



Australian Dairy Farmers

Submission to the
Dairy Australia Constitutional Review

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Executive Summary

Australian Dairy Farmers (ADF) fully supports the purpose of Dairy Australia, as set out in its current Constitution. This is consistent with the original driver for the founding of Dairy Australia in 2003.

ADF welcomes this opportunity to take part in this constitutional review at Dairy Australia's request. Following careful consideration, ADF considers that a number of amendments to the Dairy Australia Constitution need to be made, in order to ensure that Dairy Australia achieves its objects through the best representation of the interests of dairy farmers in their role as part of the dairy industry as a whole.

In developing this submission, ADF engaged in consultation with members over a period of six weeks. Our consultation was led by a subcommittee convened for the purpose of this review. Contributions and comments on a draft submission were sought from state and business members. Key issues were discussed with all National Council and Board members.

The ADF submission traverses all the topics raised by the Review Panel. A focus of the suggestions in our submission is to achieve a stronger connection between the investment and representative sectors of dairy. Redefined consultation processes for Group B members, such as meaningful consultation on strategic plans, operating plans, significant projects, and regular consultation between the Dairy Australia Board and Group B member boards is endorsed as significant steps that could be taken towards this goal. These procedures could be better defined in the Constitution. The draft Memorandum of Understanding developed by Dairy Australia and ADF and supported by ADPF outlining the process of consultation with Group B members on the Dairy Australia Strategic Plan provides a model for effective consultation.

The current membership structure and roles of the Group A and Group B members is supported. A limited number of Group B members is consistent with the original intent of the Constitution and ensures Dairy Australia is a national service body working with national representative bodies, and resources are not tied up in duplicative consultation. ADF, as a Group B member, does not seek voting rights at the AGM. However, this makes more formal and robust procedures for Dairy Australia to consult with ADF even more important. ADF notes that the allocation of Group A votes as one vote per whole dollar of levy paid may potentially contribute to disengagement between farmers paying a smaller levy amount and Dairy Australia. Changing the way votes are allocated to Group A members would be a significant change and if this is to be considered, we suggest that this is a matter for separate review including full engagement with Group A members.

A second key focus of the ADF submission is on the governance and meetings of Dairy Australia. The Dairy Australia Directors have made a valuable and extensive commitment to the Board and Dairy Australia. The Constitution provides the framework to ensure a Board that provides the leadership required for the next period of Dairy Australia's operation. ADF considers that setting a maximum term for Dairy Australia's Board and Chair appointments will help to promote succession planning, industry leadership development, capacity building, and Board regeneration. . A maximum of three terms or nine years is recommended. Formalising a role of Deputy Chair would also support succession planning. The Chair and Deputy should be appointed each year following the AGM. ADF acknowledges that it has a role in supporting the development of leaders and promotion of succession planning in the industry, including for Dairy Australia.

A diversity of skills on the Board supports an effective Board model and the Constitution should ensure the Board gives consideration to required skill areas in considering each vacancy. Levy paying dairy producers are a critical part of the Board composition. The Constitution should provide a means to ensure an appropriate balance between specialist Directors and producer Directors. ADF considers that up to four dairy producers on a Board of nine provides the appropriate balance. A

Board size of between five and nine Directors is recommended as a size that will be effective and workable. A Chair who is a dairy producer is preferred reflecting the role and funding of Dairy Australia. However, this is a Board decision, not a matter to be enshrined in the Constitution.

ADF considers that the current approach to the appointment of Directors through a selection committee and then the AGM generally works well. Some minor changes are suggested to the Constitution to ensure it reflects current practice including the separate pre-selection process led by ADF to make recommendations to the Selection Committee. An alternative process for casual vacancies on the Board is considered unnecessary. All appointments should be made through one standard process.

We also recommend amendments for the conduct of general meetings, which will facilitate better and more transparent engagement with Dairy Australia members and all levy payers across Australia. It is timely to consider options in how technology could be used for better engagement and improved attendance at General Meetings. However, the options will need to be carefully tested with members to ensure that any alternative methods for conducting meetings are cost-effective, workable, and will actually be supported by attendees. ADF endorses the approach of Dairy Australia leveraging off industry events to increase the audience for general meetings. This provides a greater opportunity for ADF to encourage improved farmer attendance at the Dairy Australia AGM. A quorum of 50 should not be reduced given that it represents less than 1% of Group A members. Indeed it is our view that a quorum of 50 should be present at a general meeting. Finally, with respect to general meetings, the Constitution should require transparency in the Chair's casting of any undirected proxies given the customary high use of proxies.

