



# 2018 RULES OF THE ASSOCIATION

Adopted by members at the 2018 Annual General Meeting,  
held 21 November 2018

Australian Banana Growers' Council Inc.

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# 1. Interpretation

## 1.1 Definitions

A word or expression that is not defined in these rules, but is defined in the *Associations Incorporation Act 1981* has, if the context permits, the meaning given by the Act.

**ABGC** means the incorporated association named the Australian Banana Growers' Council Inc.

**ABGC Membership Fee** means the fee as set by the Board from time to time and payable by the ABGC member to the ABGC.

**Act** means the *Associations Incorporation Act 1981*.

**Additional Director** means a director appointed by the Board to add skills to it. See section 7.2.

**Board** means the board of Directors.

**Business Days** means business days in Queensland.

**Commercial Banana Grower Member** means a person who has a Commercial Banana growing business, or their representative, and has paid the appropriate membership fee.

**Director** means Committee Member as formally defined under the Association Incorporation Act 1981.

**Electronic Communication means communication via** telephone, Skype, fax, email, videoconference or any other audio, visual or data device which permits instantaneous communication.

**Full term** means 4 consecutive Annual General Meeting years.

**Member** means a person whose name is entered on the Register of members.

**New South Wales Director** means a Director who is a Commercial Banana Grower in respect of a Commercial Banana Plantation located in New South Wales.

**Northern Territory Director** means a Director who is a Commercial Banana Grower in respect of a Commercial Banana Plantation located in the Northern Territory.

**Ordinary resolutions are** the resolutions put to Annual General Meetings as required in Rule 10.1.2. See Special Resolution definition.

**Queensland Director** means a Director who is a Commercial Banana Grower in respect of a Commercial Banana Plantation located in Queensland.

**Register** means the register of members kept pursuant to the Act

**Relevant Authority** means the Office of Fair Trading, Queensland Government as defined in the Act.

**Secretary** means a person appointed as secretary of the ABGC

**Special Resolution** means a resolution, other than an Ordinary Resolution, provided in advance for consideration at a general meeting of the ABGC.

**Surplus Assets** has the meaning given by section 92(3) of the Act.

**Voting member** means a commercial banana grower member who at the date of any general meeting of the ABGC has paid all membership fees and any other monies payable by that member.

**Western Australian Director** means a Director who is a Commercial Banana Grower in respect of a Commercial Banana Plantation located in Western Australia.

## 1.2 Construction

In these rules unless the context otherwise requires :

- (a) words in the singular include the plural and vice versa;
- (b) words denoting gender shall include all genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) “includes” means includes without limitation;
- (e) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (iv) a right includes a benefit, remedy, discretion or power;
  - (v) time is to local time in Brisbane, Queensland;
  - (vi) “\$” or “dollars” is a reference to Australian currency;
  - (vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission and email transmission; and
- (d) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

## 2. Name

The name of the incorporated association is the Australian Banana Growers’ Council Inc. (**ABGC**).

## 3. Objects

The objects of the ABGC include, but are not limited to:



- (a) To promote the interests and economic viability of members and the development of the Australian banana production sector;
- (b) to formulate and advocate industry policy to government, consumers, the supply chain and other industry stakeholders;
- (c) to maintain effective relations with and between Members, industry supply chain participants, other horticultural or agricultural industry groups, government and other industry stakeholders and to meet its national levy obligations as the prescribed industry body for the Australian Banana Industry; and
- (d) to inspire members and encourage membership of the ABGC by accomplishing the above objectives.

## **4. Powers**

### **4.1 Powers of an individual**

The ABGC has the powers of an individual.

### **4.2 Example of powers**

The ABGC may, for example:

- (a) enter into contracts;
- (b) acquire, hold, deal with and dispose of property;
- (c) make charges for services and facilities it supplies;
- (d) issue secured and unsecured notes, debentures and debenture stock for the ABGC; and
- (e) do other things necessary or convenient to be done in carrying out its affairs.

## **5. Membership**

### **5.1 Classes of Membership**

The membership of the ABGC shall consist of any of the following classes of Members:

- (a) *Commercial Banana Grower Member*: being a person who has a Commercial Banana growing business, or their representative, and has paid the appropriate membership fee;
- (b) *Affiliate Member*: being a business or individual who services the Australian banana growing industry, including wholesalers, transport companies, retailers, consultants and other service organisations;
- (c) *Life Member*: conferred on any member who has, in the opinion of the Board, provided outstanding services to the ABGC and/or the Australian banana industry;
- (d) *Honorary Member*: which may be conferred on any person who, by reason of their special attributes are, in the opinion of the Board, entitled to such a privilege; and

- (e) Such other classes of membership as determined by the Board from time to time.

## **5.2 Commercial Banana Growing Business**

A banana plantation is a Commercial Banana Growing Business if:

- (a) it has a minimum of 0.5 hectares of bananas under plantation;
- (b) It is determined by the Board to be run as a plantation that can popularly be characterised as a commercial banana plantation.
- (c) it has an Australian Business Number (ABN)
- (d) The decision of the Board is final and conclusive as to whether or not a plantation is a Commercial Banana Plantation.

## **5.3 Commercial Banana Grower**

A person is a Commercial Banana Grower if that person owns or operates a Commercial Banana Growing Business.

## **5.4 Commercial Banana Grower Membership**

- (a) Only one Commercial Banana Grower membership may be held in respect of a Commercial Banana Growing Business
- (b) Where a person (i.e. individual, partnership, trust or company) legally owns or operates two or more Commercial Banana Growing Businesses that person may hold two or more Commercial Banana Grower memberships in respect of those businesses

## **5.5 Qualification of Members**

To qualify for membership of the ABGC:

- (a) applicants must meet the criteria applicable to the membership class applied for;
- (b) every application for any class of membership shall be made in writing, signed by the applicant and shall be in such form as the Board from time to time prescribes;
- (c) the applicant must have conducted himself/herself in a way not considered to be extraordinarily injurious to the character or interests of the ABGC;
- (d) applicants must pay the membership fees set by the Board.

