

Explanatory Memorandum

In respect of the proposed modifications to the Constitution¹ of the Victorian Farmers Federation (VFF) included with this document

Background and introduction

Maddocks Lawyers has been instructed by the VFF to undertake a comprehensive review of the VFF's Constitution and make recommendations (for any modifications).

Maddocks' review has resulted in a series of recommendations which broadly fall into the following categories, noting that some changes may fall across several categories.

1. **Modernisation**

Modifications across this area cover both language changes (e.g. gender-neutral language) and modifications to take advantage of technological changes (zoom meetings, email communications and the like).

2. **Regularising**

Maddocks identified certain structural features of the VFF which are not in line with modern conventions and good governance (such as board composition and rotation procedures) for Australian public companies.

3. **Reflection of entrenched practices**

In some cases, certain historical and entrenched practices of the VFF should be better reflected in the Constitution for example around calculation of fees and payments to officers.

4. **Clarification of ambiguities and uncertainties**

Certain features of the Constitution create significant uncertainty and ambiguity for both Members and Directors. Proposed modifications under this category include introduction of new definitions where some terms and concepts were previously undefined (including a clearer understanding of what the annual subscription fees consist of) and addressing other ambiguous features which impact the Board's responsibilities in being ultimately responsible for the financial affairs of the VFF and therefore the ability of directors to carry out their statutory and general law duties more broadly.

5. **Guidance and clarification on Members' rights**

Further guidance to promote a clearer understanding around the extent of Members' rights. This includes the more detailed steps throughout any disciplinary process, and more precise definition of voting and participation rights.

6. **Clarification of roles**

Roles are better distinguished from one another at various governance and representative levels of the VFF and powers and responsibilities of officeholders are better defined. This include some changes of position titles.

7. **Procedural efficiency**

¹ as amended by resolution at the Extraordinary General Meeting of the VFF on 21 July 2016

Decision making and voting procedures of the VFF are improved to ensure good governance practices including a Prescribed Ballot process for contested elections and a simpler voting system.

8. **Miscellaneous**

Typographical errors fixed and other minor clarifications made.

The Schedule to this Explanatory Memorandum contains examples of proposed modifications across the above categories and outlines the rationale behind making those modifications.

Unless stated otherwise, capitalised terms in this Explanatory Memorandum have the meaning given to them in the marked-up Constitution included with this Explanatory Memorandum.

Schedule 1 Summary of proposed modifications

This table provides a summary, including examples, of the proposed amendments to the Constitution.

Clause ref ²	Subject	Examples/description of change	Reason for change
Modernisation			
	Gender-neutral language	"allocated by the Chief Executive Officer to a specific Branch which in his or her the Chief Executive Officer's opinion..."	Removal of gendered language to ensure inclusivity and reflect societal changes, as well as provide more legal clarity and precision.
CI 30	Using technology to hold meetings	Meetings of the VFF (at all levels) to be held remotely / using technology, in accordance with a new clause 30 "Using Technology to Hold Meetings".	To specifically allow for meetings to be held using technology improves accessibility, efficiency and flexibility and is in line with the way most Australian companies manage their affairs, particularly after COVID-19.
Regularising			
CI 6	Branch Biennial Meetings	Branch Annual Meetings have changed to "Biennial Meetings", meaning every 2 years. Branches otherwise have Branch Meetings to conduct general business (with no requirement as to frequency and business to be brought).	Given the nature and business of these meetings, it is proposed to reduce the frequency of these meetings to once every 2 years. Overall, this creates more flexibility and efficiency at a Branch level.
CI 9	Commodity Group Extraordinary Meetings	The ability for Commodity Groups to call and hold Commodity Group Extraordinary Meetings has been removed.	This concept and procedure is not considered an essential part of a Commodity Group's governance. This does not prevent the commodity group from holding conferences each year.
CI 10.1	Board composition and rotations	The amendments: <ul style="list-style-type: none"> remove the concept of Directors representing Commodity Groups and replace with 'Elected Directors' elected by the full membership; reduce the maximum number of Directors to 7 from 9; introduce a minimum of 1 'Independent Special Skills Director' increasing 	The proposed changes to the Board composition and terms reflects good governance practice and removes the conflict between the between duties at Commodity Group and Board levels. This maintains a majority of farmer directors on the VFF Board.

² References refer to those in the marked-up Constitution. References to clauses that have been removed refer to the clause numbers in the original Constitution.

