

Constitution

Potatoes South Australia Incorporated



**Piper Alderman
Lawyers**

Level 16
70 Franklin Street
Adelaide SA 5000
Australia
Telephone +61 8 8205 3333
Facsimile +61 8 8205 3300
www.piperalderman.com.au

Adelaide . Sydney . Melbourne . Brisbane

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Potatoes South Australia Incorporated

Constitution

Incorporated under the Associations Incorporations Act 1985 on 22 March, 2011

Part 1 – Preliminary

1. Name

The name of the incorporated association is **Potatoes South Australia Incorporated..**

2. Definitions

In this constitution:

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

Association means Potatoes South Australia Incorporated;

Board means the board of Directors of the Association;

CEO means the Chief Executive Officer of the Association appointed by the Board under rule 17;

Director means a director of the Association;

Full Member has the meaning given in rule 7.1;

Grower means a Person that engages in commercial potato growing (including seed, fresh market and processing potatoes);

Industry Member has the meaning given in rule 9.1;

Member means a Person that is a member of the Association;

Person includes a corporation, joint venture, association, government body, firm and any other entity;

Prescribed Association means an incorporated association that is prescribed for the purposes of the Act or Regulations;

Regulations means the *Associations Incorporations Regulations 2008 (SA)*;

Representative has the meaning given in rule 11.1;

Retiring Director has the meaning given in rule 16.5;

Special Resolution has the meaning given in rule 22.7(a);

Value Chain Member has the meaning given in rule 8.1.

3. Objects or purposes of the Association

3.1 The objects of the Association, are:

- (a) acting in the best interests of, and generally advancing, the Australian potato industry and providing industry leadership, advocacy and services;
- (b) identifying research, development and extension needs and priorities;
- (c) supporting and fostering research, development and extension in the potato industry, including liaising with the national potato industry advisory committees;
- (d) commissioning, coordinating or undertaking consumer education and product promotional activity at state and national levels;
- (e) representing Members in respect to legislative change or pending legislative change in any matter that may affect the potato industry;
- (f) promoting and conducting education and training programs for Members;
- (g) promoting and conducting seminars, exhibitions and public education as appropriate;
- (h) facilitating the sharing of information and providing network opportunities for Members;
- (i) planning projects and delivering services funded by the potato industry or any other funds as may be established;
- (j) fostering co-operation and goodwill between research, educational institutions and any other association or body formed for the betterment of the potato industry;
- (k) affiliating with relevant regional, state and national industry organisations;
- (l) promoting the interests of the Association and doing all such other lawful things as the Association may consider incidental or conducive to the attainment or advancement of the objects of the Association;
- (m) utilising industry funds wisely for the benefit of the potato industry;
- (n) to identify, develop, support and pursue opportunities for the commercialisation of any intellectual property relating to potatoes or the potato industry, including without limitation establishing commercial ventures and relationships with third parties; and
- (o) liaising and advocating with governments and regulatory bodies at all levels (State, Federal and local);
- (p) to do all things as are incidental or convenient of all or any of the above objects.

4. Powers of the Association

The Association shall have all the powers conferred by section 25 of the Act.

Part 2 - Membership

5. Categories

- 5.1 The Association has the following types of membership:
- (a) Full Member;
 - (b) Value Chain Member; and
 - (c) Industry Member.
- 5.2 The Board may decide that applications are not open for a particular category of membership for any period the Board decides.
- 5.3 The Board may create additional categories and/or sub-categories of membership, and may decide the rights attached to those additional categories or sub-categories. Those rights must be consistent with this constitution.
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6. Applications for membership

