



CONSTITUTION OF
BSES Limited

History:

Adopted on: 04 / 04 / 2003

Amended: 26/10/2004

A COMPANY LIMITED BY GUARANTEE

CONSTITUTION of BSES LIMITED

1. GENERAL

The name of the Company is BSES Limited.

2. DEFINITIONS

The following definitions apply in this Constitution, unless the context requires otherwise.

'ABN' means an Australian business number issued by the Australian Taxation Office;

'Chair of Directors' means the Director appointed or elected to act as the chair of meetings of Directors in accordance with Rule 14.4;

'Company' means BSES Limited ACN 103 760 005;

'Director' means a person appointed or elected to the office of director of the Company in accordance with this Constitution;

'Grower' means a person who grows and delivers sugar cane to a Mill in Australia;

'Grower Directors' means the Directors for the time being elected by the Grower Members under Rule 12.2;

'Grower Member' means a Member for the time being who is a Grower;

'Guarantee Amount' means the amount referred to in Rule 5;

'Independent Director' means a Director appointed by the Grower Directors and the Mill Owner Directors under Rule 12.4;

'Initial Grower' means a Grower set out in schedule 1 or who, as at the transfer date, grew sugar cane for the purpose of delivery to a Mill in Queensland and whose application for membership is accepted in accordance with Rule 9 but will not include those members who, despite satisfying the other terms of this definition, applied for membership of the Company after 26 October 2004;

'Initial Mill Owner' means a Mill Owner set out in schedule 2 or who, as at the transfer date, owned a Mill and processed sugar cane in Queensland and whose application for membership is accepted in accordance with Rule 9 but will not include those members who, despite satisfying the other terms of this definition, applied for membership of the Company after 26 October 2004;

'Law' means the *Corporations Act* and the Corporations Regulations;

'Member' means a member for the time being of the Company, and includes a Grower Member and a Mill Owner Member;

'Member Present' means, in connection with a meeting, a Member present in person at the venue or venues for the meeting or by proxy, by attorney and, where the Member is a body corporate, by representative;

'Mill' means a sugar cane mill or facility for processing sugar cane into another product;

'Mill Owner' means a person who processes sugar cane through a Mill in Australia;

‘Mill Owner Directors’ means the Directors for the time being elected by the Mill Owner Members under Rule 12.3;

‘Mill Owner Member’ means a Member for the time being who is a Mill Owner;

‘person’ includes individuals, firms, partnerships, bodies corporate and associations;

‘Seal’ means any common seal or duplicate common seal of the Company;

‘SIRB’ or **‘Sugar Industry Representative Body’** means Queensland Cane Growers Organisation Limited, Australian Cane Farmers Association Limited and Australian Sugar Milling Council Pty Ltd or their successors and assigns;

‘Secretary’ means the person appointed to the office of secretary of the Company in accordance with this Constitution;

‘Subsequent Grower’ means a Grower who is not an Initial Grower;

‘Subsequent Mill Owner’ means a Mill Owner who is not an Initial Mill Owner; and

‘transfer date’ means 30 June 2003 or such other date as provided for by the *Sugar Industry Act 1999*.

3. INTERPRETATION

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply, unless the context requires otherwise.

- (a) A gender includes all genders.
- (b) The singular includes the plural and conversely.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a paragraph or sub-paragraph is to a paragraph or sub-paragraph, as the case may be, of the Rule or paragraph, respectively, in which the reference appears.
- (e) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (f) Except in so far as a contrary intention appears in this Constitution, an expression has, in a provision of this Constitution which relates to a particular provision of the Law, the same meaning as in that provision of the Law.

4. REPLACEABLE RULES

The replaceable rules contained in the Law do not apply to the Company.

5. COMPANY LIMITED BY GUARANTEE

- (a) The Company is a company limited by guarantee.
- (b) Each Member undertakes to contribute to the property of the Company, if the Company is wound up while he, she or it is a Member or within 1 year after he, she or it ceases to be a Member, for payment of the Company’s debts and liabilities contracted before he, she or it ceases to be a Member and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, but not exceeding \$1.

- (c) A Mill Owner which owns more than 1 Mill shall be taken, for this and, unless inconsistent with another express provision of this Constitution, all other purposes under this Constitution, as having a membership for each Mill it owns and its liability for the Guarantee Amount shall be calculated accordingly.

6. COMPANY AS REPLACEMENT ENTITY

- (a) The Company is the replacement entity for the Bureau of Sugar Experiment Stations for the purpose of the Sugar Industry Act 1999 and may receive, by transfer to it, all of the assets and liabilities of the Bureau of Sugar Experiment Stations.
- (b) The Company may be the replacement entity for a cane protection and productivity board which voluntarily dissolves and elects to transfer its assets and liabilities to the Company,
- (c) The Company may receive the assets and liabilities of a cane protection and productivity board which is compulsorily dissolved by the operation of the *Sugar Industry Act 1999*.

7. ACTIONS AUTHORISED UNDER THE LAW AND COMPLIANCE WITH THE LAW

Where the Law authorises or permits a company to do any matter or thing if so authorised by its constitution, the Company is and shall be taken by this Rule to be authorised or permitted to do that matter or thing, unless expressly inconsistent with any other provision of this Constitution.

8. OBJECTS

- (a) The principal object of the Company is to conduct scientific research and development and extension activities (R,D&E) directed primarily at servicing and enhancing the sustainable production of sugar cane and its products, assisted by the following objects:
 - (i) to identify R,D&E needs and then plan, conduct and manage R,D&E;
 - (ii) to commercially exploit the products and services of its R,D&E to assist with funding further industry R,D&E;
 - (iii) to collaborate with other research providers and industry in the coordination of R,D&E;
 - (iv) to enhance the efficiency and competitiveness of the sugar industry; and
 - (v) to act commercially in the discharge of its functions.
- (b) In carrying out its objects, the Company may, without limiting its powers under the Law:
 - (i) enter into contracts;
 - (ii) acquire, hold, dispose of and deal with, property;
 - (iii) appoint and act through agents or attorneys; and
 - (iv) do anything else necessary or convenient to be done for its functions.