The review seeks comment on the levy poll process although this is not directly related to the Constitution itself. ADF considers there is room for improvement in the process, particularly in designing a process that is a collaboration between Dairy Australia, ADF and the Minister for Agriculture. ADF has an important role in providing information to members about the levy poll, receipt of well thought out responses, and promoting a robust recommendation to the Minister. The 'roadshow' approach needs particular consideration to ensure the meetings engage with as many levy payers as possible in a time-efficient, cost-efficient and content-effective manner. It is our view that it is time for a separate, broad, first principles review of the levy review process to fully consider all issues and all options, and to ensure the best legislative and operational framework is in place to regularly determine Dairy Australia funding.

ADF thanks Dairy Australia for the opportunity to contribute to the review. We look forward to further engagement as the review proceeds. The industry is facing challenges and it is timely for this review to ensure Dairy Australia is in a position of strength for the benefit of both its next period of operation and for the dairy industry as a whole.

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Introduction

Australian Dairy Farmers (ADF) welcomes the opportunity to present this submission in response to the invitation extended by the Dairy Australia Constitutional Review Panel. The Review provides a valuable opportunity for key stakeholders in dairy to examine the operational governance of Dairy Australia, and map the best way forward for the dairy industry as a whole.

ADF is constituted from five state dairy farmer organisations. ADF also has individual business farmer members. Its primary purpose is to represent the interests of dairy farming families across Australia (their jobs and their communities) to governments and the wider community.

This submission is from ADF Limited and is focused firstly on the interests of ADF as a national dairy representative organisation working with Dairy Australia, and secondly on the collective interests of the dairy industry. The comments in this submission reflect the role of ADF in its unique position as a Group B member of Dairy Australia.

Dairy farmers contribute \$31.2 million to Dairy Australia annually. This is the levy paid by each farmer based on their milk production. Dairy Australia also receives funding from the Government and other sources but dairy farmers contribute the majority of Dairy Australia's funding. Dairy farmers endorse the important role of Dairy Australia to undertake projects for the benefit of the dairy industry as a whole. In achieving this, dairy farmers seek value for their investment in Dairy Australia including efficient governance and operation of the organisation.

ADF believes that a number of amendments to the Dairy Australia Constitution need to be made, in order to ensure that Dairy Australia best represents the interests of dairy farmers and to better support Dairy Australia to play its important part in the dairy industry as a whole. Our comments and recommendations are focused on the areas highlighted by the Review Panel as being under consideration.

ADF has consulted widely amongst dairy farmers in the preparation of this submission. We have engaged in consultation with our members over a period of six weeks to develop the submission. This included providing our draft submission to state organisation members and business members and seeking feedback. The submission has been prepared under the leadership of a subcommittee of the ADF Board convened specifically for the purpose of this review. The key points of the submission have been discussed with the ADF Board and National Council.

ADF requests the opportunity to review and comment on the Review Panel's recommended amended Constitution before it is submitted to the Board for consideration. We would welcome the opportunity to discuss our submission with the Review Panel.

We look forward to the Review Panel's findings.

Summary of recommendations

- 1:** That Rule 5 is retained unchanged.
- 2:** That Rule 8 is amended to clarify that Group B membership consists of the two national representative bodies, one for farmers and one for processors
- 3:** That the Draft Memorandum of Understanding developed by Dairy Australia and ADF and supported by ADPF outlining the process for Group B consultation on the Dairy Australia Strategic Plan be signed by Dairy Australia, ADF and ADPF, and adopted as a model for consultation procedure between Dairy Australia and Group B members on strategic and annual plans.
- 4:** That the Dairy Australia Board meets annually with the ADF Board to review performance and outcomes of the 2004 MOU between both parties and any other formal consultation procedures put in place.