- 6.1 Unless otherwise specified in this constitution, any Person may apply for a category of membership.
- 6.2 The applicant must:
- (a) complete the application form provided by the Association and deliver it to the Association;
 - (b) state the category of membership for which the applicant applies; and
 - (c) agree to be bound by this constitution.
- 6.3 The Board must decide to accept or reject the application as soon as reasonably practicable after receipt of the application.
- 6.4 The Association must, as soon as reasonably practicable, notify the applicant in writing whether the application is accepted or rejected.
- 6.5 The Applicant becomes a Member if:
- (a) the Board accepts the application; and
 - (b) within 28 days after the Association notifies the applicant of acceptance, the applicant pays the joining fee and any other membership fees and/or levies as determined by the Board in accordance with this constitution.
- 6.6 The rights of any Member under this constitution shall be automatically suspended if that Member's membership fees are outstanding for more than three months after the due date for
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payment, until such time as that Member pays all outstanding membership fees to the Association.

- 6.7 The Board may delegate some or all of its powers under this rule 6 to the CEO or such other person as the Board may determine from time to time.

7. Full Member

7.1 A Full Member is a Member that:

- (a) is a Grower; and
- (b) carries on business as a Grower in South Australia.

7.2 Full Members shall have all rights granted to Members under this constitution, including but not limited to:

- (a) the right to receive notices of general meetings and all other documents sent to Members in respect of general meetings;
- (b) the right to attend and speak at general meetings; and
- (c) the right to vote at general meetings on any matter.

7.3 Full Members must pay the joining fee and any applicable levies as determined by the Board from time to time.

7.4 The details of all Full Members will be kept on the Association's register of members in accordance with rule 14.

8. Value Chain Member

8.1 A Value Chain Member is a Member that carries on:

- (a) commercial pre or post farm-gate potato value chain activities (other than as a Grower) which the Board considers in its discretion are consistent with the objects of the Association; or
- (b) activities as a Grower in any other State or Territory other than South Australia.

8.2 Value Chain Members:

- (a) have the right to receive notices of general meetings and all other documents sent to Members in respect of general meetings;
- (b) may attend at general meetings but do not have the right to speak; and
- (c) do not have the right to vote at general meetings on any matter..

8.3 Value Chain Members must pay a joining fee and annual membership fees as determined by the Board from time to time.

- 8.4 The details of all Value Chain Members will be kept on the Association's register of members in accordance with rule 14.
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9. Industry Member

- 9.1 An Industry Member is a Member that maintains an interest in the potato industry or broader agribusiness industry where the Board considers in its discretion such interest is consistent with the objects of the Association.
- 9.2 Industry Members have the same rights as Value Chain Members.
- 9.3 Industry Members must pay a joining fee and annual membership fees as determined by the Board from time to time.
- 9.4 The details of all Industry Members will be kept on the Association's register of members in accordance with rule 14.
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10. Fees and levies

- 10.1 The designated joining fees, membership fees and/or levies for each membership class shall be such sum (if any), as the Board shall determine in its absolute discretion from time to time.
- 10.2 The designated membership fees and/or levies shall be payable annually on 1 July or at such other times as the Board shall determine in its absolute discretion from time to time.
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11. Representative

- 11.1 A Member being a body corporate must appoint one natural person, who shall not be a Member, to represent it at a particular general meeting or at all general meetings of the Association and to otherwise exercise all the rights of that Member granted under this constitution (**Representative**).
- 11.2 A Representative shall be appointed by a resolution of the Member's board or other governing body, which may be authenticated under its seal.
- 11.3 A Representative shall be deemed to be a Member for all purposes until the authority to represent that Member is revoked and notified to the Association in writing.
- 11.4 A Member may replace its Representative from time to time by providing written notice to the Association.
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12. Resignations

- 12.1 A Member may resign from membership of the Association by giving written notice thereof to the secretary or public officer of the Association.
- 12.2 Any Member so resigning shall be liable for any outstanding membership fees, levies or any other debt owing to the Association, which may be recovered as a debt due to the Association.
- 12.3 Membership fees and/or levies paid in advance will not be refunded except at the discretion of the Board.
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- 12.4 The resignation of a Member shall take effect upon receipt of the resignation notice by the Association.
- 12.5 The secretary or public officer of the Association must record the resignation of any Member in the register of members.