		<p>to a maximum of 3; and</p> <ul style="list-style-type: none"> propose updates to the way Directors retire and rotate. 	
CI 14	Removal of Federation Conference	All references to and procedures in connection with Federation Conferences have been removed.	There is an intention to hold replacement events held at the Board's discretion. It is acknowledged that conference is no longer the primary policy setting mechanism at the VFF as it is too slow in regards to our advocacy requirements.
CI 23	Removal of Federal Councils	Reference to and processes in connection with Federal Councils have been removed.	Nominations and sending of representatives to those peak bodies is not consistent across all commodities.
CI 6.7 CI 7.4 CI 8.5 CI 10.2	Elections and term limits	The Board and the CEO call elections in line with the terms of the officeholders, including Commodity Policy Councillors, Commodity Group Chair and Deputy Chair, Branch Executives, and elected Board members.	Scheduled retirements and rotations at regularly scheduled elections reflect modern corporate governance practice.
Reflection of entrenched practices			
CI 4.6	Certificate of Merit	Removal of reference to the Certificate of Merit.	This concept is no longer in use.
CI 6.5	Register of Branch Members	The VFF / Chief Executive Officer maintains the Branch registers (rather than the Branches).	This is in line with current practice.
CI 9.1.4	Commodity Group Conference - Federation's journal	Reference to Federation's journal removed as a means of notice for a Commodity Group Conference	This concept is no longer in use.
CI 29	Directors' remuneration	Amended the Directors' remuneration provisions to expressly allow for Directors to be remunerated for their services as Directors, the maximum amount being set at an AGM.	This is in line with VFF's current and historical practices. Remunerating directors is commonplace and allowable for not-for-profit organisations such as the VFF.
Clarification of ambiguities and uncertainties			
CI 16.2 CI 16.3	Financial clauses	<p>Financial clauses which create obligations on the Board to direct certain funds of the VFF towards Commodity Groups have been removed.</p> <p>Other clauses which acknowledge funds held by Commodity Groups have also been removed.</p>	<p>Obligations contained in the Constitution of Directors to direct certain funds, especially where those amounts are unclear, create significant risk to the Board and other officers of the VFF as directors and officers.</p> <p>It is proposed these be removed and discretion to apply funds and property be left with the Board (in line with the Board's statutory and general law duties).</p>

Definitions	Defined terms	<p>Clarified several concepts that are important features of the Constitution but lacked precision including 'Subscription' and 'Levies'.</p>	<p>Given the importance of paying subscription fees and levies, the terms should be defined. A clear process for setting the Subscription and Levy has been set out.</p> <p>Throughout the Constitution it has been clarified that Subscription as a capitalised term means both the annual subscription fee and a Levy (if applicable) together. This is the total amount payable by a Voting Member. An annual subscription fee and a Levy still remain two separate concepts because they are both set differently and are variable.</p>
Definitions	Defined terms	'Voting Member' and 'Non-Voting Member' and 'Member'.	Voting rights of members are distinguished throughout the document through the use of the defined terms. Previously, the terms were not applied consistently which created doubt as to the rights of some members to vote and participate.
Definitions CI 31	Defined terms	<p>'Code of Conduct' and 'Rules of Debate'.</p> <p>A new centralised Code of Conduct clause applying to Commodity Policy Councils and Branch Executive is included for purposes of consistency.</p>	The Code of Conduct and Rules of Debate are important features of the VFF and conduct in VFF meetings. Definitions for, and additional context for the application of, these ancillary documents have been included.
Guidance and clarification on Members' rights			
CI 4.2.2	Votes per Voting Member	<p>Replacing the concept of a nominee with a provision clearly specifying a Voting Member's entitlement to 1 vote at a meeting of Voting Members, a poll or requisitioned EGM.</p> <p>Voting by proxy has been extended to all meetings of Voting Members (AGM, EGM, meetings of Branches and meetings of Commodity Groups).</p>	<p>Given the structure of the VFF's membership and number of members on the register associated with a single financial member (Voting Member), it is important to ensure consistency and clarity in voting rights attached to each Voting Membership.</p> <p>The replacement of the nominee concept with an explicit 1 vote entitlement per Voting Member is ultimately more aligned with modern public company constitutions and the Corporations Act.</p>
CI 4.4.4	Engaging with multiple Branch and Commodity Groups	Changes to ensure Voting Members can register with, and receive benefits in relation to, multiple Commodity Groups. However, it has been clarified that Voting Members only have participation and voting rights for a Primary Commodity Group and Branch.	It is important to clarify that voting rights can only be applied to the one Commodity Group or Branch so that votes across at those levels of the VFF are fairly distributed.