- 5:** That consideration be given to undertaking a separate review on the allocation of votes to Group A members.
- 6:** That consideration be given to the process for encouraging more levy payers to become Group A members.
- 7:** That the ability for Group B members to move resolutions remain.
- 8:** Dairy Australia should pursue further research on alternative options to improve participation in AGMs, including through simulcast of the national AGM online or webcasting. The research should explore and disclose the cost and resource implications of pursuing alternative options.
- 9:** Dairy Australia should continue to hold the AGM in partnership with significant, high attendance industry events to maximise attendance by dairy farmers. This partnership approach should be formalised in advance so that Group A members are aware of it and can plan to attend.
- 10:** Amend the Constitution to require a quorum of 50 to be present at a general meeting. Dairy Australia should proactively take steps to promote attendance at general meetings.
- 11:** That the Constitution be amended to require the Chair to disclose prior to the meeting how he or she intends to cast undirected proxies for each resolution.
- 12:** That the Constitution be amended to clarify that a minimum requirement of Rule 18 is that the Dairy Australia Board meets with the ADF Board as Group B member annually on the Strategic Plan.
- 13:** That the role of Director (including any time as Chair) be limited to a maximum of three consecutive terms (nine years).
- 14:** That consideration be given to a formal role of Deputy Chair of the Board.
- 15:** That Rule 21 require the Chair to be appointed by the Board after each AGM.
- 16:** That guiding principles for the Board's selection of Chair be provided either in the Constitution or in an accompanying operating document such as the Board Charter.
- 17:** That the Code of Conduct include a provision to formalise the expectation that operational processes are consistent with the consultation and engagement requirements of the Constitution.
- 18:** That Rule 25 provide for a minimum of five and a maximum of nine Directors.
- 19:** That Rule 25, 26 or 27 be amended or a new clause added to specify the minimum number of levy paying dairy producers on the Board. To achieve up to 4 on a board of 9 (or similar ratio), this could be stated as one less than half the total number of Directors on the Board (rounded up to the nearest whole number).
- 20:** That the Constitution be amended to provide that part of the selection process is that the Selection Committee must also invite Director nominations from Group B members which are then considered by the Selection Committee.
- 21:** That the Constitution retains the option of a person standing for election if nominated by a minimum of 100 Group A members.
- 22:** That the Constitution be amended to remove the alternative processes for filling casual vacancies and that the one process apply for all Director appointments, to be tied to each AGM.
- 23:** That the levy poll be subject to a first principles review for consideration at the AGM.

The purpose of Dairy Australia

Rule 5: The Panel invites submissions on whether these objects are still appropriate for Dairy Australia

Rule 5 sets out the objects of Dairy Australia. This is further defined by Rule 6 prohibiting political campaigning in line with the Statutory Funding Agreement. The existing wording of Rule 5 reflects the purpose and focus of Dairy Australia activities. ADF considers that these existing objects remain appropriate and do not need to be amended.

Recommendation 1: That Rule 5 is retained unchanged.

Representative bodies: A voice for dairy farmers

Rule 8: The Panel invites submissions on the qualifications set out in the Constitution for Group B membership (rule 8.3), particularly in light of the application by South Australian Dairy farmers Association (SADA) at the 2012 Dairy Australia AGM to be elected as a Group B member.

The Dairy Australia Constitutional Review asks respondents to examine the current membership structure, that clearly delineates between individual levy payers, who feature as Group A members and retain voting rights, and representative bodies, who as Group B members have no voting privileges.

The existing wording of the Dairy Australia Constitution enables a potentially unlimited number of Group B members which is not, we believe, reflective of the original intent of the Constitution.

The current make-up of Group B members represents dairy farmers collectively via ADF and the processing and manufacturing sector nationally through ADPF. The objects of ADF are to represent the interests of dairy farmers nationally, regardless of whether they are personally members of a dairy farmer representative body. In this regard, all levy payers and Dairy Australia can be assured that ADF takes a national interest perspective in performing its work, including Group B obligations under the Dairy Australia constitution. ADF acknowledges that if it is the sole Group B member representing farmers then this confirms it must perform that role from a national perspective.

ADF supports a structure for Group B members that is efficient for both Dairy Australia and for the members. For example, the structure should support the ability for Dairy Australia to satisfactorily meet its constitutional requirements for engaging with Group B members. We raise concerns in this submission about the quality of current engagement and therefore note the potential difficulty in any increased number of Group B members for Dairy Australia to consult with.

ADF considers that it would be appropriate for the Constitution to clarify that Dairy Australia as the national service body for the dairy industry is supported by the bodies for the national dairy farmers and national milk processors in its strategic work through Group B membership. This will endorse the whole of industry approach at a national level. This approach is then supported at the State level by the Regional Development Programs (RDP's) and the state dairy farmer representatives.

Recommendation 2: That Rule 8 is amended to clarify that Group B membership consists of the two national representative bodies, one for farmers and one for processors

Rule 11: The Panel invites submissions on whether the allocation of one vote for each whole dollar paid as a levy remains appropriate

Rule 13: The Panel invites submissions on how to enhance consultation between Dairy Australia and Group B members, particularly in relation to the compilation of strategic and annual operating plans.

ADF supports the current rules that limit voting to Group A members at the general meeting. However, the lack of a formal voice for representative bodies will become increasingly problematic if consultation procedures for Group B members are not significantly enhanced.

ADF exists solely to represent Australian dairy farmers. ADF functions as a representative of dairy farmers, not only in policy debates and public forums, but also in internal industry discussions. Strong engagement with ADF on the part of Dairy Australia represents a welcoming of the farmers' national representative voice to significant discussions around industry priorities, future investment decisions, and a productive space from which to compile strategic and annual operating plans. To quote from the 2004 MOU between both organisations, "In order to coordinate their respective activities and to work in partnership, these organisations [Dairy Australia and ADF] must consult extensively with each other."

