



Australian Government
Department of Agriculture,
Fisheries and Forestry

DEED

between the

**Commonwealth of Australia represented by the Commonwealth
Department of Agriculture, Fisheries and Forestry**

ABN 24 113 085 695

and

Meat & Livestock Australia Limited

ABN 39 081 678 364

Australian Government Department of Agriculture, Fisheries and Forestry
ABN 24 113 085 695
Edmund Barton Building
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DEED dated 13 APRIL 2007

BETWEEN THE COMMONWEALTH OF AUSTRALIA (represented by the Australian Government Department of Agriculture, Fisheries and Forestry) ABN 24 113 085 695.

AND MEAT & LIVESTOCK AUSTRALIA LIMITED (MLA)
ABN 39 081 678 364.

RECITALS

- A. The Commonwealth and MLA are parties to a Memorandum of Understanding in relation to the meat and livestock industry dated 27 April 1998, which provided for MLA to be declared to be the industry marketing body and the industry research body for the purposes of sections 60(1) and (2) of the *Australian Meat and Live-stock Industry Act 1997 (Cth) (Act)*.
- B. MLA has been declared to be the industry marketing body under section 60(1) of the Act and the industry research body under section 60(2) of the Act.
- C. Under the Act, payments of Levy Funds are to be made to the industry marketing body and the industry research body subject to conditions agreed between the Minister and the relevant body.
- D. A Deed of Agreement between the Commonwealth and MLA came into effect on 1 July 1998 (**Former Deed**) agreeing on conditions for certain payments by the Commonwealth to MLA under the Act. This was supplemented by the *MLA Research and Development, Commonwealth Matching Payments Policy Framework, January 1999*.
- E. The parties wish to terminate the Former Deed and its supplement and enter into this deed to make provision (among other things) for revised arrangements and conditions for payment to take account of changes to Commonwealth requirements.

1. DEFINITIONS

In this deed:

Agri-Political Activity means engaging in or financing any form of external or internal political campaigning, but does not include activity required or authorised under the *Corporations Act 2001 (Cth)* or another law. Clause 7.5 provides examples of activities which are not Agri-Political Activity.

Note: Clause 7.6 provides that the Company may seek consultations with the Secretary about whether a proposed activity would amount to engaging in Agri-Political Activity.

Annual Operating Plan means a plan to be prepared by MLA in accordance with clause 12.

Annual Report means a report to be prepared by MLA in accordance with Schedule 2.

Audit Compliance Report means a report to be prepared in accordance with clause 17.2.

Business Day means a day on which Australian banks are open for general banking business in the Australian Capital Territory, excluding Saturdays and Sundays.

Business Hours means the hours between 9.00am and 5.00pm on a Business Day.

Certification Report means a report to be prepared in accordance with clause 17.4.

Commonwealth Matching Funds means funds paid to MLA under section 66 of the Act.

Confidential Information means information for which all the following requirements are satisfied and including, but not limited to, Levy Payer information:

- (a) the information is given by one party (the disclosing party) to the other (the receiving party) for or in connection with this deed;
- (b) the information is by its nature confidential;
- (c) before or when the disclosing party gives the information to the receiving party, the disclosing party informs the receiving party that the information is confidential (which may be by marking a document including the information that is given by the disclosing party to the receiving party as mentioned in paragraph (a) of this definition to the effect that the information is confidential);

but does not include information that:

- (d) is or becomes public knowledge other than by breach of this deed or by any other unlawful means;
- (e) is in the possession of the receiving party without restriction in relation to disclosure before being given by the disclosing party;
- (f) has been independently developed or acquired by the receiving party.

Corporate Plan means a plan to be prepared by MLA in accordance with clause 11.

Department means:

- (a) the Department of Agriculture, Fisheries and Forestry; or
- (b) if the Act is administered by a Minister of State other than the Minister—the Department of State administered by that Minister.

Director means a person who is for the time being a member of the board of directors of MLA.

Financial Year means a period of 12 months starting on 1 July.

Former Deed means the deed mentioned in Recital D.

Fraud Control Plan means a plan to be prepared and maintained by MLA specifying measures to minimise the risk of fraud within MLA in accordance with clause 13.1(b).

Funds mean each of the following:

- (a) Levy Funds;
- (b) Commonwealth Matching Funds;
- (c) income earned or derived by MLA from the Levy Funds and Commonwealth Matching Funds; and
- (d) proceeds of the sale or other disposition of assets acquired with Funds referred to in paragraph (a), (b) or (c) of this definition.

