

Constitution and Rules

of

Potatoes New Zealand Incorporated

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Constitution and Rules
of
Potatoes New Zealand Incorporated

1. Name

The name of the society is “Potatoes New Zealand Incorporated” (“the society”).

2. Registered Office

- (a) The registered office of the society shall be at such place as the board of the society (“the board”) from time to time determines.
- (b) The registered office of the society at the date of incorporation is Level 2, Huddart Parker Building, Post Office Square, Wellington.

3. Objects

3.1 The principal object of the society is to provide benefits to the potato industry in New Zealand by creating a positive industry profile and business environment for members. This includes:

- (a) Promoting to the general public, the media, policy makers and Members of Parliament, the potato industry as a vital and growing sector of major social and economic significance to New Zealand.
- (b) Representing to the general public, the media, policy makers and Members of Parliament, the common views of the potato industry on generic issues, including, but not limited to, the issues listed under paragraph (c) below.
- (c) Actively engaging and participating in the following areas of activity, as they relate to the interests of members and the potato industry generally:
 - (i) Potato research and industry development;
 - (ii) General regulatory policy and resulting compliance costs;
 - (iii) Resource management and the environment, including but not limited to making appropriate submissions on local government plans in key production areas;
 - (iv) Marketing the nutritional and health value of potatoes;

- (v) Support for market activities in domestic and overseas markets;
 - (vi) Education, training and leadership; and
 - (vii) Border security.
- (d) Affiliating with and accepting affiliation from any organisation whether established in New Zealand or elsewhere having objects in every respect wholly or in part similar to the objects of the society.
- (e) Publishing, printing, circulating or editing any newspaper, magazine, publicity or pamphlet relating to the affairs or objects of the society.
- (f) Holding or arranging lectures, exhibitions, public meetings, classes or conferences calculated directly or indirectly to be of benefit to the society or its members.
- (g) Generally doing all other things necessary for or incidental or ancillary to the protection, fostering or advancement of the interests of the New Zealand potato industry and the attainment of the abovementioned objects or any of them.
- 3.2 For the avoidance of doubt, but without limiting the objects of the society:
- (a) The society may carry out the objects of Horticulture New Zealand Incorporated in so far as they relate to the interests of the potato industry as a sector of the New Zealand horticulture industry; and
 - (b) The society will apply for affiliated membership with Horticulture New Zealand Incorporated.
- 3.3 If and to the extent the society collects levies pursuant to the Commodity Levies (Vegetables and Fruit) Order 2007 ("the Order") or such order made in substitution for the Order pursuant to the Commodity Levies Act 1990, which are intended to pay for the administrative services provided by Horticulture New Zealand Incorporated on behalf of vegetable growers generally, the society must pay to Horticulture New Zealand Incorporated, on an annual basis, the same percentage of levies collected by the society as other vegetable growers are required to pay to Horticulture New Zealand Incorporated. This rule 3.3 may not be changed without the approval of 66% of Grower members at a general meeting called for the purpose of such vote.
- 3.4 The objects set out in clause 3 are separate and distinct objects and no object shall be in any way limited or circumscribed by reference to any other object.

4. Powers

In order to attain the objects set out in clause 3, the society has all the powers set out in any statute applicable to incorporated societies, and in addition the society:

- (a) May enter into agreements or arrangements with Horticulture New Zealand Incorporated for the provision of services relating to the attaining of the objects of Horticulture New Zealand Incorporated (in so far as they relate to the interests of the potato industry);
- (b) May use such of its funds to pay the costs and expenses of furthering or carrying out its objects, and for that purpose may employ such people as may seem expedient;
- (c) May purchase, lease, hire or otherwise acquire, may exchange, and may sell, lease or otherwise dispose of property, rights or privileges to further or carry out its objects as may seem expedient;
- (d) May invest in any investment in which a trustee might invest;
- (e) Shall have the power to borrow or raise money by any means, with or without security, including by way of levying subscriptions on members in such manner as may from time to time be set out in by-laws made for such purpose;
- (f) May act as the collection and distribution agency in respect of any levies from time to time payable by or available for the benefit of growers of horticultural products under any statute, regulation, Order in Council or otherwise;
- (g) May take such actions as are reasonable and necessary to recover any unpaid Trade Members subscriptions; and
- (h) May make regulations or bylaws to advance the attainment of any of the objects of the society.

