of the meeting.

## **21. Role of the Chairperson at general meetings**

- 21.1. The Chairperson is responsible for the conduct of the general meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions, including to the auditor.
- 21.2. The Chairperson does not have a casting vote.

## **22. Adjournment of general meetings**

- 22.1. If a quorum is present, a general meeting must be adjourned if many members present direct the chairperson to adjourn it.
- 22.2. Only unfinished business may be dealt with at a meeting resumed after an adjournment.

### **23. Circular resolutions of members**

- 23.1. Subject to sub-clause **23.3**, the directors may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).
- 23.2. The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 23.3. Circular resolutions cannot be used:
  - a. for a resolution to remove an auditor, appoint a director or remove a director;
  - b. for passing a special resolution; or
  - c. where the Corporations Act or this constitution requires a meeting of members to be held.
- 23.4. A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in sub-clause **23.5** or **23.6**.
- 23.5. Members may sign:
  - a. a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
  - b. separate copies of that document, as long as the wording is the same in each copy.
- 23.6. The TFGA may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

### **24. Votes per membership**

- 24.1. Each membership entitled to vote under clause **5** is entitled to one vote.
- 24.2. Notwithstanding sub-clause **24.1**, the Board may implement additional voting entitlements per voting membership, calculated on a sliding scale based on the level of membership fees paid per membership, provided that:
  - a. is included in all information outlining TFGA membership fees in a manner that fully explains the right of all members to access the additional votes upon paying the applicable fees.

### **25. Challenge to member's right to vote**

- 25.1. A member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.
- 25.2. If a challenge is made under clause **25.1**, the Chairperson must decide whether or not the person may vote. The Chairperson's decision is final.

### **26. How voting is carried out**

- 26.1. Voting must be conducted and decided by:
  - a. a show of hands;
  - b. a vote in writing; or
  - c. another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 26.2. Before a vote is taken, the Chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 26.3. On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 26.4. The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### **27. When and how a vote in writing must be held**

- 27.1. A vote in writing may be demanded on any resolution instead of, or after, a vote by a show of hands by:
  - a. at least five members present; or
  - b. the Chairperson.
- 27.2. A vote in writing must be taken when and how the chairperson directs, unless clause **27.3** applies.

- 27.3. A vote in writing must be held immediately if it is demanded under clause **27.1**:
  - a. for the election of a chairperson under clause **20.2**; or
  - b. to decide whether to adjourn the meeting.
- 27.4. A demand for a vote in writing may be withdrawn.

## **28. Appointment of proxy**

- 28.1. A member may appoint a proxy to attend and vote at a general meeting on their behalf.
- 28.2. A proxy does not need to be a member.
- 28.3. A proxy appointed to attend and vote for a member has the same rights as the member to:
  - a. speak at the meeting;
  - b. vote in a vote in writing (but only to the extent allowed by the appointment); and
  - c. join in to demand a vote in writing under clause **27**.
- 28.4. An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
  - a. the member's name and address;
  - b. the TFGA's name;
  - c. the proxy's name or the name of the office held by the proxy; and
  - d. the meeting(s) at which the appointment may be used.
- 28.5. A proxy appointment may be standing (ongoing).
- 28.6. Proxy forms must be received by the TFGA at the address stated in the notice under sub-clause **15.6(d)** or at the TFGA's registered address at least 48 hours before a meeting.
- 28.7. A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 28.8. Unless the TFGA receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
  - a. dies;
  - b. is mentally incapacitated;
  - c. revokes the proxy's appointment; or
  - d. revokes the authority of a representative or agent who appointed the proxy.
- 28.9. A proxy appointment may specify the way the proxy must vote on a particular resolution.

## **29. Voting by proxy**

- 29.1. A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 29.2. When a vote in writing is held, a proxy:
  - a. does not need to vote, unless the proxy appointment specifies the way they must vote;
  - b. if the way they must vote is specified on the proxy form, must vote that way; and
  - c. if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

## **30. Directors**

- 30.1. The TFGA must have at least five and no more than ten directors.
- 30.2. No fewer than 60% of the total number of directors must be elected from TFGA members eligible to vote (elected directors).
  - a. The TFGA must, as far as practicable, ensure that elected directors represent a diversity of Tasmania's farming regions and commodities.
- 30.3. At least one director, and no more than two directors of the total number of directors, shall be appointed independent directors by invitation from the Board.
  - a. Nominated directors are to be appointed by invitation from the Board of Directors subject to ratification under sub-clause **31.1**.