## **5.6 Admission to membership**

- (a) The Board shall determine the admission or rejection of the applicant as a Member as soon as possible after receiving a membership application and this could be via electronic communication.

- (b) Upon the acceptance or rejection of an application for any class of membership, the Secretary shall be directed to give the applicant notice in writing of such acceptance or rejection.

## **5.7 Membership fees**

- (a) Membership fees:
  - (i) may from time to time be set by the Board; and
  - (ii) is payable when, and in a matter which, the Board decides from time to time.
- (b) If the membership fee (or any part of it) payable by a Member remains unpaid beyond the date that it is due the Member ceases to be entitled to:
  - (i) vote at any meeting of the ABGC;
  - (ii) be elected to any office within the ABGC; or
  - (iii) any of the benefits, rights or privileges of a Member, but these will be reinstated on payment of arrears at the discretion of the Board.

## **5.8 Maintenance of Membership**

To maintain their eligibility to be a member a person must continue to pay the ABGC Membership Fee during the term of their membership.

## **5.9 When Membership ends**

### **5.9.1 Resignation of Member**

- (a) A member may resign from the ABGC by giving a written notice of resignation to the secretary.
- (b) The resignation takes effect on:
  - (i) the day and at the time the notice is received by the secretary; or
  - (ii) if a later day is stated in the notice—the later day.
  - (iii) if a member resigns, that person is not entitled to a refund of any part of the ABGC Membership Fee paid to the ABGC up to and including the date on which the resignation takes effect.

### **5.9.2 Termination of membership**

- (a) The Board may terminate a member's membership if the member:
  - (i) does not comply with any of the provisions of these rules; or
  - (ii) conducts themselves in a way considered to be injurious or prejudicial to the character or interests of the ABGC.

- (b) Before the Board terminates a member's membership, the Board must notify the member in writing of the proposed termination.
- (c) Within two weeks of notification under paragraph (b) , the member may submit to the Board a written submission showing why membership should not be terminated and may request to meet with the Board to discuss the submission.
- (d) If a submission is received from the member within the 14 day period set out in paragraph (c), and if requested by the member, the Board must meet within a reasonable time of the submission at an agreed time and place with the member to discuss the proposed termination and consider the submission made by the member.
- (e) If, after considering the submission made by the member and, if requested under paragraph (d), meeting with the member, the Board decides to terminate the membership, the secretary of the Board must give the member a written notice of the decision no later than 4 weeks after receipt of the written submission or meeting with the member, whichever is the later.
- (f) If a member's membership is terminated, they are not entitled to a refund of any part of the ABGC Membership Fee paid to the ABGC up to and including:
  - (i) if notice is given under Rule 5.10, the date on which a decision is made under Rule 5.10 (g), or
  - (ii) if no notice is given under Rule 5.10, the date which is four weeks after the person receives written notice under Rule 5.9.2 (e).

### **5.9.3 Cessation of membership**

- (a) If a member ceases to be eligible to be a member the Board may direct the secretary to remove the member's details from the register of members.
- (b) From the date of removal from the register in accordance with paragraph (a) , the member ceases to be a member of the ABGC.

### **5.10 Appeal Against Rejection or Termination of Membership**

- (a) Only decisions in relation to the rejection of a Commercial Banana Grower Member application or the termination of Commercial Banana Grower membership may be appealed.
- (b) A person whose application to be a Commercial Banana Grower Member has been rejected, or whose Commercial Banana Grower membership has been terminated, may give the Secretary written notice of the person's intention to appeal against the decision within four weeks after the person receives written notice of the decision.
- (c) If the Secretary receives a notice of intention to appeal under rule 5.10(b), the Secretary must place the appeal on the Agenda for the next meeting of ABGC, be it a Special, Annual or General Meeting and advise appellant of such meeting date.
- (d) The appellant must provide a written submission to the Secretary at least four weeks before the meeting for circulation to members.

- (e) The Board must provide a written submission to the Members at least four weeks prior to the meeting referred to in rule 5.10(c) outlining why the application was rejected or the membership terminated.
- (f) The person must be given the opportunity to appear before the meeting to show why the application should not be rejected or the membership terminated.
- (g) The Board must be given an opportunity at the meeting to show why the application should be rejected or the membership should be terminated.
- (h) An appeal must be decided by a vote of the Voting Members present at the meeting

### **5.11 Register of members**

The ABGC must keep a register of members in such form as the Board determines from time to time.

The register must include the following particulars for each Commercial Banana Grower Member:

- (a) the full name, residential and postal address, and electronic contacts of the Commercial Banana Grower Member
- (b) description of the local shire and the State or Territory of the Commercial Banana Plantation and the number of hectares of land used for commercial banana production;
- (c) such other details that the Board determines appropriate from time to time

For other membership classes the register must include:

- (a) the full name and residential and postal address of the member
- (b) brief description of members association with ABGC and/or the Australian Banana Industry
- (c) such other details that the Board determines appropriate from time to time

### **5.12 Members are those members on the register**

The members of the ABGC are those members whose details are on the register of members.

### **5.13 Right to inspect the register**

Before a member may inspect the register, the member must be aware for privacy reasons that he or she is only able to inspect his/her membership details and the member must apply to the Secretary for such information.

## **6. Secretary**

### **6.1 Appointment of secretary**

The Board will appoint the Chief Executive Officer as the ABGC's Secretary.