		Registration with additional Commodity Groups is subject to payment of Subscription for the Primary Commodity Group.	
CI 4.6.2	Honorary Life Members	Clarified that there is an exemption for Honorary Life Members from paying Subscription and highlighted the rights and powers are the same as Voting Members.	This is in line with current practice and it is recommended this be specified in the Constitution.
CI 4.8.2	Membership termination procedure	Provided for a more detailed disciplinary procedure and further rights for members that are subject to disciplinary action. This includes rights to respond and ensuring that the grounds for termination that are put to the Member are sufficiently substantiated.	A more defined process for the VFF to follow when determining whether to terminate a membership ensures a decision is made fairly. Ultimately it reduces the chance of external appeals and avoids giving rise to opposing views on how the disciplinary procedure applies.
CI 4.9	Membership suspension / variation	Powers and rights can be varied or limited at the discretion of the Chief Executive Officer.	This ensures payments are received in a timely manner and ensures that only paying members receive certain privileges.
CI 6.3	Allocation to a Branch	Voting Members may make a request to the CEO to be allocated to a preferred Branch	This creates some flexibility around being allocated to a Branch which is appropriate.
CI 13.3	Member business at meetings	Introduced more detail around Members' ability to bring business to an AGM, including the threshold number of members required to bring business.	The threshold for bringing business was significantly lower to that under s 249N of the Corporations Act. A threshold of 5%, more appropriate for a large organisation, ensures that critical and impactful matters can be brought to meetings. This reduces the chance of meetings being overwhelmed by less significant and pervasive issues.
CI 13.4.1 CI 13.5.2	Member convened Extraordinary General Meetings	The threshold to requisition an EGM has been changed to require that the request is made by 5% of all Voting Members entitled to vote at an AGM or EGM. The quorum for such Voting Member requisitioned EGM is 5%.	A threshold of 5% is more appropriate for a large organisation and is more aligned with the Corporations Act.
CI 13.5	Quorums	Amendments to quorum rules have been made for AGMs and EGMs to align with the Corporations Act, including the requirement for a Member-requisitioned meeting that does not meet a quorum to be adjourned to a later date rather than dissolved.	The Constitution's quorum rules should align with the Corporations Act and those rules should be consistent for all types of meetings (convened by either the Board or requisitioned by Members).

CI 14	Proxies, attorneys and Representatives	<p>Voting by proxy has been extended to all meetings of Voting Members (AGM, EGM, meetings of Branches and meetings of Commodity Groups).</p> <p>The concept of a Representative for Corporate Members has been introduced, for Voting Members who are body corporates as well as partnerships.</p> <p>The reference to “attorneys” has been introduced alongside proxies throughout the Constitution in the context of voting.</p>	<p>The introduced Representative concept offers a practical means for Members that are not natural persons to engage with the VFF.</p> <p>These changes are ultimately more in line with provisions of modern public company constitutions and the Corporations Act.</p>
Clarification of roles			
	Position name changes	<p>“Regional Representatives” changed to “Commodity Policy Councillors”.</p> <p>“Commodity Group President” and “Vice President” changed to “Commodity Group Chair” and “Deputy Chair”.</p>	<p>Changes to the names of particular roles help to: i) distinguish those roles from similar names at the Board level; and ii) better reflect the nature of the role.</p> <p>It is important that governance at Commodity Group levels are distinguished from the Board given its overarching powers and responsibilities.</p>
CI 6.4 CI 6.14 CI 6.15	Branches – Finances	A Branch is able to manage its own finances, however, must establish a bank account using the VFF’s ABN. Signatories to the bank account include the Branch-registered individual and two Chief Executive appointed individuals.	For purposes of prudent financial management, it is important that branch finances are centralised and overseen by the VFF central functions to the extent possible.
CI 6.9 CI 6.10	Calling a Branch Meeting and Branch Biennial Meeting	The Branch Executive proposes to the CEO a time and place for a Branch Meetings and Branch Biennial Meetings to be held. The CEO will confirm that time and place and be responsible for calling that meeting.	Centralising the role to call meetings of a Branch to the domain of the CEO ensures the process is consistent and effective.
CI 6.18 CI 7.5	Dissolution	Branches are no longer able to dissolve themselves by three quarter majority. This is at the discretion of the Board. Commodity Groups can no longer be dissolved at the AGM by request of the	We suggest that the Board should have oversight of how Branches and Commodity Groups are dissolved in light of overarching financial responsibilities.