9. MEMBERS

9.1 Initial Members

- (a) At the date of the adoption of this Constitution:
 - (i) the Initial Growers listed in schedule 1; and
 - (ii) the Initial Mill Owners listed in schedule 2,shall be the Members of the Company.

- (b) Provided they have become Members within 6 months of the transfer date, the Initial Growers and Initial Mill Owners (whether or not they are set out in schedule 1 or schedule 2) shall be asked to pay service fees to the Company on a voluntary basis.
- (c) Any other persons who are eligible to be admitted as Grower Members or Mill Owner Members under Rule 9.2 may apply for membership of the Company under Rule 9.3.

9.2 Eligibility for membership

- (a) A person who is a Grower is eligible to be admitted to the Company as a Grower Member, provided they have and produce evidence of:
 - (i) an ABN; and
 - (ii) growing sugar cane for the purpose of processing; and
- (b) A person who is a Mill Owner is eligible to be admitted to the Company as a Mill Owner Member, provided they have and produce evidence:
 - (i) of an ABN; and
 - (ii) that each mill, for which a membership is claimed, processes sugar cane.

9.3 Application for membership

- (a) An application for membership shall be made in writing, signed by the applicant and sent to the Secretary, with the applicant signing an acknowledgement that the applicant agrees to pay the Company service fees, as determined by the Board from time to time, as a condition of membership where the applicant is not an Initial Grower or an Initial Mill Owner.
- (b) At the next meeting of Directors after the receipt of an application for membership, the application shall be considered by the Directors.
- (c) If the Directors conclude that the applicant is eligible to be a Member, the directors shall accept the application and inform the Secretary:
 - (i) if the applicant is a Grower, to admit the applicant as a Grower Member; or
 - (ii) if the applicant is a Mill Owner, to admit the applicant as a Mill Owner Member.
- (d) When an application has been accepted for membership, the Secretary (or such other person who the Directors may appoint) shall notify the applicant of the acceptance and inform the applicant whether the applicant has been admitted as a Grower Member or Mill Owner Member.

9.4 Register of Members

In addition to the information required by Law, the register of Members shall record each Mill owned by a Mill Owner Member.

9.5 Resignation of membership

A Member may at any time, by giving notice in writing to the Secretary, resign as a Member. The resignation shall be effective from the date of receipt of the notice by the Secretary. That Member's name shall be removed from the register of Members.

9.6 Cessation of membership

If a Member:

- (a) who is a Grower Member ceases to be a Grower; or
- (b) who is a Mill Owner Member ceases to be a Mill Owner,

the Member's membership shall automatically cease, and that Member's name shall be removed from the register of Members.

10. TRANSFER AND TRANSMISSION OF MEMBERSHIP

10.1 Transfer

Subject to these rules, a Grower or Mill Owner may transfer his, her or its membership to a purchaser who is either a related entity or a relative (as those terms are defined in the Law) of that Grower or Mill Owner of a cane farm or a Mill owned by that Grower or Mill Owner by any instrument in writing in any usual or common form or in any other form that the Directors approve.

10.2 Registration procedure

Where an instrument of transfer referred to in Rule 10.1 is to be used by an Initial Member to transfer membership the following provisions apply:

- (a) it must be executed by or on behalf of both the transferor and the transferee;
- (b) the instrument of transfer must be left for registration with the Company, accompanied by such information as the Directors properly require to show the right of the transferor to make the transfer, and in that event, the Company must, subject to the powers vested in the Directors by these rules, register the transferee as an Initial Member;
- (c) on registration of a transfer of membership, the Company must cancel the Transferor's membership.

10.3 Right to refuse registration

- (a) Notwithstanding any other provisions contained in these rules, the Company may, in the Directors' absolute discretion and without assigning any reason therefore, refuse to register or may prevent or interfere with the registration of a transfer of membership in the Company.
- (b) Without limiting their powers under Rule 9.3(a), the Directors may refuse to register or may prevent or interfere with the registration of a transfer of membership from an Initial Grower or an Initial Mill Owner if, in the sole discretion of the Directors', the transferee has not demonstrated his, her or its involvement in the Queensland sugar industry.

10.4 Transmission by death

The trustee, executor or administrator of a deceased Member who is an Initial Grower or an Initial Mill Owner (who is not one of several joint holders) is the only person recognised by the Company as having any title to the membership registered in the name of the deceased member, provided that the Board may, subject to compliance by the transferee with these rules, register any transfer signed by a Member prior to the Member's death notwithstanding that the Company has notice of the Member's death.

10.5 Transmission by operation of Law

A person ('transmittee') who establishes to the satisfaction of the Board that the right to any membership has devolved on the transmittee by will or by operation of law may be registered as a Member or may (subject to the provisions in these rules relating to transfers) transfer the membership provided that the Board has the same right to refuse to register the transmittee as if the transmittee was the transferee named in an ordinary transfer presented for registration.

11. GENERAL MEETINGS

11.1 Power of Directors to convene

- (a) Any Director may convene a general meeting whenever the Director thinks fit.
- (b) The Directors must convene a general meeting no later than 4 weeks after receiving a requisition for a general meeting from:
 - (i) Members with at least 5% of the votes capable of being cast at a general meeting;
or
 - (ii) at least 100 Members who are entitled to vote at a general meeting.
- (c) Any Director may cancel by notice in writing to all Members any meeting convened by the Director, but a meeting convened on the requisition of a Member or Members shall not be cancelled without their consent.
- (d) The Directors may postpone a general meeting or change the place at which it is to be held by notice not later than 7 days prior to the time of the meeting to all persons to whom the notice of meeting (the *first notice*) was given. The postponing notice shall specify the place, date and time of the meeting. The meeting shall be taken to be duly convened under the first notice.