5. Membership

- (a) There shall be different categories of membership as follows:

- (i) **Grower members**

Persons eligible for membership of the society as “Grower members” shall be those persons actively engaged in the production of potatoes in New Zealand for commercial processing, domestic fresh market, export, or seed who, in the preceding 12 month period, have paid a levy in respect of such

activity ("Potato Levy") pursuant to the Commodity Levies (Vegetables and Fruit) Order 2007 ("the Order") or such order made in substitution for the Order pursuant to the Commodity Levies Act 1990, or pursuant to any voluntary levy agreed to be paid by such persons.

Grower members shall have full voting rights.

A person will cease to be entitled to be a Grower member if:

- A. in the board's reasonable view, the person has ceased to be a commercial grower of potatoes; or
- B. the person has not, in the 12 month period preceding the relevant date, paid a Potato Levy; or
- C. the person has not, in the board's reasonable view, complied with its obligations pursuant to these rules;

and the board may require membership applicants to present evidence to show they meet the membership qualifications.

(ii) **Trade Members**

Persons eligible for membership of the society as "Trade members" shall be those persons who are actively engaged in processing, trading or retailing potatoes or potato product.

Trade members shall have full voting rights.

A person will cease to be entitled to be a Trade member if the person does not pay the annual subscription or membership fee set by the board for Trade members in the manner prescribed by the board.

(iii) **Associate Members**

Persons eligible for membership of the society as "Associate members" shall be persons (other than Grower members and Trade members) who are, in the board's opinion, associated with the potato industry and are engaged in supplying services to Grower members or Trade members. The criteria for eligibility for this class of membership shall be set out from time to time in by-laws adopted by the board for this purpose.

Associate members must pay an annual subscription or membership fee as determined by the board but will not have voting rights.

(iv) Life Members

The society may, by such process and in accordance with such criteria as are set out in by-laws adopted by the board for this purpose, elect to the status of Life member any person who in the opinion of the society has rendered distinguished and honourable services to the society or in respect of the objects for which it is established and whether or not such person is or has been a member of the society. Life membership shall continue for the life of the recipient without payment of any fees. Life members will not have voting rights unless the Life member remains a Grower member or a Trade member.

(v) Other categories

The board may from time to time by by-law create further classes of membership and stipulate the criteria for admission to such classes of membership. The board may also disestablish classes of membership (other than the Grower member and Trade member classes) by by-law. Upon any such disestablishment, a person formerly a member of that disestablished class shall cease to be a member of the society, unless such person continues to qualify as a Grower member or Trade member pursuant to clauses 5(a)(i) and 5(a)(ii).

- (b) Any member may at any time by notice in writing addressed to the board resign from membership of the society.
- (c) The board may at any time expel from membership of the society any person who in the board's reasonable view has ceased to be entitled to be a Grower member pursuant to clause 5(a)(i).
- (d) The board may at any time by a two-thirds majority expel from membership of the society any member who or which in the opinion of the board is or has been guilty of wilful disobedience of these rules or any by-laws made under these rules, or of conduct inconsistent with the character and interests of the society or repugnant to any of its objects.

6. Annual General Meetings

- (a) A general meeting of all members of the society, called the "AGM", shall be held in each year not later than 30 September at such place or places as the board shall determine.
- (b) All members shall have the right to attend the AGM.
- (c) The business to be conducted at the AGM shall include:

- (i) Consideration of the annual report and financial statements of the society;
- (ii) Consideration of appointment of an auditor (if required pursuant to clause 15); and
- (iii) Such general matters as the board or any member may by notice in writing require to be included, pursuant to the notice of motion process set out in clause 7(c).