A more formal approach to supporting Group B members to execute their role is urgently required. The current Constitution anticipates formal procedures for consultation with Group B members. To this end, ADF has led a year-long process with Dairy Australia to develop a draft Memorandum of Understanding (MOU) specifically regarding the consultation process for Group B members to provide input and feedback into the Dairy Australia strategic plan. ADF would be pleased to provide a copy of this Draft MOU to the Review Panel upon request.

The overarching MOU between Dairy Australia and ADF signed in 2004, lists the key relationship areas, these being: values and behaviour, costs of consultation, reciprocity, conflicts of interest, recognition of partnership and consultation processes. ADF suggests that the Dairy Australia and ADF Boards should meet annually to review performance against the MOU. This would support a more formal approach to consultation with Group B members under the Constitution, and would endorse the consultation procedures already in the MOU. A copy of the MOU can be provided upon request.

ADF is open to exploring streamlined and innovative procedures to support general consultation with ADF and our members. We would expect the following principles to be upheld in formal procedures:

- That the innovation represents an efficiency of time and/or cost and/or resourcing for more than one party;
- That farmer time is valued and recompensed appropriately (as per Dairy Australia policy);
- That farmer representatives have an equal opportunity to participate as other parties (eg equity of consultation);
- That reasonable support is provided by Dairy Australia to enable participation via the introduction of technical or technological innovations.

ADF notes that the allocation of one vote per whole dollar of levy paid may potentially contribute to disengagement between farmers paying a smaller levy amount and Dairy Australia. The share of levy paid cannot be equated with a commercial situation as the levy is contributing to industry-wide benefit and once the levy is set, farmers do not have a choice about paying the levy or the amount of the levy. Changing the way votes are allocated to Group A members would be a significant change. ADF suggests that this is a matter that warrants Dairy Australia separately engaging with Group A members, thoroughly considering options, and putting this to the AGM. This is probably best achieved through a review separate to this Constitutional review.

There is no clear process for new levy payers to become Group A members. Neither does there appear to be a process for existing levy payers, who may have declined to become a Group A member previously, to be offered the opportunity to become members. We consider that there

would be significant benefit to Dairy Australia in increasing the proportion of levy payers who are Group A members and therefore have the ability to make a formal contribution to the strategic direction and operation of Dairy Australia. While this is not a matter for the content of the Constitution, the Panel may wish to consider the process for Group A membership. ADF is willing to help in delivering a strategy to encourage and communicate about the importance of Dairy Australia membership.

Recommendation 3: That the Draft Memorandum of Understanding developed by Dairy Australia and ADF and supported by ADPF outlining the process for Group B consultation on the Dairy Australia Strategic Plan be signed by Dairy Australia, ADF and ADPF, and adopted as a model for consultation procedure between Dairy Australia and Group B members on strategic and annual plans.

Recommendation 4: That the Dairy Australia Board meet annually with the ADF Board to review performance and outcomes of the 2004 MOU between both parties and any other formal consultation procedures put in place.

Recommendation 5: That consideration be given to undertaking a separate review on the allocation of votes to Group A members.

Recommendation 6: That consideration be given to the process for encouraging more levy payers to become Group A members.

Bringing the dairy community together: General Meetings

14: How could advances in technologies since 2003 be utilised in this area – for instance should Dairy Australia AGM's be broadcast simultaneously in different locations?

15: The Panel invites submissions on the process for a Group B member to bring forward a resolution to be moved at a general meeting. Submissions may also discuss whether a quorum of 50 for general meetings is still appropriate given decline attendance of members at Dairy Australia AGMs.

16: The Panel invites submissions on the voting of proxies by a proxy holder (eg chair) where no direction is given by the party appointing the proxy.

ADF strongly considers that clause 15.1 allowing Group B members to move resolutions must remain. This is an important mechanism for positions, suggested improvements and consultation results arising from membership structures that represent levy payers nationally to be considered by the AGM of Dairy Australia Group A members.

ADF recommends that the Dairy Australia Constitution be amended to allow Dairy Australia to make full use of technology, in order to facilitate better access to members across Australia. Due to ADF's limited financial capacity, we are unable to directly fund the attendance of our members. We note that state dairy farmer organisations are likely to be in a similar position.