13. Expulsion of a Member

13.1 Expulsion for outstanding membership fees

The Board may resolve to expel a Member if that Member's membership fees are outstanding for more than three months after the due date for payment, provided always that the Board may reinstate that membership on such terms as it thinks fit.

13.2 Expulsion for misconduct

- (a) Subject to giving a Member an opportunity to be heard or to make a written submission, the Board may resolve to expel a Member upon a charge of misconduct detrimental to the interests of the Association.
- (b) Particulars of the charge shall be communicated to the Member at least one month before the meeting of the Board at which the matter will be determined.
- (c) The determination of the Board shall be communicated to the Member, and in the event of an adverse determination the Member shall, (subject to rule 13.2(d)), cease to be a Member 14 days after the Board has communicated its determination to the Member.
- (d) It shall be open to a Member to appeal the expulsion to the Association at a general meeting. The intention to appeal shall be communicated to the secretary or public officer of the Association within 14 days after the determination of the Board has been communicated to the Member.
- (e) In the event of an appeal under rule 13.2(d), the appellant's membership of the Association shall not be terminated unless the determination of the Board to expel the Member is upheld by the Members in a general meeting after the appellant has been heard by the Members, and in such event the appellant's membership will be terminated at the date of the general meeting at which the determination of the Board is upheld.

14. Register of Members

- 14.1 A register of members must be kept and contain:
- (a) the name, address, email and other such contact details of each Member;
 - (b) the contact details of the current authorised contact person or Representative of a Member;
 - (c) the date on which each Member was admitted to the Association; and
 - (d) if applicable, the date of and reason(s) for termination of membership.

- 14.2 The confidentiality of Members' information (including the details of their current authorised contact person or Representative) shall be maintained in accordance with the *Privacy Act 1988* (Cth) and any other applicable privacy laws.

Part 3 – The Board

15. Powers and Duties

- 15.1 The affairs of the Association shall be managed and controlled by the Board which, in addition to any powers and authorities conferred by this constitution, may exercise all such powers and do all such things as are within the objects of the Association, and are not by the Act or by this constitution required to be done by the Association in general meeting.
- 15.2 The Board has the management and control of the funds and other property of the Association.
- 15.3 The Board shall have authority to interpret the meaning of this constitution and any other matter relating to the affairs of the Association on which this constitution is silent.
- 15.4 The Board shall appoint a public officer as required by the Act.

16. Appointment

- 16.1 Subject to rule 16.2, the Board shall comprise of a maximum of ten Directors including the independent chairperson appointed by the Board under rule 17.2.
- 16.2 At least:
- (a) five of the Directors must be Full Members or Representatives of Full Members; and
 - (b) two of the Directors must be independent directors who are not Full Members or Value Chain Members (or their Representatives), but may be Industry Members or their Representatives.
- 16.3 A Director must be a natural person.
- 16.4 Subject to rule 16.5, a Director's tenure will be for a period of three years.
- 16.5 At each annual general meeting, the following Directors must (and shall be deemed to) retire:
- (a) any Director appointed by the Board since the last annual general meeting; and
 - (b) three other Directors, being the longest serving Directors since their last election (and if three such Directors cannot be identified because certain Directors became Directors on the same day, then the three Directors determined by agreement and if they cannot agree, determined by lot),

(Retiring Directors). This rule does not apply to the independent chairperson.

- 16.6 Subject to rule 16.7, a Retiring Director shall be eligible to stand for re-election without nomination by notifying the Association in writing that he or she is available for re-election at least 28 days before the annual general meeting at which the Director is seeking to be re-elected.
- 16.7 No Director shall be entitled to hold office as a Director for more than three consecutive terms. No Director may re-nominate for election as a Director unless twelve months have elapsed from the date the Director ceased to hold office.
- 16.8 A person may nominate for election to the Board as long as that person is eligible to be appointed to the Board under this rule 16 and the nomination is:
- (a) in writing;
 - (b) signed by the nominee, the proposing Member and another Member; and
 - (c) provided to the Association at least 28 days before the annual general meeting at which they are seeking to be elected.
- 16.9 The Board may appoint any person as a Director to fill a casual vacancy or as an addition to the Board. Any Director appointed under this rule 16.9 shall hold office until the next annual general meeting and shall be eligible for re-election.