7. Matters relating to the operation of conferences

- (a) **Initial notice:** The Chief Executive shall notify all members of the date and place of the AGM and the general nature of the business proposed to be conducted at the AGM, not less than 70 days prior to the date fixed for the AGM.
- (b) **Entitlement to vote:** Voting entitlements for an AGM will be determined at 5 pm on the date 28 days prior to the date fixed for the AGM. Persons whose name and address are recorded in the membership lists of the society at that time as Grower members and Trade members will be the only persons entitled to vote at the AGM. The board may audit the membership lists in order to verify the entitlement to membership status and the right of any person to vote.
- (c) **Notices of motion:** In the event that the board or any member wishes to have a certain matter considered at an AGM pursuant to clause 6(c)(iii) of these rules ("a notice of motion"), then the relevant person ("the proposer") shall give notice in writing to the Chief Executive of the notice of motion not less than 49 days prior to the date fixed for the AGM.
- (d) **Notice to members:** If the notice referred to in clause 7(c) is received by the Chief Executive not less than 49 days prior to the date fixed for the AGM, the Chief Executive must give notice of the notice of motion and the text of any proposed resolution to all members entitled to receive notice of the AGM not less than 42 days prior to the date fixed for the AGM.
- (e) **Written proposal:** If the board intends that members may vote on a notice of motion by proxy or by postal vote, it must give the proposer the right to include in or with the notice referred to in clause 7(c) a statement of not more than 1,000 words prepared by the proposer in support of the notice of motion, together with the name and address of the proposer.
- (f) **Statement:** The Chief Executive will not be required to include in or with the notice of a notice of motion a statement prepared by a

proposer which the Chief Executive considers to be defamatory, frivolous or vexatious.

- (g) **Discussion:** Notwithstanding anything else in this clause 7, any matter raised without proper notice may, with the consent of a majority of those present at an AGM, be accepted for discussion at that AGM, but shall not be put to a resolution.
- (h) **Quorum:** 20 members personally present shall form a quorum at all AGMs and other general meetings of the society.
- (i) **Voting:** Voting at the AGM and at all other general meetings of the society will be on the basis of one vote per Grower member and Trade member, unless the motion is in relation to the Potato Levy in which case only Grower members shall be entitled to vote. Any person who pays a Potato Levy but who is not a member of the society or Horticulture New Zealand Incorporated (for example because of a conscientious objection) may attend a general meeting and will have speaking rights only in respect of the rate of the Potato Levy and expenditure of the Potato Levy by the society.
- (j) **Casting Vote:** The chairperson of any AGM shall be entitled to a casting as well as a deliberative vote except in relation to a vote concerning the Potato Levy.
- (k) **Extraordinary resolution:** An extraordinary resolution is a resolution passed at an AGM or general meeting of the society by a majority of not less than 66% of those present and entitled to vote and of which notice has been duly given at the time and by the notice calling such meeting.
- (l) **Proxies:** If any Grower member or Trade member is unable to attend at any AGM, that member may by notice in writing delivered to the Chief Executive not later than 48 hours prior to the time fixed for such AGM appoint any other person entitled to attend any such AGM and vote to be the proxy of that member and any proxy so appointed shall be entitled to exercise the vote available to that Grower member or Trade member under these rules.
- (m) **Exclusion from attendance:** Notwithstanding clause 7 of these rules, members present at an AGM may by resolution duly passed by a majority of not less than two-thirds of the members present and voting, exclude from attendances at and participation in the meetings and discussions of the AGM any person who, in the opinion of the members, is or has been guilty of wilful disobedience of the rules of the society or of any by-laws made under these rules or of conduct inconsistent with the character and interests of the society, or of conduct repugnant to the objects of the society or of its members.

8. Extraordinary General Meetings

- (a) 30 members may by requisition addressed to the Chief Executive demand that an extraordinary general meeting of the society be called to consider any matter set out in such requisition and upon receipt of such requisition the Chief Executive shall proceed to call such a meeting with not less than 21 days notice to members entitled to attend the same.
- (b) All provisions relating to operation of AGMs contained in these rules shall, to the fullest extent possible, apply to any extraordinary general meeting called pursuant to clause 8(a).