		Commodity Group by three quarter majority. This is also at the discretion of the Board.	
CI 7.2.1(a) CI 11.3	Commodity Group purpose and functions	<p>The concept of and definition for “General Policy” has been introduced. Commodity Groups develop, present and preserve their own General Policy, while the VFF’s is developed, presented and preserved by Policy Councils.</p> <p>“General Policy” means policy relating to matters of interest to the membership of the VFF and specifically includes Agricultural Policy, but excludes matters relating to the governance or operations of the VFF which are to be dealt with in accordance with this Constitution.</p>	We suggest a clearer and distinct scope for ‘policy’ formation is necessary which ensures, amongst other things, that the roles for Policy Councils and Commodity Groups do not overlap with general governance and operations of the VFF.
CI 9.1	Commodity Group Conferences	The Board determines when and where Commodity Group Conferences are held.	Board oversight is in keeping with ultimate Board responsibility for the governance of the VFF.
CI 10.2.9 CI 10.2.10 CI 11.2.1	Nominations Committee	<p>The role of the Nominations Committee has expanded to include the endorsing of Elected Director candidates prior to election. Candidates who are not endorsed are not precluded from running as Elected Director.</p> <p>The Nominations Committee to be composed of:</p> <ul style="list-style-type: none"> • the President; • 2 Board-appointed External Persons; and • 2 Voting Members appointed by the Policy Council. 	This additional role will support the election process to help ensure appropriate candidates are proposed to the Voting Members.
CI 10.2.12	Eligibility for President, Vice President and Elected Directors	President, Vice President and Elected Directors cannot be Commodity Group Chair or Deputy Chair during their tenure.	This will avoid potential conflicts and ensures those positions of office are carried out independently.
CI 10.9	Vacation of office of Director	Have highlighted circumstances where directorships cease immediately.	These triggers for cessation of office are common in public company constitutions and important to address.
CI 4.9 CI 4.14 CI 6.3	Additional responsibilities and powers	<p>Examples include:</p> <ul style="list-style-type: none"> • Subscription (and Levy) set by the Board 	It is important from a governance perspective for the responsibility for these items to be set out clearly.

<p>CI 6.6 CI 11.1.2</p>		<ul style="list-style-type: none"> • The Chief Executive Officer can suspend or vary Membership if a Member fails to pay the Subscription • The Chief Executive Officer defines which branches are appropriate for members, relative to their residence or place of business • Setting eligibility criteria for election into Branch Executive and power to remove those who do not comply with Code of Conduct • Chief Executive Officer and the Board can decide when elections are held (in line with rotations) for Commodity Group Chair and Deputy Chair, Commodity Policy Councillors, elected Board members and Branch executives • Approving the budget 	
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Procedural efficiency

<p>CI 5</p>	<p>Notice</p>	<p>Updated this to accommodate email / electronic means as the default means of notice (for meetings of the VFF) and provided clarification on receipt of electronic notices.</p>	<p>Ensuring notice via email is the default is a more cost effective and overall efficient means of fulfilling notice requirements.</p>
<p>CI 10.4</p>	<p>Circulating resolutions of the Board</p>	<p>We have made updates to circulating resolution procedure to include email responses as a form of agreement to a resolution.</p>	<p>This provides for a quicker and more efficient means of Board decision making.</p>
<p>CI 22</p>	<p>Polls</p>	<p>Proposed to replace the concept of secret ballot throughout the Constitution with a poll process.</p>	<p>Polls offer more transparency and the results are able to be considered in real time. Overall, this improves the integrity of decision making processes.</p>
<p>CI 21 Definitions</p>	<p>Prescribed Ballot</p>	<p>Introduced 'Prescribed Ballot' clause to better define the voting process and roles of individuals (e.g. returning officer and CEO).</p>	<p>It is important to have an overarching Prescribed Ballot set of rules that apply to contested elections for President, Vice President, Elected Directors, Commodity Policy Councillors, Commodity Group</p>

			Chair and Commodity Group Deputy Chair.
Miscellaneous			
CI 2.3.2	ASIC licences and inclusion of 'Limited' in the VFF's name	<p>Reference to the ASIC licence entitling the VFF to remove 'Limited' from its name has been removed at clause 2.3.2.</p> <p>The word 'Limited' included so that the VFF's name is "Victorian Farmers Federation Limited".</p>	The relevant Corporations Act provisions and licence no longer applies to the VFF due to the VFF's remuneration of directors (which we note complies with the Corporations Act and its not-for-profit status).
	Spelling, punctuation	Various grammar, spelling and punctuation.	Fixing errors to ensure precision and clarity.
	Interpretation	Clarification that 'day' means business days and 'discretion' means in the absolute and unfettered discretion of such person or group of persons (when given in favour of an individual or the Board).	Clarifies how certain provisions in the Constitution apply.