It is questionable whether the effort involved in organising multiple 'live sites' across the country, for a live broadcast of the AGM, would contribute to greater participation. It is more likely that the current low attendance would simply be reflected at multiple sites. Providing members with the option of watching the national AGM online (eg through webcasting) would engage the wider dairy community and allow members who are unable to attend the general meeting the ability to still be part of important governance procedures and benefit from the presentations. The web simulcast of the AGM also supports a broader aim of providing greater transparency around operational governance procedures. Should this option be pursued, it would need to include an on-line moderator to manage online questions so that they may be visible and addressed during the AGM.

For critical voting matters at the AGM, another option could be on-line voting by members in advance of the AGM with results announced at the AGM. We note that this voting approach has become more extensively used in recent times, particularly in member organisations.

ADF suggests that should the feedback from Group A members on this Constitution review not provide conclusive evidence on options, that further research be conducted to consider the cost and benefit of alternative options for achieving improved participation in general meetings. Any research should be made available to Group B members and State Dairy Farmer Organisations who we recommend be consulted on any new approach.

Given the historical success of a partnership approach to achieving a quorum, ADF suggests that Dairy Australia continue to leverage industry events. In particular, we recommend that Dairy Australia continue to specifically partner with the ADIC Dairy industry Leaders Breakfast event which is run by Dairy Australia's Group B members. This allows Group B members to promote attendance at both the breakfast and the Dairy Australia AGM and for ADF to hold complementary events (such as the ADF AGM). ADF also holds its Board and National Council meetings around these events and is therefore able to support travel and accommodation for office bearers. In this way, ADF directly supports the attendance of around twenty farmers to attend the Dairy Australia AGM.

Furthermore, by partnering with the ADIC Breakfast, ADF and the ADIC provides a value-add component for dairy farmers attending the AGM. ADF actively invites many grass-roots dairy farmers to attend this event and is keen to work with Dairy Australia to move towards a larger venue to support greater farmer attendance. All efforts to promote attendance at the AGM and other general meetings should be undertaken by Dairy Australia as a matter of priority. ADF will support Dairy Australia including using the mechanisms suggested above. ADF suggests that this partnership approach to the Dairy Australia AGM be formalised so that Group A members anticipate and can plan to attend a wider industry event incorporating the AGM.

There has been a consistent decline in attendance at Dairy Australia's AGMs. The review panel asks if the quorum should be reduced from 50 to a lower number. Members can nominate a proxy to vote in their stead, so the fact that a member cannot attend does not mean that they cannot vote.

The current quorum of 50 represents less than 1% of the current Group A membership of more than 4500, and already fails to adequately represent the dairy farmer population in Australia that directly fund Dairy Australia. Lowering the quorum number further would not be beneficial to members and would introduce greater risk that matters raised and decided at general meetings do not reflect the membership at large.

ADF notes that the current wording of the Dairy Australia constitution means that it is technically possible for the Chairman to hold a general meeting with no members present. We do not consider that this would be appropriate. It is our view that the quorum should be required to be present at the meeting, not by proxy. This is a reasonable expectation given the low number of the quorum and the objective of ensuring robust and fair general meetings. It is also our view that the Constitution should be amended to clarify that the Chair is required to declare prior to the meeting how he or she intends to cast undirected proxies for each resolution.

Recommendation 7: That the ability for Group B members to move resolutions remain.

Recommendation 8: Dairy Australia should pursue further research on alternative options to improve participation in AGMs, including through simulcast of the national AGM online or webcasting. The research should explore and disclose the cost and resource implications of pursuing alternative options. .

Recommendation 9: Dairy Australia should continue to hold the AGM in partnership with significant, high attendance industry events to maximise attendance by dairy farmers. This partnership

approach should be formalised in advance so that Group A members are aware of it and can plan to attend .

Recommendation 10: Amend the Constitution to require a quorum of 50 to be present at a general meeting. Dairy Australia should proactively take steps to promote attendance at general meetings.

Recommendation 11: That the Constitution be amended to require the Chair to disclose prior to the meeting how he or she intends to cast undirected proxies for each resolution.

Strategic and operational planning: Building sector relationships

18. The Panel invites submission on the process for the formulation of Dairy Australia's strategic and operational plans

The relationship between Dairy Australia and ADF and ADPF is critical for the development and promotion of the dairy industry as a whole. ADF welcomes the opportunity to contribute to the development of meaningful strategic and operational plans of Dairy Australia.

Rule 18 requires Dairy Australia to provide Group B members with a reasonable opportunity to consider the plan and consult with the Dairy Australia Board on the plan. The Board is required to take into account matters raised by the Group B members.

To date, contact between the ADF Board and the Dairy Australia Boards has been minimal and consultation has been unsatisfactory. Often ADF receives communication of decisions already made through either a single, high level presentation or the sending of documentation with a request for feedback.