### **6.2 Vacancy**

If a vacancy happens in the office of secretary, the members of the board must ensure a secretary is appointed for the ABGC within one month of the vacancy happening.

### **6.3 Notification**

The Board must notify the Relevant Authority within one month of the appointment of a secretary.

## **7. Membership of the Board**

### **7.1 Initial composition**

The Directors at the time at which these rules are adopted are those persons listed in Schedule 1 of these rules

### **7.2 Board Composition**

- (a) The Board is to be comprised of 8 Grower Directors and up to two Additional Directors,
- (b) After the general meeting following adoption of these revised Rules, the Board shall consist of 8 Grower Directors elected from the Voting Members, of which:
  - (i) five are Queensland Directors;
  - (ii) two are New South Wales Directors ; and
  - (iii) one is either a Northern Territory Director or a Western Australian Director.
- (c) The Board may appoint up to two Additional Directors to increase the diversity of skills on the Board.
  - (i) An Additional Director will have the same rights as a Grower Director at Board meetings, but is not eligible to be the ABGC Chairperson.
  - (ii) An Additional Director is not required to be independent of the banana industry, but cannot be a grower.
  - (iii) An Additional Director may be appointed by the Board for a term of up to two years.
  - (iv) Such appointment is to be endorsed at the next general meeting.

### **7.3 Eligibility**

- (a) A person is not eligible to be a Grower Director unless:
  - (i) for at least the 12 months prior to nomination for election as a Grower Director the person was and continues to be a Commercial Banana Grower Member of the ABGC; and
  - (ii) the person is nominated by another Commercial Banana Grower Member who is Commercial Banana Grower in the same State or Territory as the person being nominated.
- (b) A Commercial Banana Grower Member may only be nominated for election as a Grower Director representing any one State or Territory.
- (c) Where a Commercial Banana Grower Membership comprises more than one person and the membership is jointly held, only one of those persons shall be eligible to be nominated for election as a Grower Director and the nomination that shall be accepted shall be that nomination received first in time by the secretary.

### **7.4 Call for Grower Director Nominations**

- (a) The Board shall direct the Secretary to notify Voting Members of a call for nominations for Grower Directors when the notice of the Annual General Meeting is advised to members as set out in rule 10.3.1. The notice may be communicated through:
  - (i) printed correspondence generally available to Voting Members;
  - (ii) by notice; or by
  - (iii) electronic media generally accessible to Voting Members, notifying Voting Members of a call for nominations for Grower Directors.
- (b) Any notice under paragraph (a) must contain:
  - (i) the closing date for nominations which will be at least 2 weeks after the date the notice is given;
  - (ii) the eligibility criteria for a Grower Director, as set out in rule 7.3; and
  - (iii) a statement that a Member may only nominate a person as a Grower Director if the Member is a Commercial Banana Grower in the same State or Territory as the person being nominated for election.
- (c) A person may only be elected as a Grower Director if the nomination is:
  - (i) in writing;
  - (ii) signed by the candidate and the Member who nominated him or her; and
  - (iii) received by the Secretary within the time specified under rule 7.4(b)(i); and
- (d) the person is eligible to be elected under rule 7.3

## **7.5 Terms of Office**

- (a) No Grower Director may retain office for more than a Full Term without retiring from office.
- (b) A retiring Grower Director is entitled to stand for re-election at the annual general meeting at which he or she retires.
- (c) If a Grower Director fills a casual vacancy under rule 7.9.1 and that Director is re-elected at the annual general meeting following the Director's appointment by the Board, the period during which the Director filled the casual vacancy (the "Casual Term") will not be included as part of a Full Term.

## **7.6 Retirement by rotation**

- (a) The order in which the initial Grower Directors shall retire by rotation is set out in Schedule 1 and otherwise determined by the Chairperson.
- (b) if:
  - (i) a Grower Director is re-elected after a Casual Term; or
  - (ii) a Grower Director retires or is removed from office prior to the expiry of a Full Term then, the newly elected Director must offer himself/herself for re-election at the annual general meeting which the Director who caused the casual vacancy to arise or ceased to hold office at that annual general meeting, would have been required to retire by rotation pursuant to rule 7.6(a), even if the Director in office has not served a Full Term.
- (c) A retiring Grower Director may act until the conclusion of the meeting at which he or she retires.
- (d) Subject to Rule 7.6, at any annual general meeting at which any Grower Director retires the Members may fill the vacated office by re-electing the Director or electing some other person to fill the vacancy in accordance with Rule 7.7.

## **7.7 Election by Members of Same State or Territory**

- (a) Only Commercial Banana Grower Members are entitled to vote on the election of Grower Directors and such Members may only vote for a candidate who is a Commercial Banana Grower in the same State or Territory as that Member.
- (b) If the number of persons standing for election in a particular State or Territory is less than or equal to the number of vacancies in that State or Territory, the persons standing are taken to be elected as Grower Directors.
- (c) If the number of persons standing for election in a particular State or Territory is greater than the number of vacancies in that State or Territory, the election of Grower Directors shall be undertaken by a postal ballot;
- (d) Ballot papers for the election of Grower Directors shall be:



- (i) sent to Commercial Banana Grower Members and shall list in alphabetical order only those Directors standing for election in the State or Territory in which the Member is a Commercial Banana Grower;
  - (ii) sent to each Member in that state within one week of the closing date for nominations; and
  - (iii) completed by the Member and votes received by the Secretary at least two Business Days prior the annual general meeting.
- (e) A ballot paper may only be completed by the Member to whom it was sent.
  - (f) A ballot for the election of Directors shall be conducted in accordance with such rules as may be prescribed by the Board from time to time.
  - (g) Counting of votes to be supervised by the Secretary.
  - (h) The ABGC may notify the candidates of the results of the postal ballot prior to the annual general meeting.
  - (i) At the annual general meeting to which the ballot relates the results of the ballot will be declared.