Guidelines means each of the following:

- (a) the Research and Development Priorities;
- (b) the Levy Principles and Guidelines relating to the introduction of new levies or changes to existing levies, as communicated to MLA by letter from the Minister; and
- (c) any other guidelines relating to the Funds agreed between the parties.

Industry means the Australian red meat and livestock industry.

Insolvency Event means any of the following:

- (a) MLA disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
- (b) MLA ceases to carry on business;
- (c) MLA ceases to be able to pay its debts as they become due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of MLA's assets, operations or business;
- (e) any step is taken to enter into any compromise or arrangement between MLA and its creditors or a class of them;
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person to the whole or part of MLA's operations or business.

Intellectual Property means all copyright and neighbouring rights, and all rights in relation to inventions (including patents), plant varieties, registered and unregistered trade marks, registered designs, Confidential Information (including

trade secrets and know how) and circuit layout rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Intellectual Property Management Plan means a plan to be prepared and maintained by MLA specifying the procedures for management, adoption and commercialisation of Intellectual Property owned or licensed by MLA in accordance with clause 13.1(c).

Levy Funds means Marketing Funds and Research and Development Funds.

Levy Payer means a person liable to pay a levy or charge referred to in section 63 or 64 of the Act.

Levy Regulations means regulations under which levies and charges mentioned in sections 63 and 64 of the Act are imposed.

Marketing Funds means amounts paid to MLA under section 63 of the Act.

MLA Constitution means the Memorandum of Association and Articles of Association for MLA to which the Minister had regard in relation to declaring MLA to be the industry marketing body and the industry research body for the Industry under sections 60(1) and (2) of the Act, and includes any amendment to that Constitution.

MoU means the Memorandum of Understanding referred to in Recital A.

Performance Review means a review conducted in accordance with clause 16 of MLA's performance against its plans that takes into account:

- (a) the performance of MLA in meeting its obligations under this deed; and
- (b) the implementation of Annual Operating Plans and Corporate Plans and the effectiveness of MLA in meeting the targets and budgets set out in those plans; and
- (c) the delivery of the benefits to the Industry foreshadowed by those plans.

Performance Review Report means a report to be prepared in accordance with clause 16.2(a).

Research and Development means systematic experimentation or analysis in any field of science, technology, economics or business (including the study of the social or environmental consequences of the adoption of new technology) carried out with the object of:

- (a) acquiring knowledge that may be of use in achieving or furthering an objective of the Industry, including knowledge that may be used for the purpose of improving any aspect of the production, processing, storage, transport or marketing of meat or livestock, or goods that are derived from them; or
- (b) applying such knowledge for the purpose referred to in paragraph (a).

Schedule 3 includes examples of activities that may be Research and Development.

Research and Development Funds means amounts paid to MLA under section 64 of the Act.

Research and Development Priorities means the Research and Development Priorities communicated to MLA by letter from the Minister.

Risk Management Plan means a plan to be prepared by MLA specifying the measures to be implemented to manage its material, commercial, legal and administrative risks in accordance with clause 13.1 (a).

Secretary means the Secretary of the Department.

2. TERM AND OPERATION OF THIS DEED

- 2.1 This deed commences on 1 June 2007.
- 2.2 The parties agree that the Former Deed and its supplement terminate immediately before this deed commences.
- 2.3 The termination effected by clause 2.2 does not affect a right of a party accrued on or before the termination.
- 2.4 The parties agree that the *MLA Research and Development, Commonwealth Matching Payments Policy Framework, January 1999* ceases to apply in relation to MLA with effect from the commencement of this deed.
- 2.5 The parties must, by 1 January 2011, negotiate in good faith with a view to renewing this deed.
- 2.6 In negotiating the renewal of this deed, the outcomes of the most recent Performance Review will be taken into account.
- 2.7 The parties acknowledge that this deed, and any amendments to this deed, are not confidential and may, for example, be provided by the Minister to members of the Commonwealth Parliament.

3. MLA CONSTITUTION AND MEMBERSHIP

- 3.1 MLA must:
 - (a) give the Minister a copy of each notice of a motion to modify the MLA Constitution, at the same time as it gives notice of the motion to members of MLA; and
 - (b) as soon as practicable after any modification of the MLA Constitution is made, give the Minister notice setting out the modification and explaining its effect.
- 3.2 MLA must do all things necessary so that it remains representative of the Industry's marketing, promotion and research and development interests.
- 3.3 Without limiting clause 3.2, MLA must:

- (a) ensure that the MLA Constitution entitles any person that is a producer of livestock and has paid levies or charges referred to in section 63 or 64 of the Act during the financial year in which the person applies for membership or either of the two preceding financial years to be a voting member of MLA; and
- (b) establish suitable communications programs in MLA's corporate planning process to help ensure that persons that are entitled to, but are not members of MLA, are encouraged to become members of MLA.