9. Management of the Society

- (a) The management and control of the affairs and business of the society shall be vested in a board ("the board") which shall comprise at least 5 directors and up to 8 or 9 directors, as follows:
 - (i) A minimum of 5 and a maximum of eight elected directors; and
 - (ii) An additional independent director (if appointed by the board in its discretion pursuant to clause 9(h)).
- (b) At all times there shall be at least two (2) Grower member directors and two (2) Trade member directors.
- (c) Each director shall have one vote, provided that any decision concerning the Potato Levy (including expenditure of the Potato Levy by the society) will not be treated as valid unless, in addition to being supported by an overall majority of votes of directors, the matter is also supported by a majority of the Grower member directors present at a board meeting (or participating pursuant to clause 10).
- (d) The following provisions relate to the entitlement to hold office as director:
 - (i) Any person holding the office of director (including any co-opted director) shall be entitled to hold the office for a period not exceeding 3 years. At the end of the term that person shall stand down, but will be eligible for re-election (or co-option) for further 3 year terms pursuant to clause 9(e) provided that no person shall serve more than 3 consecutive terms as a director. A person who has served 3 consecutive terms as a director will become re-eligible for election after having retired for at least one 3-year term.

- (ii) At the first election following the adoption of these rules 3 directors shall retire from office. At the next following election 3 directors will retire from office. At each subsequent election, one-third of the total number of elected directors (or such number as nearly equates to one-third) shall retire from office. Those to retire shall be those who have been in office longest since they were last elected or re-elected. As between directors elected on the same day, those to retire shall be determined by lot, unless agreed otherwise between such directors.
 - (iii) Subject to clause 9(d)(i), a retiring director shall be eligible for re-election and shall act as a director until the conclusion of the next AGM. The election or re-election of new directors shall take effect from the conclusion of the next AGM.
 - (iv) A director retiring by rotation shall, if standing for re-election, be deemed to have been re-elected unless some other person is elected to fill the vacated office.
- (e) The following persons shall be eligible for election as a director:
- (i) Any Grower member or Trade member who is a natural person; or
 - (ii) Any director or shareholder of a Grower member or Trade member that is a company; or
 - (iii) Any partner, employee or nominated representative of a Grower member or Trade member that is a partnership or joint venture (whether incorporated or not); or
 - (iv) Any member of a committee of management of a Grower member or Trade member that is a Maori incorporation; or
 - (v) Any trustee of a Grower member or Trade member that is a trust (including a Maori Trust Board); or
 - (vi) any employee of a Grower member or Trade member;
- being the person nominated as the principal representative of that member in respect of dealings with the society.
- (f) Non-members will be eligible for co-option as a director.
 - (g) The election of directors will take place as follows:

- (i) Each year the board will fix the date for the election of directors.
 - (ii) Prior to the date fixed by the board for the election of directors, the Chief Executive shall give at least 28 days' notice to members calling for nominations for the office of director, and advising which of the directors is retiring by rotation.
 - (iii) Each candidate for a director's position shall be nominated by at least two members.
 - (iv) Upon receipt of nominations, if the number of nominations exceeds the number of positions to be filled, the Chief Executive will forward postal ballots to all Grower and Trade members entitled to vote pursuant to clause 7. Such members will have at least 21 days in which to return ballots to the Chief Executive.
 - (v) Voting for the election of the board will be on the basis that each Grower and Trade member will have one vote.
- (h) **Appointment one independent director:** The board may appoint one director to the board, who need not be a member. The appointed director shall have the right to vote on all board matters subject to the provisions of clause 9(c).
- (i) At the first meeting of the board following the AGM, the directors will elect one of their number to be chairperson of the board until the conclusion of the next AGM, subject to these rules.
 - (j) At the first meeting of the board following the AGM, the directors will also elect one of their number as deputy chairperson until the conclusion of the next AGM, subject to these rules.
 - (k) If the Chairman should resign from office, die, become bankrupt, or in some other way become incapable of carrying out his or her duties as Chairman for a period of more than 6 weeks, then the deputy chairman shall assume the position of Chairman and hold office until the conclusion of the next AGM.
 - (l) The office of director shall be vacated:
 - (i) If the director is absent from two consecutive meetings without special leave; or
 - (ii) If the director is or becomes bankrupt or suspends payment or compounds with the director's creditors; or

