

**Memorandum of Understanding**  
**Apple and Pear Australia Limited**



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**This Memorandum of Understanding** is dated **7 July 2002** and made

**Between**

**Australian Apple & Pear Growers Association Inc A0024650D**

**and**

**Apple & Pear Growers Association of SA A5292**

**and**

**New South Wales Farmers Association ACN 000 004 651**

**and**

**Queensland Fruit and Vegetable Growers Limited ACN 090 816 827**

**and**

**Tasmanian Apple And Pear Growers Association 02632C**

**and**

**Victorian Apple and Pear Growers' Council A002947IP**

**and**

**Western Australian Fruit Growers Association A0320007G**

## **1. Preamble**

This MOU outlines the key principles and significant understandings reached between AAPGA, being the peak Australian apple and pear growers' body and the principal State apple and pear grower organisations.

The principles and understandings outlined in this MOU have taken place against a background of wider horticultural industry reforms which aimed to promote:

- ◆ improved production efficiency;
- ◆ increased cost competitiveness;
- ◆ improved international competitiveness; and
- ◆ the refocussing of domestic production to export markets.

AAPGA, in order to achieve these aims, established a restructure task force in 1999 to examine the feasibility of a number of structural changes to the apple and pear industry.

An extensive consultation process, which included the presentation of an issues paper offering four alternative restructuring models to growers, followed. The restructure task force presented a final report to the 2001 annual general meeting of AAPGA summarising the outcomes of this process and recommending changes based on the results of the grower consultation.

A number of resolutions passed at this AGM enabled the implementation the agreed upon structural reforms. These resolutions were the result of extensive consultation by the task force within the apple and pear industry. These resolutions are set out in schedule 1.

The resolutions provided that, *inter alia*, a company limited by guarantee would be incorporated under the *Corporations Act 2001 (Cth)* and it would adopt the name "Apple and Pear Australia Limited".

The restructure task force subsequently determined that AAPGA would, in order to become a company limited by guarantee, transfer its incorporation from the *Associations Incorporation Act (Vic)* to the *Corporations Act 2001 (Cth)*.

APAL will continue the responsibility for the decision making on national issues affecting the Australian apple and pear industry. Under the Constitution, APAL will work with the existing network of state and/or regional organisations (who will be the Class B Members of APAL and who have been the state member bodies of AAPGA) to assist in enabling specific local input. The Constitution also allows for other structured regional organisations to be admitted as Class B Members.

Although the Constitution provides that voting rights will attach to the individual levy paying enterprises (who will be Class A Members), the members are committed to maintaining and strengthening the Class B Members and regional networks. The need for strong State and regional networks remains essential for the development and expansion of the Australian apple and pear industry.

This MOU outlines the key principles and significant understandings between the parties. These principles and understandings are also reflected and set out in the Constitution.

## **2. Definitions and Interpretation**

### **2.1 In this MOU:**

**"APAL"** means Apple & Pear Australia Limited, a company incorporated or to be incorporated as the peak Australian apple and pear industry body;

**"AAPGA"** means Australian Apple & Pear Growers Association Inc;

**"Class A Member"** means a class A member of APAL;

**“Class B Member”** means a class B member of APAL;

**“Constitution”** means the constitution or proposal of APAL, a draft of which is annexed as “A”; and

**“MOU”** means this Memorandum of Understanding.

## 2.2 **In this MOU:**

(a) headings are inserted for convenience only and do not affect the interpretation of this MOU; and

unless the context otherwise requires:

(b) words importing the singular include the plural and vice versa;

(c) a word importing a gender includes the other gender;

(d) a reference to a person includes an individual, a partnership, a body corporate, a joint venture, an association (whether incorporated or not), a government and a government authority or agency;

(e) a reference to a party or a person includes the party’s or the person’s executors, legal personal representatives, successors, transferees and assigns;

(f) a reference to a part, clause or party is a reference to a part or clause of, or a party to, this MOU; and

(g) a reference to this MOU includes the preamble and any schedules, annexures, exhibits or attachments to this MOU.

2.3 A provision of a schedule to this MOU which is inconsistent with a provision of this Agreement does not operate to the extent of the inconsistency.

## 3. **Effect of this MOU**

3.1 This MOU is being executed by the parties to record their commitments (as contained in clause 4) and their roles and responsibilities (as contained in clause 5). These commitments and roles and responsibilities are reflected in the Constitution. The parties confirm that legally binding roles and responsibilities will arise between them as a result of executing this MOU. Where there is an inconsistency between this MOU and the Constitution, the Constitution shall prevail to the extent of the inconsistency.

### **3.2 This MOU records:**

- (a) the commitment by the parties to APAL's operational structure and objectives and to the strengthening and maintenance of the relationship between APAL and the Class B Members; and
- (b) the roles and responsibilities agreed to by the parties to this MOU in order to implement the objectives and the procedures contained in the Constitution.

## **4. Record of Commitment**

### **4.1 APAL Operational Structure**

Each of the parties are committed to ensuring that APAL has the operational structure to meet the needs and requirements set out in the Constitution and summarised in Schedule 2.