11.2 Notice of general meetings

- (a) Each notice convening a general meeting shall contain the information required by the Law.
- (b) The non-receipt of a notice convening a general meeting by, or the accidental omission to give notice to, any person entitled to receive notice does not invalidate the proceedings at or any resolution passed at the meeting.

11.3 Quorum

- (a) No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this Constitution, a quorum shall be 3 Mill Owner Members Present and 10 Grower Members Present.

11.4 If quorum not present

- (a) If a quorum is not present within 20 minutes after the time appointed for the meeting:
 - (i) where the meeting is convened on the requisition of Members, the proposed meeting shall be dissolved (subject to Rule 11.6(a));
 - (ii) in any other case:
 - (A) the meeting stands adjourned to a day and at a time and place as the Directors decide or, if no decision is made by the Directors, to the same day in the next week at the same time and place; and
 - (B) if at the adjourned meeting a quorum is not present within 20 minutes after the time appointed for the meeting, the meeting must be dissolved.

11.5 Chair of meetings

- (a) Subject to Rule 11.5(b), the Chair of Directors shall preside as chair at every general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no Chair of Directors; or

- (ii) the Chair of Directors is not present within 15 minutes after the time appointed for the meeting or does not wish to act as chair of the meeting,

the Directors present shall choose one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the Members Present shall elect one of their number to be chair of the meeting.

11.6 Adjournments

- (a) The chair may, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- (b) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided by Rule 11.6(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

11.7 Passing resolutions

- (a) Subject to Rule 11.7(b), resolutions at general meetings shall be passed by a simple majority of Grower Members who are Members Present and a simple majority of Mill Owner Members who are Members Present.
- (b) Resolutions to change this Constitution shall be passed by a majority that comprises Grower Members holding at least 75% of the total number of votes cast by all Grower Members who are Members Present and Mill Owner Members holding at least 75% of the total number of votes cast by all Mill Owner Members who are Members Present.

11.8 Voting at general meetings

- (a) Any resolution to be considered at a meeting shall be decided on a show of hands unless a poll is demanded.
- (b) A declaration by the chair that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting shall be taken as conclusive evidence of the fact without the need to show the number or proportion of the votes recorded in favour of or against the resolution.
- (c) Despite the Law, a poll for a resolution may be demanded by the chair, or by at least 3 Members Present and entitled to vote on the resolution.
- (d) A poll may not be demanded on the election of a chair or on a resolution for adjournment.
- (e) A demand for a poll may be made at any time prior to, or forthwith after, the chair has announced the result of a vote by show of hands.

11.9 Procedure for polls

- (a) A poll when demanded shall be taken in the manner and at the time the chair directs.
- (b) The result of the poll shall be a resolution of the meeting at which the poll was demanded.
- (c) The demand for a poll shall not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded.

11.10 Representation and voting of members

Subject to this Constitution at a meeting of Members or class of Members:

- (a) on a show of hands, each person present and entitled to vote (including a person present as a proxy or attorney) has 1 vote;
- (b) on a poll:
 - (i) a Grower Member, if a Member Present and entitled to vote at the meeting, has 1 vote;
 - (ii) a Mill Owner Member, if a Member Present and entitled to vote at the meeting, has that number of votes as calculated in accordance with the following formula:

$$A/B \times 100$$
 where:
A is the tonnes of raw sugar produced by Mills in Australia owned by that Mill Owner Member over the 5 complete crushing seasons preceding the calendar year in which the meeting is held; and
B is the total tonnes of raw sugar produced by Mills in Australia owned by Mill Owner Members over the 5 complete crushing seasons preceding the calendar year in which the meeting is held;
- (c) a Grower Member, if attending by proxy, representative or attorney, shall be represented by 1 person entitled (subject to the law and other provisions of this Constitution) to cast 1 vote;
- (d) a Mill Owner Member, if attending by proxy, representative or attorney, may be represented by a different person for each Mill in Australia owned by that Mill Owner Member and each such person shall be entitled (subject to the Law and the other provisions of this Constitution) to cast that number of votes calculated according to the following formula:

$$A/B \times 100$$
 where:
A is the tonnes of raw sugar produced by the relevant Mill over the 5 complete crushing seasons preceding the calendar year in which the meeting is held; and
B is the total tonnes of raw sugar produced by Mills in Australia owned by Mill Owner Members over the 5 complete crushing seasons preceding the calendar year in which the meeting is held.

11.11 Objections to qualification to vote

- (a) An objection to the qualification of a person to vote may be raised only at the meeting or adjourned meeting at which the vote objected to is tendered.
- (b) Any objection shall be referred to the chair of the meeting, whose decision shall be final.
- (c) A vote allowed after an objection shall be valid for all purposes.

11.12 Proxies

- (a) Subject to Rule 11.12(e), a Member who is entitled to attend and cast a vote at a meeting of Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting in accordance with Rule 11.10.
- (b) An instrument of proxy must:
 - (i) be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing; or
 - (ii) if the appointor is a corporation, be either under seal or under the hand of a duly authorised officer or attorney.

- (c) A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (d) An instrument appointing a proxy may be in any form that the directors may accept or stipulate.
- (e) Other than the chair of a general meeting, a person, who has been appointed as proxy for Grower Members, shall not be allowed to cast by way of proxy more than 5% of the total votes capable of being cast by all Grower Members.

11.13 Lodgement of proxies

- (a) The documents to be received under the Law, for an appointment of a proxy to be effective, must be received by the Company 48 hours (or any shorter period as the Directors may permit) before the meeting commences or resumes (as the case may be).
- (b) For an instrument appointing an attorney to act on behalf of a Member at all meetings of the Company (or at all meetings for a specified period) to be effective, the following documents must be received by the Company not less than 48 hours (or any shorter period as the Directors may permit) before the commencement of the meeting or adjourned meeting at which the attorney proposes to vote:
 - (i) the power of attorney or a certified copy of that power of attorney; and
 - (ii) any evidence that the directors may require of the validity and non-revocation of that power of attorney.