4. **MoU**

MLA must do all things necessary to remain a party to the MoU and must comply with its roles, responsibilities and other obligations under the MoU.

5. **PAYMENT OF FUNDS**

- 5.1 For the purposes of sections 63, 64 and 66 of the Act, the parties agree the time and the manner in which the amounts payable to MLA under those sections are to be paid are as set out in Schedule 1.

Note: Section 63 of the Act deals with Industry Marketing Funds, Section 64 deals with Industry Research and Development Funds and Section 66 deals with Commonwealth Matching Funds.

- 5.2 MLA agrees that the Commonwealth may either invoice MLA, or deduct from relevant payments to be made to MLA:

- (a) amounts referred to in section 67(1)(a) or 67(2)(a) or payable by MLA under section 68 of the Act; and
- (b) any reasonable expenses incurred by the Commonwealth in connection with any changes to the Act, the Levy Regulations or this deed initiated by MLA or the Industry, subject to any budget that may be agreed between the Commonwealth and MLA.

MLA must pay any amount so invoiced to the Commonwealth within 30 days after receipt of the invoice.

Note Section 67(1)(a) permits MLA to apply Marketing Levy Funds to repay the Commonwealth its expenses incurred in relation to the collection or recovery of amounts referred to in section 63 of the Act and the administration of section 63. Section 67(2)(a) permits MLA to apply Industry Research Funds to repay the Commonwealth its expenses incurred in relation to the collection or recovery of amounts referred to in section 64 of the Act and the administration of section 64. Section 68 states that if the Commonwealth pays a refund in respect of an amount of levy or charge referred to in section 63, 64, 64A or 64B, MLA must pay to the Commonwealth an amount equal to the refund.

- 5.3 The Commonwealth must provide to MLA, prior to the commencement of each financial year, an indicative, non-binding, budget and plan for the financial year in relation to the Commonwealth's collection and recovery of levies.

6. MANAGEMENT OF FUNDS

- 6.1 MLA must establish such accounting systems, processes and controls as are necessary to ensure:
- (a) the Funds are used only in accordance with the Act and this deed;
 - (b) all dealings with the Funds are properly authorised, conducted and accounted for; and
 - (c) an auditor is able to verify readily that the Funds have been used only in accordance with the Act and this deed.
- 6.2 MLA must, on request, notify the Minister of the details of the systems, processes and controls established in accordance with clause 6.1.
- 6.3 MLA must keep complete and detailed accounts and records of receipt and expenditure of the Funds and must do so separately in relation to Marketing Funds, Research and Development Funds and Commonwealth Matching Funds. The accounts and records must be kept in accordance with good accounting practice including all applicable Australian accounting standards.

7. APPLICATION OF THE FUNDS

- 7.1 MLA must apply all Funds only in accordance with sections 67 and 68 of the Act, including in meeting the obligation to apply Commonwealth Matching Funds only in accordance with section 67(3) of the Act.
- 7.2 MLA must spend Commonwealth Matching Funds only on Research and Development, and must comply with the obligations in Schedule 3 in relation to that expenditure.
- 7.3 MLA must spend the Funds in a manner that is consistent with:
- (a) the Corporate Plan; and
 - (b) the Annual Operating Plan; and
 - (c) the Guidelines (to the extent applicable to the type of expenditure concerned);
- and must apply the Funds in a manner that is efficient, effective and ethical.
- 7.4 The Minister may amend the Guidelines at any time. For the purposes of clause 7.3, the amendment takes effect at the end of 6 months after MLA has been notified of the amendment. An amendment does not affect any liabilities of MLA accrued before that time.
- 7.5 MLA must not engage in or finance Agri-Political Activity. To avoid doubt, Agri-Political Activity does not include any of the following:
- (a) the Board or an individual director from recommending a candidate for election;
 - (b) a candidate from funding his or her own campaign activities;

- (c) use by another person, for political purposes, of a report or other publication prepared or financed by MLA in accordance with this deed;
- (d) MLA making statements or providing information to the Industry on matters related to its objects in the proper performance of its functions and the proper furtherance of its objects.

7.6 MLA may, at any time, seek consultations with the Secretary or his or her nominee in relation to any matter connected with this deed (including whether a proposed expenditure would amount to engaging in Agri-Political Activity).