17. Appointment of office holders and CEO

- 17.1 The Association shall have an independent chairperson, a deputy chairperson, a treasurer, a secretary and CEO (appointed in accordance with this rule 17).
- 17.2 The independent chairperson and CEO shall be appointed by the Board from time to time on such terms (including remuneration) as the Board may determine in its discretion. The chairperson and deputy chairperson shall be Directors, the CEO may, but need not, be a Director.
- 17.3 Subject to rule 17.4, the deputy chairperson, treasurer and secretary will be appointed by the Board from its number at the first meeting of the Board following each annual general meeting and otherwise when a vacancy arises.
- 17.4 Unless otherwise determined by the Board, the CEO will also be the secretary of the Association.

18. Office holder roles

18.1 Independent chairperson and deputy chairperson

- (a) The independent chairperson shall be the Association's presiding officer.
- (b) In the absence of the independent chairperson the deputy chairperson shall act as and have the rights and powers of the chairperson.
- (c) The tenure of the independent chairperson and deputy chairperson is twelve months and may be renewed by the Board from time to time.

- (d) The chairperson has the right to vote at meetings of the Board and if the chairperson is a Member, the right to vote at general meetings.

18.2 Secretary and treasurer

- (a) The secretary and treasurer shall cause to keep all files and records as directed by the Board and as required by the Act.
- (b) The treasurer shall attend to all Association accounts and matters of finance. This shall include preparation and maintenance of financial statements and returns as required by law.

19. Disqualification of Board members

19.1 A Director ceases to be a Director if that Director is:

- (a) disqualified from being a Director by the Act;
- (b) expelled as a Member under this constitution, or if the Director is a Representative, the relevant Member is expelled;
- (c) permanently incapacitated by ill health;
- (d) absent without apology from more than two meetings in a financial year;
- (e) absent with apology for more than three consecutive meetings in a financial year; or
- (f) no longer the Representative of a Member, if applicable.

Part 4 – Proceedings of the Board

20. Proceedings of Board

20.1 The Board shall meet together for the dispatch of business at least six times per year, at a time and place as determined by the Board.

20.2 Board meetings may be conducted face to face, or using technology to enable each director to communicate with the other Directors, as long as all Directors are able to communicate to each other simultaneously.

20.3 Questions arising at any meeting of the Board shall be decided by a majority of votes. The chairperson has a casting vote as well as a deliberative vote.

20.4 A quorum for a meeting of the Board shall be one half of the Directors of the Board.

20.5 A Director having a direct or indirect pecuniary interest in a contract or proposed contract with the Association must disclose the nature and extent of that interest to the Board as required by the Act, and shall not vote with respect to that contract or proposed contract. The Director must disclose the nature and extent of his or her interest in the contract at the next annual general meeting of the Association.

- 20.6 The Board may establish sub-committee(s) comprising three or more persons, established for various purposes, consisting of such number of Directors and/or Members or any other person as they think fit.
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21. Circulating resolutions

- 21.1 The Directors may pass a resolution without a Directors' meeting being held, if all of the Directors entitled to vote on the resolution:
- (a) sign a document containing a statement that they are in favour of the resolution set out in the document; or
 - (b) state by means of electronic communication (including by email), without the necessity of signing, that they are in favour of the resolution, or words of like effect.
- 21.2 Each Director must be given a copy of a document used for signing by Directors or notice of the proposed resolution.
- 21.3 Separate copies of a document may be used for signing by Directors or for giving notice of a resolution, if the wording of the resolution and statement is identical in each copy.
- 21.4 The resolution is passed when the last Director who makes up a majority signs or states their assent.
- 21.5 Passage of the resolution must be recorded in the Association's minute book.