For the purposes of this Rule 11.13(b), the Company receives these documents when they are received at any of the following:

- (iii) the Company's registered office;
- (iv) a fax number at the Company's registered office; or
- (v) a place, fax number or electronic address specified for the purpose in the notice of meeting.

11.14 Validity of proxies

- (a) A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:
 - (i) the previous death or unsoundness of mind of the principal; or
 - (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or the power;

if no notice in writing of the death, unsoundness of mind or revocation has been received by the Company at its registered office prior to the commencement of the meeting, or adjourned meeting at which the instrument is used or the power is exercised.

- (b) A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

11.15 Where proxy is incomplete

- (a) No instrument appointing a proxy is treated as invalid merely because it does not contain:
 - (i) the address of the appointor or of a proxy;
 - (ii) the proxy's name or the name of the office held by the proxy; or
 - (iii) in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.

- (b) Where the instrument specifies neither the name of a proxy nor the name of the office held by the proxy, the instrument is taken to be given in favour of the chair of the meeting.

11.16 Right of officers and advisers to attend general meeting

- (a) A Director who is not a Member shall be entitled to be present and to speak at any general meeting.
- (b) A secretary who is not a Member shall be entitled to be present and, at the request of the chair, to speak at any general meeting.
- (c) Any other person (whether a Member or not) requested by the Directors to attend any general meeting shall be entitled to be present and, at the request of the chair, to speak at that general meeting.

11.17 Meetings of classes of Members

All the provisions of these Rules in relation to general meetings apply to any special meetings of Members which may be held pursuant to the operation of these Rules of the Law.

12. APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS

12.1 Maximum Number

The Company shall have a maximum of 8 Directors.

12.2 Grower Directors

- (a) From the date of adoption of this Constitution until 31 October 2007 or until 2 persons are elected Grower Directors in accordance with the remaining paragraphs of this Rule (whichever is the earlier), the following persons shall be Directors and shall be treated as being Grower Directors for the purposes of this Constitution:
 - (i) Mrs M Salvetti; and
 - (ii) Mr LJ Raiteri.
- (b) In the future, persons shall be elected Grower Directors in accordance with the remaining paragraphs of this Constitution.
- (c) Subject to the Law, the Grower Members at a general meeting may elect 2 Grower Directors.
- (d) Subject to the Law, the Grower Members at a general meeting may:
 - (i) remove any Grower Director; and
 - (ii) elect a person to be a Grower Director in the place of a Grower Director who dies, resigns or is removed from or otherwise vacates office under this Constitution.
- (e) To be eligible for election as a Grower Director a person must be a Grower Member or a director of a Grower Member at the time of appointment.
- (f) The Grower Directors are to be elected or removed in accordance with the following:
 - (i) Grower Members shall elect Grower Directors in accordance with Rule 12.2(f)(ii) and Grower Members shall remove Grower Directors in accordance with Rule 12.2(g)
 - (ii) Grower Directors shall be elected as follows:
 - (A) Grower Members shall nominate to the Company a person to fill any vacancy occurring among Grower Directors from time to time;

- (B) the Company shall then put a list of nominated candidates to the Grower Members for a vote;
 - (C) the nominated candidate with the most Grower Member votes will then be elected as the Grower Director.
- (g) Grower Members may at any time vote to remove a Grower Director from office. On such a vote, each Grower Member shall have 1 vote.
 - (h) Where a Grower Director dies, resigns or is removed from or otherwise vacates office under this Constitution, a general meeting of Grower Members shall be called by the remaining Directors to fill that vacancy in accordance with this Rule 12.2.

12.3 Mill Owner Directors

- (a) From the date of adoption of this Constitution until 31 October 2007 or until 2 persons are elected Mill Owner Directors in accordance with the remaining paragraphs of this Rule (whichever is the earlier), the following persons shall be Directors and shall be treated as being Mill Owner Directors for the purposes of this Constitution:
 - (i) Mr GD Maclean; and
 - (ii) Mr JS Pollock.
- (b) In the future, persons shall be elected Mill Owner Directors in accordance with the remaining paragraphs of this Constitution.
- (c) Subject to the Law, the Mill Owner Members at a general meeting may elect 2 Mill Owner Directors.
- (d) Subject to the Law the Mill Owner Members at a general meeting may:
 - (i) remove any Mill Owner Director; and
 - (ii) elect a person to be a Mill Owner Director in the place of a Mill Owner Director who dies, resigns or is removed from or otherwise vacates office under this Constitution.
- (e) The Mill Owner Directors are to be elected or removed in accordance with the following:
 - (i) Mill Owner Members shall nominate to the Company a person to fill any vacancy occurring among Mill Owner Directors from time to time;
 - (ii) in the event that Mill Owner Members are unable to agree on the person to fill a vacancy occurring among Mill Owner Directors, Mill Owner Members shall vote to choose between the candidates proposed by Mill Owner Members. On such a vote, each Mill Owner Member shall have that number of votes calculated in accordance with the following formula:

$$A/B \times 100$$
 where:

A is the tonnes of raw sugar produced by Mills in Australia owned by that Mill Owner Member over the 5 complete crushing seasons preceding the calendar year in which the vote is held

B is the total tonnes of raw sugar produced by Mills in Australia owned by Mill Owner Members over the 5 complete crushing seasons preceding the calendar year in which the vote is held;
- (f) Mill Owner Members may at any time vote to remove a Mill Owner Director from office. On such a vote, each Mill Owner Member shall have that number of votes calculated in accordance with the formula contained in Rule 12.3(e)(ii).