ADF and Dairy Australia stand as two important pillars in the broader dairy industry, and the sharing and collaboration around strategic and operational planning is vital to ensuring a healthy and sustainable dairy industry. Considering the challenges the industry faces today, this lack of consultation is worrying and the situation needs to be collectively improved. ADF views the draft MOU between ADF, ADPF and Dairy Australia as an important first step and anticipates regular contact between ADF and the Dairy Australia board in the future in order to cement this new understanding.

ADF reiterates its recommendation 3 that the Draft Memorandum of Understanding developed by Dairy Australia and ADF and supported by ADPF outlining the process for Group B consultation on the Dairy Australia Strategic Plan be signed by all parties and endorsed as a model to achieve the consultation anticipated by the Constitution.

Recommendation 12: That the Constitution be amended to clarify that a minimum requirement of Rule 18 is that the Dairy Australia Board meets with the ADF Board as Group B member annually on the Strategic Plan.

Recommendations 3 and 4 above are also relevant for Rule 18.

Sustainable governance for dairy's future

21. The Panel invites submissions on whether there should be a maximum number of terms the Chair might serve, or if there were to be a maximum specified, whether there should be a mechanism for that person to continue as Chair provided they satisfy a particular requirement (e.g. a members' vote). The Panel also invites submissions regarding the specific skills and experience a Chair of Dairy Australia ought to bring to the role.

ADF considers there should be a limit on the number of terms a Director or Chair can serve on the Dairy Australia Board. The Dairy Australia Constitution should be amended so a Director can only serve a maximum of three terms (nine years) before stepping down. A Director may serve any part of that nine year period as Chair.

A maximum period for a Director or Chair will provide for the Dairy Australia Board to actively support regeneration and renewal. Enabling turnover avoids complacency which could have long-term ramifications for Dairy Australia and the industry in general. It is incumbent on the Board to:

- Treat succession planning as a vital part of its broader duties
- Cultivate innovative and connected leaders; and
- Adopt governance practices that support generational change.

ADF considers that a maximum number of terms is likely to improve the attention given to these duties by the Board. An additional mechanism to support succession planning on the Board would be for the Board to nominate a Deputy Chair. This would provide a step towards becoming Chair, and again would encourage the Board to give more formal attention to succession planning.

ADF acknowledges that it has a role in supporting the development of leaders and promotion of succession planning for the industry, including for Dairy Australia.

The Chair of the Board should be a person demonstrating particular qualities but rather than specifying the skills for a Chair, ADF considers that the important matters of principle to guide the Board's selection of the Chair could be defined. ADF considers that the Chair should be:

- The best person for the job; and
- Selected on the basis of achieving good governance; and
- A levy paying farmer; or
- If there is no suitable levy paying farmer, a specialist Director.

These principles in selecting a Chair may not be appropriate in the Constitution itself but could be set out in the Board Charter or other suitable operating document.

It would be appropriate for the Chair and the Deputy to be elected at the first meeting of the Board following the AGM.

Given the role of Dairy Australia and the significant proportion of its funding contributed by levy-payers, ADF considers it preferable that the Chair of Dairy Australia be a levy-payer of Dairy Australia under the Primary Industries (Excise) Levies Act 1999 (Cth). This reflects that the greater interests of levy payers are a priority for Dairy Australia and would assist to maintain the focus on the core R, D & E activities of Dairy Australia to ensure long term benefit to the industry. It would also help to ensure a culture of levy payer service with a focus on adding value for milk producers.

ADF notes that historically Dairy Australia Chairs have been levy payers, so it is a reasonable and achievable proposition. While a large number of farmers believe that the Chair should always be a levy payer and that the Constitution should require this, it is the ADF position that it is the Board's role to select the Chair. The benefits of having a levy paying Chair should be a strong consideration but we recognise that there may be times when the Board decides differently in the interests of good governance.

Recommendation 13: That the role of Director (including any time as Chair) be limited to a maximum of three consecutive terms (nine years).

Recommendation 14: That consideration be given to a formal role of Deputy Chair of the Board.

Recommendation 15: That Rule 21 require the Chair to be appointed by the Board after each AGM.

Recommendation 16: That guiding principles for the Board’s selection of Chair be provided either in the Constitution or in an accompanying operating document such as the Board Charter.

24. The Panel invites submission on whether the areas covered by the code of conduct should be expanded

The matters listed in the current Rule 24 to be included in the code of conduct are appropriate. In addition, ADF considers that it would be appropriate to include a provision to more formally link the processes in the Constitution to the code of conduct. For example, the Constitution is a key document guiding the consultation procedures of Dairy Australia engagement with Group B members. It could be beneficial for the Code of Conduct to endorse the expectation that Directors and senior officers work in accordance with these organisational principles and processes

Recommendation 17: That the Code of Conduct include a provision to formalise the expectation that operational processes are consistent with the consultation and engagement requirements of the Constitution.