Part 5 – General Meetings

22. General meetings

22.1 Annual general meetings

- (a) The Board shall call an annual general meeting in accordance with the Act and this constitution.
- (b) Annual general meetings shall be held within five months after the end of the Association's financial year (as determined under rule 24.1).
- (c) The order of the business at the meeting shall be:
 - (1) the confirmation of the minutes of the previous annual general meeting and of any special general meeting held since that meeting;
 - (2) the consideration of the accounts and reports of the Board and the auditor's report (if an auditor's report is required);
 - (3) the election of Directors;
 - (4) the appointment of an auditor, if required (see rule 24.5);

- (5) any other business requiring consideration by the Association in general meeting.

22.2 Special general meeting

- (a) The Board may call a special general meeting of the Association at any time.
- (b) Upon a requisition in writing of not less than three Full Members, the Board shall, within one month of the receipt of the requisition, convene a special general meeting for the purpose specified in the requisition.
- (c) Every requisition for a special general meeting shall be signed by the relevant Members and shall state the purpose of the meeting.
- (d) If a special general meeting is not convened within one month, as required by rule 22.2(b) above, the requisitionists, or at least 50% of their number, may convene a special general meeting. Such a meeting shall be convened in the same manner as nearly as practical as a meeting convened by the Board, and for this purpose the Board shall ensure that the requisitionists are supplied free of charge with particulars of the Members entitled to receive a notice of meeting. The reasonable expenses of convening and conducting such a meeting shall be borne by the Association.

22.3 Notice of general meetings

- (a) Subject to rule 22.3(b), at least 14 days notice of any general meeting shall be given to Members. The notice shall set out where and when the meeting will be held, and particulars of the nature and order of the business to be transacted at the meeting.
- (b) Notice of a meeting at which a Special Resolution is to be proposed shall be given at least 21 days prior to the date of the meeting.
- (c) A notice may be given by the Association to any Member by serving the Member with the notice personally, or by sending it by post or email to the address appearing in the register of members (see rule 14.1).
- (d) Where a notice is sent by post:
 - (1) the service is effected by properly addressing, prepaying and posting a letter or packet containing the notice, and
 - (2) unless the contrary is proved, service will be taken to have been effected at the time at which the letter or packet would be delivered in the ordinary course of post.
- (e) Where a notice is sent by electronic mail, the service is effected at the time and on the day shown in the sender's server, if it shows that the notice was sent or otherwise routed to the person's electronic address or server last notified, and has not been rejected or returned by such server.

22.4 Proceedings at general meetings

- (a) Five Full Members present personally or by proxy shall constitute a quorum for the transaction of business at any general meeting.

- (b) If within 30 minutes after the time appointed for the meeting a quorum of Members is not present, a meeting convened upon the requisition of Members shall lapse. In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place and if at such adjourned meeting a quorum is not present within 30 minutes of the time appointed for the meeting the Members present shall form a quorum.
- (c) Subject to rule 22.4(d), the chairperson shall preside as the chairperson at a general meeting of the Association.
- (d) If the chairperson is not present within five minutes after the time appointed for holding the meeting, or he or she is present but declines to take or retires from the chairperson, the Members may choose a Board member or one of their own number to be the chairperson of that meeting.

22.5 Voting at general meetings

- (a) Subject to this constitution, every Member has only one vote at a meeting of the Association.
- (b) Subject to this constitution, a question for decision at a general meeting, other than a Special Resolution, must be determined by a majority of Members who vote in person or, where proxies are allowed, by proxy, at that meeting. The chairperson has a personal deliberative vote if the chairperson is a Member as well as a casting vote.
- (c) Unless a poll is demanded by at least three Members, a question for decision at a general meeting must be determined by a show of hands.