### **4.2 Objectives of APAL**

Each of the parties are committed to ensuring that APAL is able to fulfil its objectives as set out in clause 6 of the Constitution.

### **4.3 Class B Members**

Each of the parties are committed to strengthening and maintaining the relationship between APAL and the Class B Members.

### **4.4 Reimbursement by APAL for Particular Services**

APAL shall, from time to time and on terms to be negotiated in good faith between APAL and the Class B Members, reimburse each Class B Member for its reasonable costs and expenses incurred in the performance of any services on behalf of and as determined by APAL which are not services normally carried out in the normal day to day business and activities of that Class B Member.

## **5. Roles and Responsibilities**

### **5.1 Roles and Responsibilities of APAL**

Under the Constitution and otherwise, APAL has the following obligations to Class B Members:

- (a) allowing representatives of Class B Members to carry proxy votes to the annual general meeting and other general meeting of APAL;
- (b) assisting Class B Members to do what is necessary to maintain an up to date register of Class A Members in each state, noting whether such Class A Member is an apple grower and/or a pear grower and, only to the extent which

is reasonably possible, determining whether the Class A Member is eligible to pay a levy;

- (c) encouraging the Class B Member to develop, where appropriate, a network of regional structures;
- (d) assisting the Class B Member to undertake specific roles in communicating appropriate levy issues to all relevant Class A Members within that state through notices, articles, newsletters and/or grower meetings;
- (e) allowing Class B Members to raise issues directly with the board of APAL for consideration and possible action by APAL;
- (f) supporting Class B Members representing a State with the election process for the director representing each State in accordance with the procedures outlined in the Constitution and any other processes reasonable and fair in all the circumstances;
- (g) if the requirement still exists for external funding (outside of the levy process), determining any annual subscription payable by Class B Members; and
- (h) to undertake any other actions ancillary to and not inconsistent with the above.

## 5.2 Roles and Responsibilities of Class B Members

Under the Constitution and otherwise, Class B Members will have the following obligations to APAL:

- (a) organising proxy votes of their members to take to the annual general meeting and any other general meeting of APAL and notifying APAL of approved proxy votes prior to each relevant meeting;
- (b) assisting APAL to maintain, on its register, an up to date list of all Class A Members in their State, noting whether such Class A Member is an apple grower and/or pear grower and assisting APAL to determine, only to the extent which it is reasonably possible, whether the Class A Member is eligible to pay a levy;
- (c) developing, where appropriate, a network of regional structures;
- (d) undertaking specific roles in communicating appropriate levy issues to all relevant Class A Members within that State through notices, articles and newsletters and/or grower meetings;
- (e) raising issues directly with the Board for consideration and possible action by APAL;

- (f) conducting an election for a director representing each State in accordance with the procedures outlined in the Constitution and any other processes reasonable and fair in all the circumstances;
- (g) if the requirements still exist for external funding (outside of the levy process) and APAL determines that Class B Members are to pay an annual subscription paying that annual subscription; and
- (h) to undertake any other actions ancillary to and not inconsistent with the above.

**6. New Parties**

A party may become a party to this MOU by executing a deed agreeing to be bound by the terms of the MOU.

**7. Changes to Parties to MOU**

A party (other than APAL) to this MOU that ceases to be a member of APAL will automatically cease to be bound this MOU, provided that the party shall continue to be bound by and liable for any obligations that arose prior to it ceasing to be a Member of APAL.

**8. Further Assurances**

Each party shall sign, execute, deliver and do and shall procure that each of its officers, employees and agents signs, executes, delivers and does, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to effectively carry out and give full effect to this MOU and the rights and obligations of the parties under it.

**9. Variation**

This MOU shall not be varied except by a document in writing signed by the parties. Any negotiations regarding a variation shall be carried out in good faith.

**10. Governing Law and Jurisdiction**

This MOU is governed by and is to be construed in accordance with the law of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria and any court hearing appeals from those courts.

**EXECUTED** as an agreement

**SIGNED** for and on behalf of **AUSTRALIAN )**  
**APPLE & PEAR GROWERS ASSOCIATION )**.....  
**INC A0024650D** in the presence of: ).....

Position of Signatory

..... Witness

..... Print name  
of Witness

..... Print address  
of Witness

**SIGNED** for and on behalf of **APPLE & PEAR )**  
**GROWERS ASSOCIATION of SA A5292** in the ).....  
presence of: ).....

Position of Signatory

..... Witness

..... Print name  
of Witness

..... Print address  
of Witness

**SIGNED** for and on behalf of **NEW SOUTH )**  
**WALES FARMERS ASSOCIATION ACN 000 )**.....  
**004 651** in the presence of: ).....