### **31. Election and appointment of directors**

- 31.1. Each of the directors must be appointed by a separate resolution at an AGM, unless:
  - a. the members present have first passed a resolution that the appointments may be voted on together; and
  - b. no votes were cast against that resolution.
- 31.2. A person is eligible for election as an elected director of the TFGA under sub-clause **30.2** if they:
  - a. are a member of the TFGA, or a representative of a member of the TFGA (appointed under clause **18**);
  - b. give the TFGA their signed consent to act as a director of the TFGA; and
  - c. are not ineligible to be a director under the Corporations Act or any other relevant Act.
- 31.3. A person invited for appointment as an appointed director of the TFGA under sub-clause **30.3** must:
  - a. possess the skills, knowledge, and expertise to help ensure that the TFGA board of directors as a collective has the diversity needed to deliver TFGA's objectives and strategic goals;
  - b. give the TFGA their signed consent to act as a director of the TFGA; and
  - c. not be ineligible to be a director under the Corporations Act or any other relevant Act.
- 31.4. The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
  - a. In the case of an elected director, is eligible under sub-clause **31.2**;
  - b. In the case of an appointed director, is eligible under sub-clause **31.3**.
- 31.5. If the number of directors is reduced to fewer than five or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to five (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

### **32. Election of Chairperson and Vice Chairperson**

- 32.1. The directors must elect a director as the TFGA's elected Chairperson.
- 32.2. The directors must elect a director as the TFGA's elected Vice Chairperson.
- 32.3. The election of Chairperson and Vice Chairperson must take place at the first meeting of directors after an annual general meeting.
- 32.4. The term of a Chairperson and Vice Chairperson will expire annually immediately prior to elections under clause **32.3**.
- 32.5. A director may only serve as elected Chairperson for a maximum of five consecutive terms.
- 32.6. Notwithstanding sub-clause **32.5** the Board may, at their discretion, agree to elect a director for an additional term as Chairperson.

### **33. Term of office**

- 33.1. At each annual general meeting:
  - a. any director appointed by the directors to fill a casual vacancy or as an additional director must retire; and
  - b. at least two members of the remaining directors must retire.
- 33.2. The directors who must retire at each annual general meeting under sub-clause **33.1** will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.
- 33.3. Other than a director appointed under clause **31.4**, a director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- 33.4. Each director must retire at least once every three years.
- 33.5. A director who retires under sub-clause **33.1** may nominate for election or re-election, subject to sub-clause **33.6**.
- 33.6. A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a special resolution at the annual general meeting.

### **34. When a director stops being a director**

A director stops being a director if they:

- a. give written notice of resignation as a director to the TFGA;
- b. die;
- c. are removed as a director by a resolution of the members;
- d. stop being a member of the TFGA;
- e. are a representative of a member, and that member ceases to be a member;
- f. are a representative of a member, and the member notifies the TFGA that the representative is no longer a representative;
- g. are absent for three consecutive directors' meetings without approval from the directors; or
- h. become ineligible to be a director of the TFGA under the Corporations Act or any other relevant Act.

### **35. Powers of directors**

- 35.1. The directors are responsible for managing and directing the activities of the TFGA to achieve the purposes set out in this constitution.
- 35.2. The directors may use all the powers of the TFGA except for powers that, under the Corporations Act or this constitution, may only be used by members.
- 35.3. The directors must decide on the responsible financial management of the TFGA including:
  - a. any suitable written delegations of power under clause **36**; and
  - b. how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 35.4. Subject to clause **34**, the directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a general meeting.
- 35.5. The directors may convene any advisory committees it believes necessary to assist them in achieving the purposes set out in this constitution. The powers of any such committee is subject to the limitations and constraints contained within clause **36**.
- 35.6. The directors may delegate any powers to a committee of directors on the following terms:
  - a. A committee to which any powers have been delegated must exercise the powers delegated in accordance with any direction of the directors; and
  - b. The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of directors, except to the extent they are contrary to any direction given under clause **35.6.a**.

### **36. Delegation of directors' powers**

- 36.1. The directors may delegate any of their powers and functions to a committee, a director, an employee of the TFGA (such as a chief executive officer) or any other person, as they consider appropriate.
- 36.2. The delegate must exercise the powers delegated in accordance with any directions of the directors.
- 36.3. The delegation must be recorded in the TFGA's minute book.

### **37. Payments to directors**

- 37.1. A Director may be paid the remuneration determined by the TFGA in General Meeting for his or her services as a Director. However, if the TFGA pursues a charitable purpose then the TFGA must not pay fees to its Directors.
- 37.2. The TFGA may:
  - a. pay a director for work they do for the TFGA, other than as a director, if the amount is no more than a reasonable fee for the work done; or

- b. reimburse a director for expenses properly incurred by the director in connection with the affairs of the TFGA.
- 37.3. Any payment made under sub-clause **37.2** must be approved by the directors.
- 37.4. The TFGA will pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

### **38. Execution of documents**

The TFGA may execute a document without using a common seal if the document is signed by:

- a. two directors of the TFGA; or
- b. a director and the secretary.