- (g) Where a Mill Owner Director dies, resigns or is removed from or otherwise vacates office under this Constitution, a general meeting of Mill Owner Members shall be called by the remaining Directors to fill that vacancy in accordance with this Rule 12.3.

12.4 Independent Directors

- (a) From the date of adoption of this Constitution until 31 October 2006, or until 3 persons are elected Independent Directors in accordance with the remaining paragraphs of this Rule (whichever is the earlier), the following persons shall be Directors and shall be treated as being Independent Directors for the purposes of this Constitution:
 - (i) Mr TD Fenwick;
 - (ii) Mr RN Chapman; and
 - (iii) Mrs MS Boydell.
- (b) Subject to Rule 12.4(a), persons shall be appointed or removed as Independent Directors in accordance with the remaining paragraphs of this Constitution.
- (c) Subject to Rule 12.4(h), the Grower Directors and Mill Owner Directors shall, subject to Rule 12.1, from time to time appoint three persons to be Independent Directors.
- (d) If there are no Independent Directors, the Grower Directors and Mill Owner Directors must not act, except to appoint an Independent Director.
- (e) Subject to Rule 12.4(h), an Independent Director may be removed at any time by the Grower Directors and the Mill Owner Directors.
- (f) The Independent Directors, other than the managing director, must:
 - (i) have expertise in an area considered by the Grower Directors and Mill Owner Directors, as appropriate, including business, commercial, marketing, finance, research, development or extension experience;
 - (ii) not be a Mill Owner or a Grower or a director or employee of a Mill Owner or Grower; and
 - (iii) not be a current director or employee of a SIRB.
- (g) Subject to Rule 12.4(h), the provisions of this Constitution relating to the Proceedings of Directors shall apply to any decision or proposed decision to appoint or remove an Independent Director, except that no Independent Director nor the managing director shall be entitled to take part in those proceedings in any way (including voting) or be counted for the purposes of a quorum under Rule 14.3 of this Constitution.
- (h) Persons shall only be appointed or removed as an Independent Director by the Grower Directors and Mill Owner Directors provided there are 2 Grower Directors and 2 Mill Owner Directors in office at the time of such appointment or removal.

12.5 Chief Executive Officer

The chief executive officer shall also be a Director and shall be the managing director.

12.6 Term of appointment

- (a) No Grower Director or Mill Owner Director shall hold office for a term in excess of 4 years, or until the 4th annual general meeting following the Director's appointment (whichever is the longer) without submitting themselves for re-election.
- (b) No Grower Director or Mill Owner Director shall be eligible to be re-elected for a 5th consecutive term of office after having been elected and then re-elected for a total of 4 consecutive terms.

- (c) At least 1 Grower Director and 1 Mill Owner Director will retire at the second annual general meeting of the Company. A Director who retires in accordance with this Rule 10.6(c), is eligible for re-election as a Director. If a decision cannot be made as to which Directors will retire under this Rule 10.6(c), the decision will be made by lot, and thereafter Directors will retire by rotation.
- (d) No Independent Director (other than the managing director) shall hold office for a term in excess of 3 years, or until the 3rd annual general meeting following the Director's appointment (whichever is the longer), without submitting themselves for re-appointment.
- (e) No Independent Director (other than the managing director) shall be eligible to be re-appointed for a 6th consecutive term of office after having been appointed and then re-appointed for a total of 5 consecutive terms.
- (f) One Independent Director shall retire at each of the first, second and third annual general meeting of the Company. If the Independent Directors cannot determine who is to retire before each annual general meeting, the decision will be made by lot. A Director who retires in accordance with this Rule 12.6(f), is eligible for re-appointment as a Director.

12.7 Remuneration

- (a) Subject to Rule 12.7(b), the Directors shall be paid for their services as Directors such sum as set from time to time by the Company in general meeting. This sum shall be divided among the Directors in such a proportion and manner as the Directors agree, or in default of agreement, equally. Directors remuneration shall accrue from day to day.
- (b) Remuneration for Directors is to continue on the same terms and conditions as that enjoyed by the members of the board of the Bureau of Sugar Experiments Stations as at the date of the adoption of this Constitution, until it is otherwise changed in accordance with Rule 12.7(a) of this Constitution.
- (c) Any Director who is remunerated as an executive Director shall not be paid fees under Rule 12.7(a).
- (d) The Directors shall also be entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the Directors, committee of the Directors, general meeting of the Company or otherwise in connection with the business or affairs of the Company.
- (e) If any Director, with the approval of the Directors, performs extra services or makes any special and substantial exertions for the benefit of the Company in addition to the normal duties expected of the Director (for the avoidance of doubt, such normal duties include participation in board committees and sub-committees), the Directors may approve the payment to that Director of special and additional remuneration as the Directors think fit having regard to the value to the Company of the extra services or special exertions. Any special or additional remuneration shall not include a commission on or a percentage of operating revenue or turnover.
- (f) A Director may be engaged by the Company in any other capacity (other than auditor) and may be appointed on such terms as to remuneration, tenure of office and otherwise as may be agreed by the Directors.

12.8 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant under the Law, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

- (b) resigns by notice in writing to the Company;
- (c) is absent without the consent of the Directors from meetings of the Directors held during a continuous period of 6 months;
- (d) dies; or
- (e) is a Grower Director who ceases to be a Grower (but in this case, the Director shall be entitled to remain in office until removed by the Grower Members or until the conclusion of the next annual general meeting, whichever is the earlier). This Rule 12.8(e) does not apply to the initial Grower Directors appointed under Rule 12.2(a) to hold office as Directors until no later than 31 October 2007

13. POWERS AND DUTIES OF DIRECTORS

13.1 Powers of directors

- (a) Subject to the Law and this Constitution, the business of the Company is managed by the Directors, who may exercise all powers of the Company which are not, by the Law or this Constitution, required to be exercised by the Company in general meeting.
- (b) Without limiting the generality of Rule 13.1(a), the Directors may exercise all the powers of the Company:
 - (i) to borrow money;
 - (ii) to charge any property or business of the Company; and
 - (iii) to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

13.2 Appointment of attorneys

- (a) The Directors may, by power of attorney, appoint any person to be the attorney of the Company for the purposes, with the powers, authorities and discretions vested in or exercisable by the Directors for any period and subject to any conditions as they think fit.
- (b) Any appointment under Rule 13.2(a) may be made on terms for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

13.3 Negotiable instruments

All negotiable instruments of the Company shall be executed by the persons and in the manner the Directors decide from time to time.