## **7.8 Resignation or removal from office of Director**

### **7.8.1 Resignation of Directors**

- (a) A Director may resign from office by giving written notice of resignation to the Secretary.
- (b) The resignation takes effect on:
  - (i) the day and at the time the notice is received by the Secretary; or
  - (ii) if a later day is stated in the notice - the later day.

### **7.8.2 Removal of Directors**

- (a) A Director may be removed from office by a resolution of the Board. The Board may remove a Director if:
  - (i) the Director conducts himself/herself in a way considered to be injurious or prejudicial to the character or interests of the ABGC;
  - (ii) fails to attend three consecutive Board meetings without reasonable cause; or
  - (iii) through automatic removal, as set out in Rule 7.8.3.
- (b) Before a vote is taken about removing the Director from office, the Director must be offered an opportunity to address the Board as to why he or she should not be removed from office.
- (c) A Director has no right of appeal against the Director's removal from office under this rule.

### **7.8.3 Automatic removal**

The office of a Grower Director automatically becomes vacant if the Director:

- (a) is removed as a Director under 7.8.2;
- (b) ceases to be a Commercial Banana Grower Member;
- (c) resigns by notice in writing to the ABGC;
- (d) dies;
- (e) is :
  - (i) convicted of an offence under the Act; or
  - (ii) convicted of an indictable offence or an offence punishable on summary conviction for which the person is sentenced to imprisonment, other than in default of payment of a fine.

### **7.9 Vacancies on the Board**

#### **7.9.1 Casual vacancy**

- (a) The Directors shall have power at any time to appoint any Commercial Banana Grower member to be a Director to fill a casual vacancy.
- (b) The vacancy shall be filled by a person who is a Commercial Banana Grower Member or its Representative in the same State of Territory as the Director who has vacated office and otherwise complies with Rule 7.3(a).
- (c) Any Grower Director so appointed shall hold office only until the next annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the Directors who are to retire by rotation at that meeting unless the Director who caused the casual vacancy to arise would have been required to retire by rotation.

#### **7.9.2 Continuing to act**

Where the office of a Director becomes vacant, the continuing Directors may continue to act except where the number of Directors falls below the minimum number set under Rule 9.5 in which case the continuing Directors may act as the Board only:

- (a) to appoint Casual Directors up to that minimum number; or
- (b) to convene a general meeting

### **7.10 Directors' Remuneration and Expenses**

#### **7.10.1 Remuneration**

The remuneration of the Directors shall be determined by the Board from time to time.

### **7.10.2 Expenses**

The ABGC may elect but is not required to pay a Director (in addition to any other remuneration) all reasonable expenses including, without limitation, any travelling and accommodation expenses incurred by the Director:

- (a) in attending meetings of the Board or a committee of the Board;
- (b) in carrying out that Director's duties as a Director.

## **8. Functions of the Board**

### **8.1 Management of ABGC**

Subject to these rules, the Board has:

- (a) the general control and management of the administration of the affairs, property and funds of the ABGC; and
- (b) authority to interpret the meaning of these rules and any matter relating to the ABGC on which the rules are silent.

### **8.2 Exercise powers of ABGC**

The Board may exercise the powers of the ABGC including:

- (a) to borrow, raise or secure the payment of amounts;
- (b) to secure the amounts mentioned in 8.2 (a) or the payment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the ABGC in any way, including by the issue of debentures (perpetual or otherwise) charged upon the whole or part of the ABGC's property, both present and future;
- (c) to purchase, redeem or pay off any securities issued;
- (d) to borrow amounts from members and pay interest on the amounts borrowed;
- (e) to mortgage or charge the whole or part of its property;
- (f) to issue debentures and other securities, whether outright or as security for any debt, liability or obligation of the ABGC and
- (h) to invest in a way the Board may from time to time decide.

## **9. Meetings of Directors**

### **9.1 Mode of Meeting**

The Board may meet in person or by electronic communication means of conferring for the dispatch of business (or by any combination of those means) which allows each person present to hear and

be heard by each other person present, and adjourn and otherwise conduct its proceedings as it considers appropriate.

## **9.2 Frequency of meetings**

The Board must meet at least 3 times per calendar year to exercise its functions.

## **9.3 Convening meetings**

- (a) The Board may decide how a meeting is to be called.
- (b) Notice of each meeting of the Board :
  - (i) must state the day, time and place of the meeting and the business to be conducted
  - (ii) must be given to each Director;
  - (iii) may be given in writing, by telephone, email or facsimile message,
- (c) Any five Directors may request that the Secretary convene a meeting so long as.
  - (i) the reason for the request is in writing;
  - (ii) as soon as practicable after receiving a request the Secretary to call a meeting of Board no later than four weeks after receipt of the request or at such later date as the Directors making the request agree.

## **9.4 Place of Meeting**

Where the Board holds a meeting solely or partly by telephone or other instantaneous means of conferring the meeting is to be treated as held at the place at which at least one of the Directors present at the meeting is physically located as is agreed by those Directors present at the meeting.

## **9.5 Quorum**

The number of Directors present at a meeting of the Board necessary for the transaction of business at the meeting is:

- (a) Half the number of filled Board positions, rounded up. (e.g. where there are 7 Directors, the quorum would be 4.
- (b) For the purposes of these Rules, a Director is treated as present at the meeting by electronic communication if the Director is able to hear the entire meeting and be heard by all others attending the meeting.
- (c) A Director is not permitted to nominate a proxy vote for a Board meeting.
- (d) In the event that the Director is excluded from voting because of 9.9.3 (relating to a material personal interest), the quorum will be adjusted accordingly (e.g. if one Director is so excluded then the quorum will be one less Director).