- (iii) If the director dies or becomes mentally incapable as defined in the Protection of Personal and Property Rights Act 1988; or
- (iv) If the director (if a Grower member or Trade member) ceases to be a member of the society.
- (m) A director may continue in office notwithstanding a change in the underlying Grower member or Trade member with which the director was originally associated, provided the director continues to maintain eligibility for election as a director pursuant to clause 9(d).
- (n) Any casual vacancy in the board may be filled by the remaining directors by the co-option of a person duly qualified and any person so appointed to fill such vacancy shall hold office for the balance of the unexpired term of the director in whose place he or she is appointed.
- (o) The board may continue to act despite not having a full number of directors provided at all times there remains a quorum of 5 directors and the provisions of clause 9(c) are complied with).
- (p) The society in AGM or general meeting may by an extraordinary resolution remove any director from the board before the expiration of the director's term of office and appoint in that director's place another person duly qualified. The director so appointed shall hold office until such time only as the director in whose place he or she was appointed would have held the same if he or she had not been removed.
- (q) No director shall be liable for the acts or defaults of any other director or any loss so occasioned, unless occasioned by their wilful default or by their wilful acquiescence.
- (r) The directors shall be indemnified by the society for all liabilities and costs incurred by them in the proper performance of their functions and duties, other than as a result of their wilful default.

10. Proceedings of the board

- (a) Meetings of the board shall be held at such intervals as may be deemed necessary.
- (b) Not less than 7 days' notice of a meeting of the board shall be given by the Chief Executive to each director.
- (c) Two directors may at any time request a meeting of the board and the Chief Executive upon the request of two directors shall convene such a meeting.

- (d) Each director will have one vote. The chairperson of the board may exercise a casting as well as a deliberative vote at any meeting of the board.
- (e) In the absence of the Chairman the vice-chairman shall act as chairperson of the board and if both the Chairman and vice-chairman are absent the directors present shall choose one of their number to be chairperson of that meeting.
- (f) Five directors shall form a quorum at all meetings of the board.
- (g) A meeting of the board at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under the rules for the time being vested in or exercisable by the board generally.
- (h) A resolution in writing signed by a majority of directors shall be as valid and effectual as if had been passed at a meeting duly constituted and held.
- (i) All acts done by any director shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such director or that the person was disqualified, be as valid as if every person had been duly appointed and was qualified to be a director.
- (j) If any matter before the board cannot be resolved by reason of an equality of votes upon it (including the matter of the election of the Chairman and vice-chairman) such matter in dispute shall be referred to the award of a single arbitrator if the directors can agree upon one and if not to the award of two arbitrators and their umpire and in either case in accordance with the provisions of the Arbitration Act 1996.

11. Sub Committees

- (a) The board may delegate any of their respective powers to sub-committees consisting of such persons as is thought fit. Any sub-committee shall in the exercise of the powers so delegated conform to any regulations that may from time to time be imposed upon it by the board.
- (b) The meetings and proceedings of any such sub-committee shall be governed by the provisions of these rules for regulating the meetings and proceedings of the board so far as the same are applicable and are not superseded by any regulations made under these rules.

12. Remuneration of board and Sub-Committees

- (a) No part of the income or property of the society will be paid directly or indirectly to any member **provided that** this clause will not prevent the society making reasonable payments to members for professional or other services rendered.
- (b) Directors and members of sub-committees may be paid such remuneration by way of honorarium as may be determined by the society in general meeting and may also be paid travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the board or any sub-committee or any general meetings of the society or in connection with the business of the society and in addition may be paid such sum as may be determined by prior resolution of the society in respect of any extra service performed by any such member within New Zealand or elsewhere either in respect of attendance at any meeting or in respect of any special exertions in going or residing abroad or otherwise for any of the purposes of the society.