8. **SUSPENSION OR TERMINATION OF FUND PAYMENTS**

8.1 Subject to clause 8.2 the Commonwealth may, by giving written notice to MLA, immediately:

- (a) suspend or terminate payment of any or all of the Funds; or
 - (b) reduce the amount of a payment of the Funds that would otherwise be made; or
 - (c) terminate this deed;
- if:
- (d) an Insolvency Event occurs; or
 - (e) MLA is in breach of its obligations under this deed or the Act and MLA has not rectified the breach within 28 days after receiving notice of the breach from the Commonwealth; or
 - (f) the Commonwealth considers that it is reasonable to do so because of a change to the MLA Constitution; or
 - (g) the declaration of MLA under the Act as the industry marketing body or the industry research body is revoked; or
 - (h) there is a change in Commonwealth policy relating to the raising or spending of the Levy Funds or the payment or spending of Commonwealth Matching Funds.

8.2 The Commonwealth must not issue a notice under clause 8.1 on the ground stated in clause 8.1(h) unless it has:

- (a) given MLA 12 months notice of the proposal to issue the notice; and
- (b) had regard to any matters raised by MLA in response (including matters related to any long term commitments of MLA).

9. **REPAYMENT OF FUNDS**

9.1 Subject to clause 9.3, if any of the Funds have been used or expended by MLA otherwise than in accordance with this deed or the Act, the Minister may, by written notice to MLA, require MLA to repay to the Commonwealth, by the time

specified in the notice, the amount specified in the notice as the amount that has been so used or expended.

- 9.2 If this deed is terminated under clause 8.1, the Minister may, by notice to MLA, require MLA to repay to the Commonwealth, by the time specified in the notice, all or a specified amount of the Funds held by MLA at the time of the notice (other than so much of the Funds as are required by MLA to meet liabilities properly incurred in accordance with this deed).
- 9.3 The Minister must not issue a notice under clause 9.1 (the repayment notice) unless:
- (a) he or she has first given MLA a notice (the show cause notice) requiring MLA, within a reasonable period specified in the notice, to show cause why the repayment notice should not be given; and
 - (b) either:
 - (i) MLA does not respond to the show cause notice within the specified period; or
 - (ii) having regard to MLA's response to the show cause notice, the Minister still considers that the repayment notice should be given.
- 9.4 MLA must comply with a notice under clause 9.1 or 9.2.

10. ACCESS TO RECORDS AND USE OF INFORMATION

- 10.1 The Commonwealth, the Auditor-General and any duly authorised representative of either of them, may, for the purpose of monitoring compliance by MLA with this deed and the Act:
- (a) have access to premises occupied by or under the control of MLA; and
 - (b) have access to data, records, accounts and other financial material, and any property of the Commonwealth, in the possession or under the control of MLA; and
 - (c) to examine and copy MLA's accounts and records relating to this deed or the Act.

MLA must grant this access, on request:

- (d) during Business Hours—at any time; and
 - (e) outside Business Hours—on reasonable notice given to MLA and marked for the attention of the Secretary of MLA, with a copy given to MLA marked for the attention of the Managing Director of MLA.
- 10.2 MLA must provide access to all its accounts and records relating to this deed and the Act and otherwise co-operate fully with the requests of the Commonwealth, the Auditor-General and any duly authorised representative of either of them to enable those persons to exercise rights in connection with the operation of clause 10.1.

- 10.3 Without limiting clause 10.2, MLA must, as appropriate:
- (a) provide documents or information; and
 - (b) make available relevant MLA personnel to provide information or answer questions on any matter that relates to MLA's obligations under this deed or the Act.
- 10.4 The Commonwealth must use reasonable endeavours to ensure that the activities of the Commonwealth, the Auditor-General and any duly authorised representative of either of them do not unreasonably interfere with the ordinary business operations of MLA.
- 10.5 Each party must, in respect of Confidential Information given by the other party:
- (a) use that Confidential Information only for the purposes of administering or enforcing this deed, the Act or the *Primary Industries Levies and Charges Collection Act 1991*(Cth); and
 - (b) not disclose that Confidential Information to any person without the prior approval in writing from the other party and subject to any reasonable conditions or restrictions imposed by the other party in giving its approval;
- provided that a party is not in breach of this clause to the extent that it is legally obliged to make a particular use or disclosure of the Confidential Information.
- 10.6 MLA agrees that neither the Minister nor the Commonwealth is in breach of clause 10.5 for disclosing Confidential Information given by MLA and held by the Department in accordance with a request made by a House or a committee of the Parliament for that information to be given to the House or committee, provided that the Department notifies the House or committee of the confidential nature of the information and requests the House or committee to hold and deal with that information on an *in camera* basis.
- 10.7 The parties agree, for the purposes of paragraph (c) of the definition of Confidential Information in clause 1, that the following classes of information are to be treated as Confidential Information if the information otherwise complies with the definition of Confidential Information:
- (a) information subject to an obligation of confidence owed by the MLA to a third party that has been entered into by MLA in good faith, where MLA has notified the Commonwealth of the third party obligation of confidence prior to or at the time of the giving of the information between the parties;
 - (b) information that is commercially sensitive to MLA or a third party and, if disclosed, would be likely to prejudice the commercial interests of MLA or that third party, where MLA has notified the Commonwealth of that commercial sensitivity prior to or at the time of the giving of the information between the parties.
- 10.8 Subject to clauses 10.5 and 10.6, MLA grants the Commonwealth a licence to use the copyright in any MLA document provided to the Minister or the