22.6 Poll at general meetings

- (a) If a poll is demanded by at least three Members, it must be conducted in a manner specified by the person presiding and the result of the poll is the resolution of the meeting on that question.
- (b) A poll demanded for the election of a person presiding or on a question of adjournment must be taken immediately, but any other poll may be conducted at any time before the close of the meeting.

22.7 Special and ordinary resolutions

- (a) As defined in the Act, a special resolution of an incorporated association where the rules of the association provide for membership of the association means a resolution passed at a duly convened meeting of the Members if:
 - (1) at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been given to all Members; and
 - (2) it is passed at a meeting referred to in this paragraph by a majority of not less than three-quarters of such Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting.
- (b) An ordinary resolution is a resolution passed by a simple majority at a general meeting.

22.8 Proxies

A Member shall be entitled to appoint in writing a natural person who is also a Full Member or a Representative of a Full Member to be their proxy, and attend and vote at any general meeting of the Association.

23. Minutes

- (a) Proper minutes of all proceedings of general meetings of the Association and of meetings of the Board, shall be entered within one month after the relevant meeting in minute books kept for the purpose.
 - (b) The minutes kept pursuant to this rule must be confirmed by the Members or the Board (as relevant) at a subsequent meeting.
 - (c) The minutes kept pursuant to this rule shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting at which the minutes are confirmed.
 - (d) Where minutes are entered and signed they shall, until the contrary is proved, be evidence that the meeting was convened and duly held, that all proceedings held at the meeting shall be deemed to have been duly held, and that all appointments made at a meeting shall be deemed to be valid.
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24. Financial reporting

24.1 Financial year

The financial year of the Association shall be the period commencing on 1 July and ending on 30 June of each year.

24.2 Accounts to be kept

The Association shall keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the Association in accordance with the Act.

24.3 Accounts and reports to be laid before Members

The accounts, together with the auditor's report on the accounts, the Board's statement and the Board's report, shall be laid before Members at the annual general meeting.

24.4 Annual returns

This rule only applies to if the Association is a Prescribed Association.

The annual (periodic) return shall be lodged in accordance with the Act within six months after the end of each financial year. It must be accompanied by a copy of the accounts, the auditor's report, the Board's statement, and the Board's report.

24.5 Appointment of auditor

- (a) At each annual general meeting, the Members shall appoint a person to be auditor of the Association.
- (b) The auditor shall hold office until the next annual general meeting and is eligible for re-appointment.
- (c) If an appointment is not made at an annual general meeting, the Board shall appoint an auditor for the current financial year.

25. Prohibition against securing profits for Members

The income and capital of the Association shall be applied exclusively to the promotion of its objects and no portion shall be paid or distributed directly or indirectly to Members or their associates except as bona fide remuneration of a Member for services rendered or expenses incurred on behalf of the Association.

26. Winding up

The Association may be wound up in the manner provided for in the Act.

27. Application of surplus assets

- (a) If after the winding up of the Association there remains 'surplus assets' as defined in the Act, such surplus assets shall be distributed to any organisation which has similar objects and has rules which prohibit the distribution of its assets and income to its Members.
- (b) Such organisation or organisations shall be identified and determined by a resolution of Members in general meeting.

28. Altering this constitution

- 28.1 This constitution may be altered (including an alteration to the Association's name) by Special Resolution of the Members. This includes rescission or replacement by substitute rules.
- 28.2 The alteration shall be registered as required by the Act.
- 28.3 The registered constitution shall bind the Association and every Member to the same extent as if they have respectively signed and sealed them, and agreed to be bound by all of the provisions thereof.

29. Standing orders and by-laws

The Board may establish a set of administrative standing orders, by-laws and other administrative procedures and policies not inconsistent with this constitution and the Act, to facilitate the effective operation of the Association. These and any alterations and/or amendments shall be made available to Members upon request.