Position of Signatory

..... Witness

..... Print name  
of Witness

..... Print address  
of Witness

**SIGNED** for and on behalf of **QUEENSLAND** )  
**FRUIT AND VEGETABLE GROWERS LIMITED** ) .....  
**ACN 090 816 827** in the presence of: ) .....  
Position of Signatory  
..... Witness  
..... Print name  
of Witness  
..... Print address  
of Witness

**SIGNED** for and on behalf of **TASMANIAN** )  
**APPLE AND PEAR GROWERS ASSOCIATION** ) .....  
**02632C** in the presence of: ) .....  
Position of Signatory  
..... Witness  
..... Print name  
of Witness  
..... Print address  
of Witness

**SIGNED** for and on behalf of **VICTORIAN APPLE** )  
**AND PEAR COUNCIL A002947IP** in the ) .....  
presence of: ) .....  
Position of Signatory  
..... Witness  
..... Print name  
of Witness  
..... Print address  
of Witness

**SIGNED** for and on behalf of **WESTERN** )  
**AUSTRALIAN FRUIT GROWERS** ) .....  
**ASSOCIATION A0320007G** in the presence of: ) .....  
Position of Signatory  
..... Witness  
..... Print name  
of Witness  
..... Print address  
of Witness

## Schedule 1

Resolution Number	Resolution	Moved	Seconded
13.2	<p><b>Reformation of AAPGA as a Company</b></p> <p>That the delegates to the 2001 Annual General Meeting of the Australian Apple and Pear Growers Association approve the formation of a new national industry organisation as a company limited by guarantee under Federal Law</p>	T SA	NSW
13.3	<p><b>New Company Title</b></p> <p>That the delegates to the 2001 Annual General Meeting of the Apple and Pear Growers Association approve the formation of a new national industry organisation titled “Apple and Pear Australia Limited”.</p>	SA	WA
13.4	<p><b>New Company Roles &amp; Responsibilities</b></p> <p>That the delegates to the 2001 Annual General Meeting of the Australian Apple and Pear Growers Association approve the roles and responsibilities of the new industry organisation as outlined in the white paper (June 2000)</p>	SA	VIC
13.5	<p><b>Class A Members</b></p> <p>That the delegates to the 2001 Annual General Meeting of the Apple and Pear Growers Association approve the formation of a new national industry organisation structured so that each levy paying enterprise becomes an “A Class” member and eligible to a single vote</p>	SA	TAS
13.6	<p><b>Class B Members</b></p> <p>That the delegates to the 2001 Annual General Meeting of the Apple and Pear Growers Association approve the formation of a new national industry organisation structured so that current state affiliates become ‘B Class’ members with rights and responsibilities of membership agreed through a memorandum of understanding.</p>	WA	NSW
13.7	<p><b>Board Structure</b></p>	QLD	WA

Resolution Number	Resolution	Moved	Seconded
	<p>Representation at AAPGA Executive (or the Board of the new Company) to be made up of one elected representative per state, each one elected by levy payers in each state, with one extra representative for the pear industry elected by the pear industry.</p> <p>That two further Board members may be appointed to fill skill requirements.</p>		
13.8	<p><b>Board Elections</b></p> <p>That the delegates to the 2001 Annual General Meeting of the Australian Apple and Pear Growers Association approve the formation of a new national industry organisation structured so that the positions of the elected directors are decided by an election in which Class A members are the voters.</p>	VIC	NSW
13.9	<p><b>Implementation of the New Company</b></p> <p>That the delegates to the 2001 Annual General Meeting of the Australian Apple and Pear Growers Association give approval for the current executive of the AAPGA Inc to immediately undertake the necessary legal and administrative action to implement the formation of the new national industry organisation.</p>	WA	SA

## Schedule 2

### Summary of APAL Operation and Structure Under the Constitution

#### 1. Introduction

The Constitution reflects the change in structure of the Australian apple and pear Industry as resolved by AAPGA at 2001 annual general meeting.

#### 2. Members

The Constitution provides that APAL currently has Class A Members and Class B Members.

The Class A Members are and will be levy paying enterprises. Where a levy paying enterprise is not a legal person, a nominee of that levy paying enterprise will be the Class A Member. Class A Members will each be entitled to a single vote, except that voting on matters affecting pear levy issues will be limited to Class A Members who are pear growers and matters affecting apple levy issues will be limited to Class A Members who are apple growers.

The Class B Members are the principal bona fide organisation of apple and pear growers in a State (who were the former State body members of AAPGA) and will be any other structured regional apple and/or pear growers organisation approved for admission by the Board.

#### 3. Board Structure

The board of APAL will comprise of six directors elected to represent each State, one director to represent the Australian pear industry and up to three additional directors (including a managing director) to fill skill requirements.

#### 4. Appointment of Directors

The method of appointment of each director will depend upon the type of director to be appointed.

Directors representing each State will be elected by the Class A Members who carry on business in that State. The Class B Member representing that State (or Class B Members representing that State if there are any subsequent structured regional apple and/or pear grower organisations subsequently approved for admission by the Board) will conduct the election of that director in accordance with the procedures outlined in the Constitution. A candidate must satisfy the Class B Member (or Class B Members as the case may be), in consultation with the Board, that it satisfies specific skill requirements before he or she is approved for the election.

The director representing the pear industry will be elected by the Class A Members who are pear growers. The Board of APAL will conduct the election of the pear director in accordance with the procedures outlined in the Constitution. The Board shall consider specific skilled requirements in order to determine whether it approves of the candidates.

Any additional directors (including a managing director) will be appointed by the Board. The Board must be satisfied that each additional director meets specific skill requirements.