14. PROCEEDINGS OF DIRECTORS

14.1 Proceedings

- (a) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) A Director may at any time convene a meeting of Directors.
- (c) On the request of a Director, the Secretary shall convene a meeting of the Directors.
- (d) Reasonable notice must be given to every Director of the place, date and time of every meeting of the Directors. Where any Director is for the time being outside of Australia, notice need only be given to that Director if contact details have been given.

14.2 Meetings by technology

- (a) For the purposes of the Law, each Director, on becoming a Director (or on the adoption of this Constitution), consents to the use of the following technology for calling or holding a Directors meeting:
 - (i) video;
 - (ii) telephone;
 - (iii) electronic mail;
 - (iv) any other technology which permits each director to communicate with every other director; or
 - (v) any combination of the technologies described in the above paragraphs.

A Director may withdraw the consent given under this Rule in accordance with the Law.

- (b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
 - (i) the participating Directors shall, for the purpose of every provision of this Constitution concerning meetings of the Directors, be taken to be assembled together at a meeting and to be present at that meeting;
 - (ii) the meeting shall be taken to be held at the place agreed to by the participating Directors so long as at least 1 participating Director is physically present at that place; and
 - (iii) all proceedings of those Directors conducted in that manner shall be as valid and effective as if conducted at a meeting at which all of them were present.

14.3 Quorum at meetings

- (a) At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is 4, including:
 - (i) at least 1 Grower Director entitled to vote;
 - (ii) at least 1 Mill Owner Director entitled to vote; and
 - (iii) at least 1 Independent Director.
- (b) Unless the Directors present at any time determine otherwise, the quorum need only be present at the time when the meeting proceeds to business.

14.4 Chair of Directors

- (a) From the date of adoption of this Constitution until 31 October 2006, the Chair of Directors shall be Mr TD Fenwick. From 31 October 2006, the Chair of Directors shall be elected in accordance with Rule 14.4(b).
- (b) The Chair of Directors shall be elected from time to time by the Directors (other than the managing director), and they may decide the period for which that Director is to hold office as Chair of Directors.
- (c) Where a meeting of Directors is held and:
 - (i) there is no Chair of Directors; or
 - (ii) the Chair of Directors is not present at the time appointed for the holding of the meeting or does not wish to chair the meeting,the Directors present shall elect one of their number to be the chair of the meeting.

14.5 Proceedings at meetings

- (a) Subject to this Constitution, questions arising at a meeting of Directors are decided by a majority of votes of Directors present and voting and for all purposes any such decision is taken to be a decision of the Directors.
- (b) In the case of an equality of votes, the chair of the meeting does not have a casting vote in addition to the chair's deliberative vote.

14.6 Directors' interests

- (a) It is acknowledged that:
 - (i) a Director of the Company is generally entitled to any information requested by the Director about the affairs and activities of the Company for the purpose of enabling the Director to discharge the duties of a director under this Constitution and the Law;
 - (ii) a Director is not entitled to use information acquired by virtue of his or her position as a Director in the capacity as a Director improperly to gain an advantage for themselves or for any other person or to cause detriment to the Company;
 - (iii) to avoid the risk of occurrence of such a misuse of information, it may be appropriate for a Director to request that information about a particular matter be kept confidential from that Director, and for that Director to decide not to participate in any discussion about or vote upon that matter.

This acknowledgment is not intended to affect the construction of the following paragraphs of this Rule 14.6.

- (b) A Director who has a material personal interest in a matter that is being considered at a meeting of the Directors may:
 - (i) vote on the matter; or
 - (ii) be present while the matter is being considered at the meeting only in the circumstances authorised by the Law. The Directors shall take all necessary steps to ensure that a Director is not disqualified from considering or voting on a matter by reason solely that the Director has an interest in that matter as a Grower or Mill Owner in common with other Growers or Mill Owners.
- (c) A Director is not disqualified by the Director's office from contracting with the Company in any capacity.
- (d) A contract or arrangement made by the Company with a Director or in which a Director is in any way directly or indirectly interested may not be avoided merely because the Director is a party to or interested in it.
- (e) A Director is not liable to account to the Company for any profit derived in respect of a matter in which the Director is in any way directly or indirectly interested, merely because of the Director's office or the fiduciary relationship it entails, if the Director:
 - (i) declared the Director's interest in the matter as soon as practicable after the relevant facts have come to the Director's knowledge; and
 - (ii) did not contravene this Constitution or the Law in relation to the matter.
- (f) A general notice stating:
 - (i) that the Director is an officer or member of a specified body corporate or firm; and
 - (ii) the nature and extent of the Director's interest in that body corporate or firm in a matter involving the Company and that body corporate or firm,

shall in relation to a matter involving the Company and that body corporate or firm, be a sufficient declaration of the Director's interest, provided the extent of that interest is at the time of first consideration of the matter by the Directors no greater than was stated in the notice.

- (g) If the provisions of this Rule and the Law have been observed by any Director with regard to any contract or arrangement in which the Director is in any way interested, the fact that the Director signed the document evidencing the contract or arrangement shall not in any way affect its validity.
- (h) Other than the Managing Director, a Director may not hold any office of employment in the Company. A Director may hold an office of profit in the Company (other than auditor) in addition to holding office as a Director.