### **39. Duties of directors**

- 39.1. The directors must comply with their duties as directors under legislation and common law (judge-made law). Directors must:
  - a. exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the TFGA;
  - b. act in good faith in the best interests of the TFGA;
  - c. not misuse their position as a director;
  - d. not misuse information they gain in their role as a director;
  - e. disclose any perceived or actual material conflicts of interest as set out in clause **40**;
  - f. ensure that the financial affairs of the TFGA are managed responsibly; and
  - g. not allow the TFGA to operate while it is insolvent.

### **40. Conflicts of interest**

- 40.1. A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
  - a. to the other directors, or if all of the directors have the same conflict of interest, to the members at the next general meeting; or
  - b. at an earlier time if reasonable to do so.
- 40.2. The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 40.3. Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under sub-clause **40.4**:
  - a. be present at the meeting while the matter is being discussed; or
  - b. vote on the matter.
- 40.4. A director may still be present and vote if:
  - a. their interest arises because they are a member of the TFGA, and the other members have the same interest;
  - b. their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the TFGA (see clause **49**);
  - c. their interest relates to a payment by the TFGA under clause **48** (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
  - d. the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter; or
  - e. the directors who do not have a material personal interest in the matter pass a resolution that:

- i. identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the TFGA, and
- ii. says that those directors are satisfied that the interest should not stop the director from voting or being present.

#### **41. Directors meetings**

- 41.1. The directors may decide how often, where and when they meet.
- 41.2. Calling directors' meetings
  - a. A director may call a directors' meeting by giving reasonable notice to all of the other directors.
  - b. A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.
  - c. The elected chairperson is entitled to chair directors' meetings.
  - d. The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the elected chairperson is:
    - e. not present within 30 minutes after the starting time set for the meeting; or
    - f. present but does not want to act as chairperson of the meeting.
- 41.3. Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors.
  - a. A quorum must be present for the whole directors' meeting.
- 41.4. The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
  - a. The directors' agreement may be a standing (ongoing) one.
  - b. A director may only withdraw their consent within a reasonable period before the meeting.
- 41.5. A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.
- 41.6. The directors may pass a circular resolution without a directors' meeting being held.
  - a. A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in sub-clause **41.6(b)**.
  - b. Each director may sign:
    - i. a single document setting out the resolution and containing a statement that they agree to the resolution; or
    - ii. separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 41.7. The TFGA may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 41.8. A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in sub-clause **41.6(b)**.

#### **42. Company Secretary**

- 42.1. The TFGA must have a company secretary.
- 42.2. A secretary must be appointed by the directors and may be removed by the directors.
- 42.3. The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 42.4. A company secretary upon appointment must indicate acceptance by giving their signed consent to act as secretary of the TFGA.
- 42.5. The role of the secretary includes:
  - a. ensuring the maintenance of a register of the TFGA's members; and
  - b. ensuring the maintenance of the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.

#### **43. Minutes and records**

- 43.1. The TFGA must, within one month, make and keep the following records:
  - a. minutes of proceedings and resolutions of general meetings;
  - b. minutes of circular resolutions of members; and
  - c. a copy of a notice of each general meeting.
- 43.2. The TFGA must, within one month, make and keep the following records:
  - a. minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
  - b. minutes of circular resolutions of directors.
- 43.3. To allow members to inspect the TFGA's records:
  - a. the TFGA must give a member access to the records set out in clause **43.1**; and
  - b. the directors may authorise a member to inspect other records of the TFGA, including records referred to in sub-clauses **43.1** and **44.1**.
- 43.4. The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by:
  - a. the chairperson of the meeting; or
  - b. the chairperson of the next meeting.
- 43.5. The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

#### **44. Financial and related records**

- 44.1. The TFGA must make and keep written financial records that:
  - a. correctly record and explain its transactions and financial position and performance; and
  - b. enable true and fair financial statements to be prepared and to be audited.
- 44.2. The TFGA must also keep written records that correctly record its operations.
- 44.3. The TFGA must retain its records for at least 7 years or any greater term that may be mandated by applicable company and taxation legislation.
- 44.4. The directors must take reasonable steps to ensure that the TFGA's records are kept safe.

#### **45. By-laws**

- 45.1. The directors may pass a resolution to make by-laws to give effect to this constitution.
- 45.2. Members and directors must comply with by-laws as if they were part of this constitution.