## **9.6 No Quorum**

If a quorum is not present within 30 minutes after the time fixed for a Board meeting, the meeting is to be adjourned to a day, time and place decided by the Board.

## **9.7 Office Bearers**

- (a) The Directors shall hold its annual Board meeting, as soon as practicable after the ABGC's Annual General Meeting, to elect one of their number to each of the following positions:
  - (i) Chairperson; and
  - (ii) Deputy Chairperson.
  - (iii) Treasurer
- (b) The office bearers hold that office until the earlier of:
  - (i) his or her resignation or removal as office bearer by the Board
  - (ii) his or her ceasing to be a Director; or
  - (iii) the end of the next Annual General Meeting following his or her election to the office.

## **9.8 Chairperson of Board Meetings**

Where the Board holds a meeting and:

- (a) the Chairperson is not present within 10 minutes of the time appointed for the holding of the meeting or is unwilling to act the Deputy Chairperson is to chair the meeting
- (b) the Deputy Chairperson is not present within 10 minutes of the time appointed for the holding of the meeting or is unwilling to act, the Directors present at the meeting may choose one of their number to be Chairperson of that meeting.

## **9.9 Directors' Duties and Interests**

### **9.9.1 Disclosure of Material Personal Interests**

A Director who has a material personal interest in a matter that relates to the affairs of the ABGC must give Directors notice of the interest.

### **9.9.2 Details of Notice**

A notice required by rule 9.9.1 must:

- (a) give details orally of the interest, and the relation of the interest to the affairs of the ABGC; and
- (b) be given at a Board meeting as soon as practicable after the Director becomes aware of his interest in the matter.
- (c) must be recorded in the minutes of the Board meeting

### **9.9.3 Restrictions on Voting**

A Director who has a material personal interest in a matter that is being considered at a meeting of the Board must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter; unless:
- (c) Rule 9.9.4 applies.

### **9.9.4 Participation with approval of other Directors**

A Director may be present and vote, or present and not vote, if the Directors who do not have a material personal interest in the matter pass a resolution that:

- (a) identifies the director, the nature and extent of the directors interest in the matter and its relation to the affairs of the ABGC; and
- (b) states that those Directors are satisfied the interest should not disqualify the director from voting, or being present.

### **9.10 Majority Decisions**

Every question arising at a Board meeting is to be decided by a simple majority of Directors present at the meeting voting in favour. If there is an equality of votes on any question or resolution, the Chairperson of the meeting has the power to exercise a casting vote in addition to any other vote he or she may have.

### **9.11 Board Committees**

#### **9.11.1 Delegation to Committee**

The Board may delegate any of its powers to a committee consisting of any Directors, including Additional Directors or other members of the ABGC considered appropriate by the Board.

#### **9.11.2 Committee Powers and Meetings**

Where the Board has appointed a committee under rule 9.11.1:

- (a) that committee must exercise the powers delegated to it in accordance with any directions of the Board;
- (b) the members of the committee may elect a Chairperson from among the members;
- (c) where a committee holds a meeting and:
  - (i) has not elected a Chairperson under rule 9.11.2 (b); or
  - (ii) the Chairperson so elected is not present at the meeting within 10 minutes of the time appointed for the holding of the meeting or is unwilling or unable to act, the members of the committee present at the meeting may choose one of their number to be Chairperson of the meeting;

- (d) the committee may meet in person or by telephone or other instantaneous means of conferring for the dispatch of business (or by any combination of those means) and adjourn and otherwise regulate its meetings as it may determine; and
- (e) the committee meetings are otherwise governed by the provisions of these Rules which regulate the meetings and procedures of the Board.
- (f) All committee recommendations on strategic policy matters must be ratified by the Board before becoming policy.

### **9.12 Written Resolution of Directors**

Where Directors receive a notice of a meeting to vote on a Board resolution and subsequently formally document support for the resolution (the terms of which are set out in the document), a resolution in those terms is for all purposes to be treated as having been passed at a duly convened meeting of the Board held on the date and at the time when the last Director signed the document.

### **9.13 Several Documents Suffice**

For the purpose of rule 9.12:

- (a) 2 or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document;
- (b) an email or facsimile message containing the text of the document expressed to have been signed by a Director and sent to the ABGC is a document signed by that Director at the time of its receipt by the ABGC.

### **9.14 Board meetings by Electronic Communication**

For the purposes of these rules, the contemporaneous linking together by Electronic Communication of a number of consenting Directors not less than the quorum, whether or not any one or more of the Directors is out of Australia, is deemed to constitute a meeting of the Directors and all the provisions of these rules as to the meetings of the Directors will apply to such meetings held by Electronic Communication provided the following conditions are met:

- (a) all the Directors for the time being entitled to receive notice of the meeting of Directors are entitled to notice of a meeting by Electronic Communication and to be linked by Electronic Communication for the purposes of such meeting. Notice of any such meeting may be given by the Electronic Communication or in any other manner permitted by these rules;
- (b) at the commencement of the meeting each of the Directors taking part in the meeting by Electronic Communication is able to communicate with each of the other Directors taking part;
- (c) at the commencement of the meeting each Director must acknowledge the Director's presence for the purpose of a meeting of the Directors to all the other Directors taking part;
- (d) a Director must not leave the meeting by disconnecting the Director's Electronic Communication unless the Director has previously obtained the express consent of the

chairperson of the meeting. A Director is conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by Electronic Communication unless the Director has previously obtained the express consent of the chairperson of the meeting to leave the meeting; and

- (e) a minute of the proceedings of a meeting by Electronic Communication is sufficient evidence of those proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson following a Board meeting.