14.7 Committees

- (a) The Directors may delegate any of their powers to a committee or committees consisting of such number of them and/or other persons as they think fit. A committee may consist of one or more persons.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Directors. A power so exercised is taken to be exercised by the Directors.
- (c) The members of the committee may elect one of their number as their chair.
- (d) Where a meeting is held and:
 - (i) a chair has not been elected as provided by Rule 14.7(c); or
 - (ii) the chair is not present at the time appointed for the holding of the meeting or does not wish to chair the meeting,the members present shall elect one of their number to be a chair of the meeting.
- (e) A committee may meet and adjourn as it thinks fit.
- (f) Questions arising at a meeting of a committee shall be determined by a majority of the members present and voting.
- (g) The number of members whose presence at a meeting of the committee is necessary to constitute a quorum is the number determined by the committee members and, if not so determined, is 2. Unless the Directors determine otherwise, the quorum need only be present at the time when the meeting proceeds to business.
- (h) The minutes of all the proceedings and decisions of every committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Directors as required by the Law to be made, entered and signed.

14.8 Written resolutions

- (a) If a document:
 - (i) is sent to all those entitled to receive notice of a meeting at which a resolution could be put;
 - (ii) contains a statement that the signatories to it are in favour of that resolution;
 - (iii) sets out or identifies the terms of the resolution; and
 - (iv) has been signed by a majority of the Directors entitled to vote on that resolution,a resolution in those terms is passed on the day on which and at the time at which the document was signed by a majority of Directors and the document has effect as a minute of the resolution.
- (b) For the purposes of Rule 14.8(a):

- (i) 2 or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be taken to constitute one document containing a statement in those terms signed by those Directors at the time at which the last of those documents to be signed was signed by a Director;
- (ii) a fax which is received by the Company or an agent of the Company and is sent for or on behalf of a Director shall be taken to be signed by that Director not later than the time of receipt of the fax by the Company or its agent in legible form.

14.9 Defects in appointments

- (a) All acts done by any meeting of the Directors, committee of Directors, or person acting as a Director are as valid as if each person was duly appointed and qualified to be a Director or a member of the committee.
- (b) Paragraph (a) applies even if it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a member of a committee or to act as a Director or that a person so appointed was disqualified.

15. CHIEF EXECUTIVE OFFICER

15.1 Power to appoint chief executive officer

The Directors shall appoint a person to act as chief executive officer of the Company for the period and on the terms as they think fit. Subject to the terms of any agreement entered into in a particular case, the Directors may at any time revoke such appointment.

15.2 Remuneration

The chief executive officer shall, subject to the Law and the terms of any agreement between the chief executive officer and the Company, receive remuneration (whether by way of salary, commission, bonus, or partly in one way and partly in another) as the Directors decide.

15.3 Delegation of powers to chief executive officer

- (a) The Directors may, on the terms and conditions and with any restrictions as they think fit, confer on a chief executive officer any of the powers exercisable by them.
- (b) Any powers so conferred may be concurrent with the powers of the Directors.
- (c) The Directors may at any time withdraw or vary any of the powers conferred on a chief executive officer.

16. SECRETARIES AND OTHER OFFICERS

16.1 Secretary

- (a) The Secretary of the Company holds office on the terms and conditions, as to remuneration and otherwise, as the Directors decide.
- (b) The Directors may at any time terminate the appointment of the Secretary.

16.2 Other officers

- (a) The Directors may from time to time:
 - (i) create any other position or positions in the Company with the powers and responsibilities as the directors may from time to time confer; and
 - (ii) appoint any person, whether or not a Director, to any position or positions created under sub-paragraph (i).

- (b) The directors at any time may terminate the appointment of a person holding a position created under paragraph (a)(i) and may abolish the position.

17. SEALS AND EXECUTING DOCUMENTS

17.1 Seals and their use

- (a) The Company may have a Seal.
- (b) The Seal may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal. Every document to which the Seal is affixed shall be signed by:
 - (i) 2 Directors; or
 - (ii) a Director and the Secretary (or another person appointed by the Directors to countersign that document or a class of documents in which that document is included). This Rule does not limit the ways in which the Company may execute a document.

18. RECORDS

18.1 Inspection of records

- (a) The Directors may authorise a Member to inspect books of the Company to the extent, at the time and places and under the conditions, the directors consider appropriate.
- (b) A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or as authorised by the Directors.

19. NOTICES

19.1 Notices generally

- (a) Any Member who has not left at or sent to the registered office, a place of address or an electronic mail address (for registration in the register) at or to which all notices and documents of the Company may be served or sent is not entitled to receive any notice.
- (b) A notice may be given by the Company to any Member by:
 - (i) serving it on the Member personally;
 - (ii) sending it by post to the Member or leaving it at the Member's address as shown in the register or the address supplied by the Member to the Company for the giving of notices;
 - (iii) serving it in any manner contemplated in this Rule 19.1(b) on a Member's attorney as specified by the member in a notice given under Rule 19.1(c);
 - (iv) fax to the fax number supplied by the Member to the Company for the giving of notices; or
 - (v) transmitting it electronically to the electronic mail address given by the Member to the Company for the giving of notices.
- (c) A Member may, by written notice to the Secretary left at or sent to the registered office, require that all notices to be given by the Company or the Directors be served on the Member's attorney at an address specified in the notice.
- (d) Notice to a Member whose address for notices is outside Australia shall be sent by airmail, fax or electronic mail.

- (e) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected on the day after the date of its posting.
- (f) Where a notice is sent by fax or electronic transmission, service of the notice is taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the day it is sent.

19.2 Notices of general meeting

- (a) Notice of every general meeting shall be given:
 - (i) in the manner authorised by Rule 19.1;
 - (ii) to every Member and to each Director; and
 - (iii) to the auditor to the Company (if any).
- (b) No other person is entitled to receive notice of general meetings.