25. Dairy Australia currently operates with eight external non-executive Directors, plus a Managing Director. The Panel would be interested to receive submissions on whether this is the appropriate number of Directors.

26. The Panel invites submission on whether it is appropriate that the Board be ‘skills based’ and, if so, what balance of skills and experiences the Board should have.

ADF considers that the Dairy Australia Board needs to represent a mix of skills including specialist skills and dairy producers (farmer levy payers). The specialist and dairy producer streams for Directors differ and both need to be clearly provided for in the Constitution.

Currently, the Dairy Australia Board composition includes individuals with the following specialist areas: environmental issues; food technology and value chain; food research and development/technology; accounting; agribusiness strategy and marketing.

Given the significance of the levy funding source and the objects of Dairy Australia, the Board needs to contain an appropriate number of levy paying dairy producers in order to ensure a balance of both dairy producers and specialist Directors. While there are currently three farmer Directors on the Board, it is feasible that there could be none because the current Constitution is silent on the mix of dairy producers and specialist Directors. ADF considers that the Constitution should specify a minimum number of Board Directors to be dairy producers. It is our view that the Board should include at least 3 and up to four (out of nine) dairy producer Directors. Having approximately one third of the Directors as dairy producers provides for the non-producer Directors to be the majority but for dairy producers to provide a reasonable component of the Board. We note that a dairy producer could be appointed as a specialist Director.

In addition to specialist or farmer skills/experience, Board members also need to have broad understanding of the industry, drive to consider challenges and lead on opportunities and changes, and understanding of industry structures and the importance of collaboration across the industry.

In endorsing a skills based Board, ADF does not consider that the Constitution should specify the specialist skills. Rather, we endorse the current process where the Board reviews its skills and gaps at the time of each vacancy, and identifies the areas it is looking to fill with new Directors to complement the make-up of the Board. This provides the opportunity for the Board to consider the

skills that would most benefit the Board at that time, as these skills will change over time dependant on the issues and context for Dairy Australia and the industry.

A Board of up to nine Directors, as provided in the current Constitution, is supported as it provides the scope to ensure the appropriate range of skills and experience is included in the Board composition. ADF considers that a minimum of three Directors is too low. It is unlikely that a Board of three would be able to adequately perform the role of the Board. A minimum of five Directors is recommended as appropriate.

Recommendation 18: That Rule 25 provide for a minimum of five and a maximum of nine Directors.

Recommendation 19: That Rule 25, 26 or 27 be amended or a new clause added to specify the minimum number of levy paying dairy producers on the Board. To achieve up to 4 on a board of 9 (or similar ratio), this could be stated as one less than half the total number of Directors on the Board (rounded up to the nearest whole number).

28. The Panel invites submissions on whether the composition of the selection committee achieves an appropriate balance in terms of its membership and other submissions in relation to the process of its establishment. The Panel invites submissions on the process for filling a casual vacancy on the Board.

29. The Panel invites submissions on whether overall the Director selection process is conducive to a Board composition that is able to operate in the best interests of members.

ADF notes that under Rule 28, Group B members are consulted on the specification to the Selection Committee of the skills and experience appropriate for Directors.

We note that the current approach to candidates going forward to the Selection Committee has involved ADF also making recommendations to the Selection Committee about potential Directors. In nominating a Director, ADF runs a pre-selection process involving short listing and interviews if necessary. Group B members have significant knowledge and connection with individuals and the ability to run a pre-selection process enabling valuable input to the selection process about potential Directors with the appropriate skills and experience.

This practice however this is not specifically provided for in the Constitution. Group B members can add value and efficiency to the Director selection process and this approach should be anticipated in the Constitution by specifically enabling Group B members to make Director nominations to the Selection Committee. ADF supports the Selection Committee retaining the responsibility to make one nomination to the Board which is then put forward to the AGM. This process endorses a focus on skills and experience to complement the Board composition rather than relying on a member vote at the AGM.

The constitution provides for a person to stand for election if nominated by 100 Group A members. The requirement to obtain 100 Group A member signatures is considered to be appropriate in demonstrating a level of support and commitment of that nominee. This high level of support ensures the candidate is serious and provides a level of endorsement fitting for the annual election process. Lowering the number of signatures required would not achieve this.

ADF suggests that the Rules relating to casual vacancies be reviewed. Nomination and selection of Directors at the AGM is the appropriate process to confirm Director positions. The value in a short-term casual occupancy of a Board position for a term of up to six months is not clear. In fact there is risk that filling a vacancy with a casual appointment may pre-determine or prejudice the appointment of a permanent Director through the prescribed selection, nomination and election process. We consider that a casual vacancy should remain vacant until the next AGM and be filled using the standard process at that time.