13. Chief Executive Officer

- (a) The board shall appoint a Chief Executive, who shall hold office for such period and upon such terms as to salary or otherwise as the board shall from time to time determine.
- (b) The board will determine and agree the responsibilities and duties of the Chief Executive.

14. Bank Accounts

The society shall open an account or accounts with one or more trading banks operating within New Zealand and all cheques or other negotiable instruments drawn upon such Bank or Banks shall be signed by such person or persons as the board shall from time to time determine.

15. Auditor

The board may, from time to time, and shall, if more than 50% of the Grower members and Trade members at an AGM so require, appoint an auditor to audit the financial statements of the society prior to their presentation to the AGM and such auditor (if appointed) shall be a member of the Institute of Chartered Accountants of New Zealand.

16. Common Seal

A common seal shall be obtained for the society and it shall be kept in the custody of the Chief Executive and shall not be affixed to any instrument except by order of a meeting of the board and be signed by two directors duly authorised in that behalf and by the Chief Executive.

17. Power to make and alter rules

- (a) These rules may be amended or replaced by resolution supported by a majority of at least 75% of all valid votes cast by members present or by proxy at the AGM or a general meeting called for such purpose.
- (b) Notice of any proposed amendment with the full text of the amendment shall be forwarded to the Chief Executive not later than 49 days prior to the date fixed for the AGM or general meeting and shall be sent by the Chief Executive to each member and affiliated organisation not later than 42 days prior to the AGM or general meeting provided that any new rule or existing rule so to be amended or rescinded may be altered or varied by the AGM or general meeting considering the same.
- (c) No addition or alteration to these rules will be effective if they result, or could result, in the society being dissolved, liquidated or struck off the Register of Incorporated Societies either by the Court, or the Registrar of Incorporated Societies.
- (d) No alteration to these rules will be effective if they result, or could result, in the negating of the objects, clause 12(a) or clause 18(b).

18. Liquidation

- (a) The society may be put into liquidation if a resolution is passed for the appointment of a liquidator by a majority of members present at an extraordinary general meeting called for the purpose. The resolution must be confirmed at a subsequent extraordinary general meeting called for that purpose and held not earlier than 30 days after the date on which the resolution to be confirmed was passed.
- (b) The surplus assets of the society shall after all liabilities are paid be distributed in such manner as such meeting shall decide **provided that** no portion of the surplus assets or funds may be transferred directly to members of the society but must be given or transferred to some other organisation within New Zealand having objectives similar to those of the society, provided that no portion of the assets and funds of that organisation can be transferred directly to its or their members.

19. Transitional provisions

- (a) Until the first board is elected pursuant to these rules, there will be a Foundation Board comprising 8 persons as are appointed upon incorporation of the society by the board of the Potato Product Group of Horticulture New Zealand Incorporated.
- (b) The first elections for the new board will be held as soon as practicable, as determined by the Foundation Board.

20. Definitions

20.1 In these rules, unless the context otherwise requires, the following words have the following meanings:

- (a) “AGM” means the annual general meeting of the society;
- (b) “board” means the board of directors of the society constituted pursuant to clause 9(a);
- (c) “Chief Executive” means the chief executive officer of the society appointed pursuant to clause 13(a);
- (d) “Foundation Board” means the board responsible for establishing the society described in clause 19(1)(a);
- (e) “objects” means the objects of the society set out in clause 3;
- (f) “person” includes an individual, firm, company, corporation, partnership, incorporated or unincorporated body of persons, joint venture (incorporated or unincorporated), Maori incorporation, incorporated charitable trust board, Maori Trust Board, any public, territorial or regional authority, any government, and any agency of any government or of any such authority;
- (g) “rules” means these rules as amended from time to time pursuant to clause 17;
- (h) “society” means the incorporated society known as Potatoes New Zealand Incorporated or by such other name as the society adopts from time to time.