20. APPLICATION OF INCOME AND PROPERTY

- (a) Subject to Rule 20(b), the profits (if any) or other income and property of the Company shall be applied solely towards the promotion of the objects of the Company as set out in Rule 8 and no portion of it shall be paid or transferred, directly or indirectly, to any Member whether by way of dividend, bonus or otherwise.
- (b) Nothing in Rule 20(a) shall prevent any payment in good faith by the Company of:
 - (i) reasonable and proper remuneration to any Member, officer or employee of the Company (whether or not such person is a Director) for any services actually rendered to the Company;
 - (ii) reasonable and proper rent for premises let or demised by any Member to the Company;
 - (iii) moneys to any Director for out-of-pocket expenses paid under Rule 12.7; or
 - (iv) moneys to any Director, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer in connection with the promotion of the Company's objects.

21. WINDING UP

21.1 Entitlement on distribution or dissolution

If, on the winding up or dissolution of the Company by any means and for any reason, there remains any property, after the satisfaction of all the Company's debts and liabilities ('surplus property'), the surplus property shall be paid to or distributed amongst the Initial Members in accordance with this Rule 21.

21.2 Entitlements of Members who are Initial Growers

A Member who is an Initial Grower shall be entitled to a share of one-half of the surplus property, to be distributed among them according to the following formula:

$$A/B \times 100$$

where:

A is the tonnes of sugar cane delivered to a Mill in Queensland, by the Initial Grower, over the 5 complete crushing seasons prior to the Company entering into liquidation; and

B is the total tonnes of sugar cane delivered to Mills, in Queensland, by all Members who are Initial Growers over the 5 complete crushing seasons prior to the Company entering into liquidation.

21.3 Entitlements of Members who are Initial Mill Owners

A Member who is an Initial Mill Owner shall be entitled to a share of one-half of the surplus property, to be distributed among them according to the following formula:

$$A/B \times 100$$

where:

A is the tonnes of sugar cane processed by the Mill in Queensland owned by that Member over the 5 complete crushing seasons prior to the Company entering into liquidation; and

B is the total tonnes of sugar cane processed by Mills in Queensland owned by Members who are Initial Mill Owners over the 5 complete crushing seasons prior to the Company entering into liquidation;

21.4 Distribution

Subject to Rules 21.2, 21.3 and 21.5, the liquidator of the Company may:

- (a) realise the surplus property and pay it to the Members who are Initial Growers and Initial Mill Owners;
- (b) with the sanction of a resolution passed by a majority that comprises Grower Members holding at least 75% of the total number of votes cast by all Grower Members who are Members Present and Mill Owner Members holding at least 75% of the total number of votes cast by all Mill Owner Members who are Members Present, divide among the Members in kind the whole or any part of the surplus property and may for that purpose:
 - (i) set such value as the liquidator considers fair upon any property to be so divided; and
 - (ii) determine how the division is to be carried out as between the Grower Members and the Mill Owner Members, or
- (c) with the sanction of a resolution passed by a majority that comprises Grower Members holding at least 75% of the total number of votes cast by all Grower Members who are Members Present and Mill Owner Members holding at least 75% of the total number of votes cast by all Mill Owner Members who are Members Present, vest the whole or any part of the surplus property in trustees on such trusts for the benefit of Members generally, Grower Members generally, Mill Owner Members generally or any such of them as the liquidator thinks fit.

21.5 Encumbered property

Nothing in this Rule 21 compels a Member to accept any surplus property in respect of which there is any liability.

22. INDEMNITY

22.1 Indemnity and insurance

- (a) To the extent permitted by law and without limiting the powers of the Company, the Company must indemnify each person who is, or has been, a Director or Secretary of the Company against any liability which results directly or indirectly from facts or circumstances relating to the person serving or having served in that capacity in relation to the Company:

- (i) to any person (other than the Company or a related body corporate), which does not arise out of conduct involving a lack of good faith or conduct known to the person to be wrongful; and
 - (ii) for costs and expenses incurred by the person in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted, or in connection with any application in relation to such proceedings in which the court grants relief to the person under the Law.
- (b) The Company need not indemnify a person as provided for in Rule 22.1(a) in respect of a liability to the extent that the person is entitled to an indemnity in respect of that liability under a contract of insurance.
- (c) To the extent permitted by law and without limiting the powers of the Company, the board of directors may authorise the Company to, and the Company may enter into any:
- (i) documentary indemnity in favour of; or
 - (ii) insurance policy for the benefit of,
- a person who is, or has been, a Director, secretary, auditor, employee or other officer of the Company or of a subsidiary of the Company, which indemnity or insurance policy may be in such terms as the directors approve and, in particular, may apply to acts or omissions prior to or after the time of entering into the indemnity or policy.
- (d) The benefit of each indemnity given in Rule 22.1(a) continues, even after its terms or the terms of this Rule 22.1(d) are modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modification or deletion.

23. ACCESS TO DOCUMENTS

- (a) Subject to Rule 23(c), the Company must allow a Director to have access to and make copies of documents provided to the Director by the Company for use in his or her deliberations as a Director.
- (b) Subject to Rule 23(c) the Company must, for a period of 7 years following the date that a person ceases to be a Director, allow that person to have access to and make copies of documents provided to that person by the Company when he or she was a Director for use in his or her deliberations as a Director.
- (c) The Company may refuse access to documents if the provision of access to those documents would cause waiver of the Company's legal professional privilege attaching to the documents and access is requested by a person at a time during which the person and the Company are involved in litigation against each other.

24. REGISTERED OFFICE

The registered office of the Company shall be situated in Queensland.

25. APPOINTMENT OF AUDITOR

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

SCHEDULE 1
Grower Members

Warabud Pty Ltd ABN 556 338 360 13

Maryann Salvitti ABN 93 132 386 793

SCHEDULE 2
Mill Owner Members

Bundaberg Sugar Ltd; and
Mackay Sugar Co-operative Association Limited

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