### **9.15 Validity of Acts of Directors**

An act performed by the Board, a committee or a person acting as a Director is taken to be validly performed even when this act was performed when there was a defect in the appointment of the Board, committee or person acting as a Director or when such persons were disqualified from being a member.

## **10. General Meetings**

### **10.1 Annual general meeting**

#### **10.1.1 Frequency of Meeting**

An annual general meeting must be held:

- (a) once each year; and
- (b) within 6 months after the end of the ABGC's previous financial year.

#### **10.1.2 Period of Notice**

- (a) A Notice of meeting must be sent to each member at least 6 weeks prior to the annual general meeting.
- (b) If a Special resolution is to be proposed by a member it is to be seconded by another member and submitted to the Secretary at least 3 weeks prior to the meeting. In that circumstance the Secretary is to send a revised notice of meeting with changes approved by the Chairperson at least 2 weeks prior to the meeting.

#### **10.1.3 Business to be conducted at annual general meeting**

The following business must be conducted at each annual general meeting:

- (a) receiving the Income Statement and Balance Sheet of the ABGC for the last financial year;
- (b) receiving the auditor's report on the financial affairs of the ABGC for the last financial year;
- (c) presenting the audited statement to the meeting for adoption;
- (d) electing Grower Directors; and
- (e) appointing an auditor.



## **10.2 Special general meeting**

### **10.2.1 Convening a special general meeting**

The secretary may only call a special general meeting by giving each member at least 4 weeks' notice of the meeting after:

- (a) being directed to call the meeting by the Chairperson; or
- (b) being directed by the quorum of directors ; or**
- (c) being given a written request signed by at least half of the members of the ABGC; or
- (d) being given a written notice of an intention to appeal against the decision of the Board:
  - (i) to reject an application for a Commercial Banana Grower membership; or
  - (ii) to terminate a Commercial Banana Grower's membership.

### **10.2.2 Contents of request**

A request mentioned in rule 10.2.1 (b) must state:

- (a) why the special general meeting is being called; and
- (b) the business to be conducted at the meeting.

## **10.3 Meeting Procedures**

### **10.3.1 Notice of Meeting**

- (a) The ABGC must give notice of every general meeting to every member.
- (b) A notice of a general meeting may be given by writing, telephone, facsimile or email and specify:
  - (i) the place, date and time of the meeting;
  - (ii) the general nature of the business to be transacted,
  - (iii) any Special Resolution to be proposed at the meeting
  - (iv) information regarding the right to appoint a proxy; and
  - (v) if a mode of meeting other than meeting in person is to apply to the meeting, that mode of meeting and any details required to enable a Member to attend that meeting.

### **10.3.2 Mode of Meeting**

ABGC Members may meet in person or, if the Board determines by telephone, or by electronic communication for the dispatch of business (or by any combination of those means) which allows each Member or Member's representative to hear and be heard by each other person at the meeting, and a person entitled to be present at the meeting who can so hear and be heard is present at that meeting.

### **10.3.3 Omission to Give Notice**

The accidental omission to give notice of a general meeting to, or the non-receipt of notice of the general meeting by, a person entitled to receive notice does not invalidate any resolution passed at that general meeting.

### **10.3.4 Cancellation or Postponement of Meeting**

A general meeting may be cancelled or postponed by giving notice to all Members entitled to receive such a notice

### **10.3.5 Representation of Members**

A Member may attend a general meeting at which he is entitled to be present in any of the following ways:

- (a) in person;
- (b) by proxy;
- (c) by attorney; or
- (d) in the case of a Member which is a body corporate, by a representative appointed for the general meeting.

### **10.3.6 Quorum**

- (a) A general meeting may not deal with any business unless a quorum of Voting Members is present for the duration of the general meeting, being 8 Voting Members that are not Directors.
- (b) In the event of a member excluded from voting by the Chairperson due to a conflict of interest, the quorum shall be adjusted accordingly.

### **10.3.7 No quorum**

If a quorum is not present within 60 minutes from the time appointed for a general meeting the meeting stands adjourned to a day, time and place that the Board may determine.

### **10.3.8 Adjourned Meetings**

- (a) The chairperson may, with the consent of any meeting at which a quorum is present, and must if directed by the meeting, adjourn the meeting from time to time and from place to place.
- (b) The chairperson of a meeting may adjourn a meeting to allow time for members to comply with a request made under Rule 14.
- (c) If a meeting is adjourned under rule 10.3.7 only the business left unfinished at the meeting from which the adjournment took place may be conducted at the adjourned meeting.

- (d) The secretary is not required to give the Members notice of an adjournment or of the business to be conducted at an adjourned meeting unless a meeting is adjourned for at least 4 weeks.
- (e) If a meeting is adjourned for more than 4 weeks, notice of the adjourned meeting must be given in the same way notice is given for an original meeting.

#### **10.3.9 Chairperson**

The Chairperson of the Board of Directors shall be entitled to take the chair at every meeting of ABGC.

#### **10.3.10 Chairperson Absent**

At each general meeting:

- (a) if the Chairperson is not present within 15 minutes after the time fixed for the meeting or is unwilling to act, the Deputy Chairperson is to act as chairperson; and
- (b) if the Deputy Chairperson is absent or unwilling to act as chairperson, the Directors present must elect one of their number to be Chairperson of the meeting, and failing that the Members present must elect one of their number to be chairperson of the meeting.

#### **10.3.11 Method of Voting**

Every resolution put to a vote at a general meeting must be determined by a show of hands by Members entitled to vote unless a poll is properly demanded either before or on declaration of the result of the vote on a show of hands.