#### **46. Notice**

- 46.1. Anything written to or from the TFGA under any clause in this constitution is written notice and is subject to sub-clauses **46.3** and **46.6** unless specified otherwise.
- 46.2. Sub-clauses **46.3** and **46.6** do not apply to a notice of proxy under clause **28.6**.
- 46.3. Written notice or any communication under this constitution may be given to the TFGA, the directors or the secretary by:
  - a. delivering it to the TFGA's registered office;
  - b. posting it to the TFGA's registered office or to another address chosen by the TFGA for notice to be provided; or
  - c. sending it to an email address or other electronic address notified by the TFGA to the members as the TFGA's email address or other electronic address;
- 46.4. Written notice or any communication under this constitution may be given to a member:
  - a. in person
  - b. by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
  - c. sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any); or



- d. if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 46.5. If the TFGA does not have an address for the member, the TFGA is not required to give notice in person.
- 46.6. Notice is taken to be given when:
  - a. delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
  - b. sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
  - c. sent by email or electronic method, is taken to be given on the business day after it is sent; and
  - d. given under clause **46.4(e)** is taken to be given on the business day after the notification that the notice is available is sent.

#### **47. Financial Year**

The TFGA's financial year is to be 12 calendar months as resolved by the directors and approved by ASIC.

#### **48. Indemnity**

- 48.1. The TFGA indemnifies each officer of the TFGA out of the assets of the TFGA, subject to sub-clause **48.3**, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the TFGA.
- 48.2. In this clause, 'officer' means a director, secretary or chief executive officer and extends to after they have ceased to hold that office.
- 48.3. The indemnity under sub-clause **48.1** is limited:
  - a. to the extent that the TFGA is precluded by law (including the Corporations Act) from giving indemnity;
  - b. to amounts that the officer is not otherwise entitled to be indemnified, nor is indemnified, by another person (including an insurer under an insurance policy); and
  - c. by any other limitations that may be contained in a deed of indemnity that the officer may have agreed in writing with the TFGA from time to time.
- 48.4. The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the TFGA.
- 48.5. The indemnity in clause **48.1** applies to liabilities incurred both before and after the adoption of this constitution.

#### **49. Insurance**

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

#### **50. Directors' access to documents**

- 50.1. A director has a right of access to the financial records of the TFGA at all reasonable times.
- 50.2. If the directors agree, the TFGA must give a director or former director access to:
  - a. certain documents, including documents provided for or available to the directors; and
  - b. any other documents referred to in those documents.

#### **51. Winding Up**

- 51.1. If the TFGA is wound up, any surplus assets must not be distributed to a member or a former member of the TFGA, unless that member or former member is a company or organisation as described in sub-clause **51.2**.

- 51.2. Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets that remain after the TFGA is wound up must be distributed to one or more not-for-profit company or organisation:
  - a. with purpose(s) similar to, or inclusive of, the purpose(s) in clause 2; and
  - b. which also prohibits the distribution of any surplus assets to its members to at least the same extent as the TFGA.
- 51.3. The decision as to the company or organisation to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the TFGA may apply to the Supreme Court to make this decision.

## 52. Definitions

In this constitution:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

**ASIC** means the Australian Securities & Investment Commission.

**Board** means the directors acting collectively under this constitution.

**TFGA** means the Tasmanian Farmers and Graziers Association as referred to in sub-clause 1.1.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**elected chairperson** means a person elected by the directors to be the TFGA's chairperson under clause 32.

**general meeting** means a meeting of members and includes the Annual General Meeting, under sub-clause 14.1.

References to **member or members** in this constitution will be taken to mean a voting member under clause 5.2(a) unless otherwise stated.

**member present** means, in connection with a general meeting, a member present in person, by representative or by proxy at the venue or venues for the meeting.

**Primary Producer** is an individual, partnership, trust or company operating a primary production business if they undertake plant or animal cultivation (or both), fishing or pearling (or both), tree farming or felling (or both).

**special resolution** means a resolution:

- i. of which notice has been given under clause 15.6.c; and
- ii. that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution.

**surplus assets** means any assets of the TFGA that remain after paying all debts and other liabilities of the TFGA, including the costs of winding up.

## 53. Reading this constitution with the Corporations Act

- 53.1. The replaceable rules set out in the Corporations Act do not apply to the TFGA.
- 53.2. The Corporations Act overrides any clause in this constitution which is inconsistent with that Act.
- 53.3. If the TFGA becomes a registered charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
- 53.4. A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

## 54. Interpretation

54.1. In this constitution:

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