ADF notes that the constitution is not entirely clear or easy to interpret in the options and processes for Director appointments, particularly for casual vacancies. We suggest that this part of the Constitution would benefit from an overall review and reorganisation.

Recommendation 20: That the Constitution be amended to provide that part of the selection process is that the Selection Committee must also invite Director nominations from Group B members which are then considered by the Selection Committee.

Recommendation 21: That the Constitution retain the option of a person standing for election if nominated by a minimum of 100 Group A members.

Recommendation 22: That the Constitution be amended to remove the alternative processes for filling casual vacancies and that the one process apply for all Director appointments, to be tied to each AGM.

31. The Panel invites submissions on whether there should be a specified maximum number of terms that a Director should serve.

As noted above in relation to a maximum number of terms for the Board Chair, ADF considers that regeneration, renewal and succession planning are vital in ensuring a Board that is innovative and active in leading Dairy Australia. This applies to both the Chairman and the Directors.

Although the current Constitution suggests a maximum three year term for Directors, because there is an ability to be re-nominated, most current directors have held their positions well in excess of three years. By the time of the next AGM, four of the eight external Directors would have held their positions for 6, 7, or 8 years, with the Chair in excess of 9 years. The remaining three Directors will be at three or less years. The Directors have made valuable and extensive commitment to the role of Director and this is fully acknowledged by ADF. It is also acknowledged that continuity adds value.

However, ADF considers that leadership of Dairy Australia will benefit from regular renewal, and it is our understanding that this is the intention of the current Constitution. ADF's particular interest is succession of farming Directors and ability of new industry leaders to become Directors. The same principle applies to specialist Directors in enabling regeneration of the Board over time. There is a balance between the value of continuity and the value of renewal. We consider a maximum term should be specified to assist in achieving a good balance and promoting succession planning.

Refer to **Recommendation 13** for a maximum of three consecutive terms for Directors.

Sustainable funding for Dairy Australia's future

The Panel invites submissions on possible improvements to the Levy Poll process

ADF considers that there is scope for improvement in the Levy Poll process. ADF has previously provided feedback to Dairy Australia on the 2012 Levy Poll.

As the representative of the levy payers, ADF strongly considers that the recommendation and setting of the levy poll options and farmer consultation are a collaborative process between Dairy Australia, the Minister for Agriculture and ADF. ADF has a lot to offer Dairy Australia in input to the materials for the levy poll process, and communication with levy payers.

Holding a series of meetings with levy payers in regional dairy areas is endorsed. The opportunity for farmers to receive information and have interactive discussions about the levy poll is essential. These meetings not only provide information to farmers voting on the levy, but also provide an

important indicator to farmers on the relevance, efficiency and value provided by Dairy Australia. However, the approach to these meetings needs to be carefully considered. It could be improved by having less meetings (eg 40 rather than 52), more strategic locations, less presenters, closer liaison with state organisations, and more targeted presentations for specific audiences. We note that providing a greater amount of time for levy payers to consider the levy rate options before polling would be more reasonable.

ADF would be pleased to work with Dairy Australia in developing and delivering an effective 'roadshow'. We note however, that a roadshow cannot be relied on as the only means of providing information about the levy poll. We recommend a fresh look at the best means of communicating about the levy poll.

It is important that the levy poll is not the only time that Dairy Australia, ADF and state dairy organisations are seen jointly in regional areas talking to levy payers. As noted earlier in this submission, ADF seeks closer and more formal arrangements between Dairy Australia and ADF in strategic planning and consultation on key projects. The levy poll is just one example where visibly working more closely together could have critical outcomes for the benefit of the industry as a whole.

While we have commented on improvements to the process of the levy poll, we consider that it is time for a more fundamental consideration of the issues and options for regularly determining Dairy Australia funding. This is a matter for review separate to this Constitutional review and should include consideration of the legislation, criteria, possible levy options and process. A first principles review should be carried out in 2013 with the following underlying principles:

- Dairy Australia, ADF and DAFF being joint partners in undertaking a first principles review
- The legislation providing a broad framework that enables a range of options and approaches to levy increases
- The regular review of funding being jointly delivered by Dairy Australia and ADF
- The regular review incorporating options that provide a fair and reasonable ability for levy payers to determine the levy
- Information about options and supporting material being available to levy payers through an effective communication approach to reach as many levy payers as possible in a time-efficient and cost-efficient manner.

Recommendation 23: That the levy poll be subject to a first principles review for consideration at the AGM.