Where a resolution is determined by a show of hands:

- (a) a declaration by the Chairperson of the general meeting that the resolution has been carried, carried unanimously, carried without dissent, carried by a particular majority or lost is conclusive evidence of the fact so declared without proof of the number or proportion of votes cast for or against that resolution; and
- (b) an entry in the book containing the minutes of that general meeting recording that declaration is conclusive evidence of the fact that the declaration was made as so recorded.

#### **10.3.12 Voting by Members**

Subject to Rule 10.3.16(b) all decisions of Members entitled to vote in a general meeting shall be determined by majority vote.

#### **10.3.13 Chairperson has no casting vote**

In the case of equality of votes the Chairperson does not have a casting vote

#### **10.3.14 Demand for Poll**

A demand for a poll under rule 10.3.11 may be made by:

- (a) the Chairperson of the general meeting; or

- (b) at least 5 Members entitled to vote on the resolution

#### **10.3.15 Demand for a Secret Ballot**

When a secret ballot is called:

- (a) The Chairperson must appoint two Directors in consultation with the Secretary to conduct the secret ballot in a way the Chairperson determines and
- (b) The result of the secret ballot as declared by the Chairperson is taken to be a resolution of the meeting at which the ballot was held

#### **10.3.16 Entitlements to Attend and to Vote**

##### **(a) Entitlement to the Notice and to Attend**

Subject to these rules, each Member and each Director is entitled to the notice of each general meeting and to be present and to speak at that general meeting.

##### **(b) Entitlement to Vote**

- (i) Only Members who are Commercial Banana Grower Members have voting rights. Honorary and Life Members must be current commercial banana growers to vote.
- (ii) Each Voting Member (or a proxy, representative or attorney appointed by a Member) has one vote on a show of hands, one vote in a secret ballot, one vote on a poll, or one proxy vote

#### **10.3.17 Joint Membership Votes**

Where more than one person is a joint Commercial Banana Grower Member:

- (a) each of those persons may tender a vote in respect of the membership either in person or by proxy, representative or attorney, as if the person were the sole Member in respect of that membership; but
- (b) if two or more of those persons tender a vote on any resolution, the only vote which is to be counted in respect of that membership is the vote tendered by the most senior of those persons, seniority being conclusively ascertained by the order of names in respect of that membership in the Register.

#### **10.3.18 Appointment of Proxy**

- (a) A Member may appoint a proxy (who need not be a Member) to attend, speak and, in the case of a Commercial Banana Grower Member, vote at a general meeting in his or her place only by an instrument of proxy in the form of Schedule 2 or in any other form that the Board may from time to time prescribe or accept which is executed:
  - (i) in the case of a Member who is a natural person, under the hand of the Member, or of an attorney appointed in writing by the Member; or
  - (ii) in the case of a Member which is a body corporate, either under seal or by a properly authorised officer or attorney of the corporation

- (b) Completed proxy forms are to be received by the Secretary at least two business days prior to the General Meeting

#### **10.3.19 Corporate Representatives**

Where a body corporate authorises a person to act as its Representative, that appointment is only effective where the ABGC Chairperson receives a copy of the instrument appointing the Representative two business days prior to the meeting.

#### **10.3.20 Multiple Appointments**

Where the ABGC Chairperson has received an instrument of proxy from a Member the appointment made by that instrument is and remains valid and effective, except that where the ABGC Chairperson subsequently receives:

- (a) a power of attorney or office copy or notarially certified copy of a power of attorney entitling the attorney to attend and vote at the meeting, the appointment is revoked;
- (b) intimation in writing either of the revocation of the appointment under the instrument of proxy or of the death of the Member, the appointment is revoked; and
- (c) another instrument of proxy from the Member, the instrument of proxy bearing the later date (or if the instruments bear the same date, the instrument later received by the ABGC Chairperson) is an intimation in writing of the revocation of the appointment under the other instrument.

#### **10.3.21 Presence of Member**

If a Member is present at a general meeting in either of the ways specified in rule 10.3.5 and a person appointed by the Member as a proxy or attorney is also present at that meeting, that person may not exercise the rights conferred by the instrument of proxy or power of attorney while the Member is present.

#### **10.3.22 Directions to Proxy**

Unless instructed how to vote on the Proxy Form, the proxy may vote as the proxy considers appropriate.

#### **10.3.23 Ruling on Entitlements to Vote**

An objection may be raised with the Chairperson of a general meeting as to the qualification of a purported voter or the admission or rejection of a vote by any person present and entitled (or claiming to be entitled) to vote but

- (a) the decision of the Chairperson is final and conclusive; and
- (b) a vote not disallowed as a result is valid and effective for all purposes

## **11. Alteration of Rules**

### **11.1 General meeting**

Subject to the Act, these rules may be amended, repealed or added to by a special resolution carried at a general meeting.

### **11.2 Registration of amendments**

An amendment, repeal or addition is valid only if it is registered by the Relevant Authority.

## **12. ABGC Administration**

### **12.1 Minutes to be Entered**

The Board must cause all minutes to be entered in the relevant minute book of the ABGC.

### **12.2 Minutes to be Made**

The Board must cause minutes to be made of:

- (a) the names of the Directors present at each Board meeting;
- (b) the names of the committee members present at each meeting of a committee appointed under Rule 9.11.1
- (c) the proceedings and resolutions of each general meeting;
- (d) the proceedings and resolutions of each Board meeting; and
- (e) the proceedings and resolutions of each meeting of a committee appointed under Rule 9.11.

### **12.3 Minutes to be accurate**

To ensure the accuracy of the minutes recorded under Rule 12

- (a) the minutes of each Board meeting must be accepted by the following similar meeting and signed by the chairperson of the meeting, or the chairperson of the next Board meeting, verifying their accuracy;
- (b) the minutes of each general meeting must be signed by the chairperson of the meeting, or the chairperson of the next general meeting, verifying their accuracy; and
- (c) the minutes of each annual general meeting must be signed by the chairperson of the meeting, or the chairperson of the next meeting of the ABGC that is a general meeting or annual general meeting, verifying their accuracy

#### **12.4 Common Seal**

- (a) The Board must ensure the ABGC has a common seal
- (b) The Common Seal must be:
  - (i) kept securely by the Board
  - (ii) used only under the authority of the Board
- (c) Each instrument to which the common seal is attached must be signed by a member of the board and countersigned by:
  - (i) the secretary
  - (ii) another member of the Board or
  - (iii) someone appointed by the board

#### **12.5 Account in name of ABGC**

- (a) All funds of the ABGC must be kept in an account in the name of the ABGC.
- (b) The ABGC may collect and distribute funds on behalf of other entities upon direction of the Board.
- (c) All amounts must be deposited in the financial institution account as soon as practicable after receipt.

#### **12.6 Sole use of assets and income**

The income and assets of the ABGC must be used solely in promoting the ABGC's objects and no portion shall be distributed directly or indirectly to the members, except as compensation for services rendered or expenses incurred on behalf of the ABGC.

#### **12.7 Financial Statements**

- (a) The financial year of the ABGC closes on 30<sup>th</sup> June each year.
- (b) The Treasurer must, as soon as practicable after the end of each financial year, ensure a statement containing the following particulars is prepared:
  - (i) the Income Statement for the financial year just ended, and
  - (ii) the ABGC's Balance Sheet at the close of that year.

#### **12.8 Auditor**

The auditor must examine the statement prepared under Rule 12.7 and present a report about it to the secretary before the next Annual General Meeting following the financial year for which the audit was made.

## **12.9 Inspection of Records**

Generally, financial and other internal ABGC Documents are not available to members, other than current Directors. However under exceptional circumstances the Board may determine whether and to what extent, at what times and places and under what conditions, the accounting records and other documents of the ABGC may be open to the inspection of Members other than Director. A Member other than a Director does not have the right to inspect any document of the ABGC except as authorised by the Board.

## **12.10 Documents**

The Board must ensure the safe custody of books, documents, instruments of title and securities of the ABGC.

# **13. Dissolution**

## **13.1 Distribution of surplus assets**

- (a) If the ABGC is wound up and there remains any property after satisfaction of all debts and liabilities, that property must not be distributed among the ABGC members
- (b) Paragraph (a) does not prevent the payment in good faith:
  - (i) of remuneration to any officers or servants of the ABGC in return for any services rendered to the ABGC, if such payment is approved by the Board and the amount payable is not more than an amount that would be commercially reasonable for the service;
  - (ii) for goods supplied in the ordinary and usual course of business;
  - (iii) of reasonable and proper rent for premises leased or licensed by any member to the ABGC; or
  - (iv) of out of pocket expenses incurred by a Director in performing ABGC duties.
- (c) The Surplus Assets must be given to another entity:
  - (i) having objects similar to the ABGC's objects; and
  - (ii) which is not carried on for the profit or gain of its individual members.

## **13.2 Contribution by members**

Any liability of members is limited to the member fees or any other money due under the rules of the ABGC.

# **14. Request for Statutory Declaration**

The Board or the chairperson of a general meeting may from time to time require the production of a statutory declaration and documentary evidence (for example consignment receipts) from an applicant or any member regarding the ABGC Membership Fees that have been paid or are to be paid by the applicant or the member including full particulars of:



- (a) the dates on which payment was or is to be made;
- (b) the amounts paid or to be paid by the member or applicant;
- (c) who paid or is to pay the amounts to the ABGC on behalf of the applicant or member; and
- (d) details of the Commercial Banana Plantation owned by the member.

## SCHEDULE 1

### Rotation of Directors (as at 28 November 2018)

<b>Date</b>	<b>State Representative to Retire</b>	<b>Current Directors</b>
2019	QLD No. 1	Ben Franklin*
2019	QLD No. 2	Paul Inderbitzin*
2020	QLD No. 3	Stephen Lowe
2020	NSW No. 1	Vacant
2021	NSW No. 2	Stephen Spear
2021	QLD No. 4	Leon Collins
2022	WA/NT	Tom Day
2022	Qld No. 5	Jade Buchanan

\*Up for re-election 21 November 2019, AGM

**SCHEDULE 2 - PROXY FORM**

**AUSTRALIAN BANANA GROWERS' COUNCIL PROXY FORM**



**A) Appointment**

I.....  
(PLEASE PRINT NAME)

Of...../.....  
(ADDRESS/PHONE NUMBER)

being a member of Australian Banana Growers' Council Inc. and entitled to attend and vote, appoint\*

.....  
(PLEASE PRINT NAME + PHONE NUMBER)

as my proxy to act generally at the meeting on my behalf and to vote in accordance with the following directions at the meeting of members of Australian Banana Growers' Council Inc. to be held on:

.....  
and at any adjournment of that meeting.

*\*Or failing the person so named (or if no person is named) the Chairperson of the meeting.*

**B) Business**

Should you desire to direct your proxy how to vote on the Resolutions you should place a mark (X) in the appropriate box against each item below.

	FOR	AGAINST	ABSTAIN
Ordinary Resolution 1: Financial Report and Auditor's Report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ordinary Resolution 2: Appointment of Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Special Resolution (if any):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**C) Members Signature**

.....

**PLEASE RETURN THIS FORM TO THE ABGC SECRETARY BY ..... 5pm.**

*Mail: PO Box 309 Brisbane Market Qld 4106*

*Fax: (07) 3278 4938*

*Email: jim.pekin@abgc.org.au*