Commonwealth under this deed in any way for any purpose of the Commonwealth. A MLA document is a document in which MLA owns or is a licensee of copyright (whether alone or with one or more other persons). This clause does not amount to an assignment of copyright.

11. CORPORATE PLAN

11.1 MLA must, within 12 months after this deed commences, develop and adopt a 3 to 5 year Corporate Plan. MLA must review the Corporate Plan at least once each 12 months and must, within 28 days after the date the Directors pass a resolution to accept the Corporate Plan or an amendment of the Corporate Plan, provide the Minister with a copy of the Plan or amended Plan.

11.2 The Corporate Plan must cover matters such as:

- (a) MLA's vision or mission statement;
- (b) the objectives and priorities of MLA for the period covered by the plan;
- (c) an assessment of MLA's operating environment including its strengths, weaknesses, threats and opportunities, current and future trends and their implications;
- (d) MLA's interaction with key stakeholders and clients on relevant matters;
- (e) a corporate governance statement including the directors' responsibilities in terms of planning and reporting;
- (f) the strategies MLA intends to adopt in order to achieve its objectives;
- (g) the alignment of MLA's objectives with the Research and Development Priorities;
- (h) proposed corporate outcomes, outputs, and strategies aligned with MLA's goals and objectives;
- (i) performance indicators that enable progress being made towards achieving planned outputs and outcomes to be monitored, reported upon on and evaluated as part of the Performance Review processes under clause 16; and
- (j) broad resource allocation including estimates of income and expenditure on research and development and marketing for the life of the Corporate Plan.

11.3 In developing the Corporate Plan, MLA must:

- (a) take into account its obligations under the MoU; and
- (b) take the Guidelines into account; and
- (c) consult the Minister and representatives of the Industry; and
- (d) take into account its reporting obligations under Schedule 2.

- 11.4 The Commonwealth must treat the Corporate Plan, and each amendment of the Corporate Plan, as Confidential Information until the Corporate Plan or amendment is publicly released by MLA.

12. ANNUAL OPERATING PLAN

- 12.1 MLA must, prior to 1 September each year, provide to the Minister a copy of its Annual Operating Plan. The Annual Operating Plan must be clearly linked to the Corporate Plan and cover issues such as:

- (a) the intended operations of MLA for the current financial year;
- (b) research and development programs to be undertaken by MLA;
- (c) marketing or promotion activities to be undertaken by MLA;
- (d) alignment of research and development programs with the Research and Development Priorities;
- (e) performance indicators which enable the progress which is being made towards achieving the planned outputs and outcomes to be monitored and reported upon;
- (f) estimates of income and expenditure for the year by the broad grouping of research and development, marketing and indirect costs, and including an appropriate apportionment of indirect costs to the research and development and marketing programs to enable reporting on the full cost of each of the research and development and marketing programs; and
- (g) any other matters that MLA considers should be set out in the Annual Operating Plan.

- 12.2 The Commonwealth must treat the Annual Operating Plan as Confidential Information until the Annual Operating Plan is publicly released by MLA.

- 12.3 In preparing Annual Operating Plans, MLA must take into account its reporting obligations under Schedule 2.

13. OTHER PLANS

- 13.1 Within 12 months after this deed commences, MLA must develop, implement and provide the Minister with a copy of the following plans:

- (a) a Risk Management Plan;
- (b) a Fraud Control Plan; and
- (c) an Intellectual Property Management Plan.

- 13.2 MLA must review each plan at intervals of no more than 3 years and must, within 28 days after the date its Directors pass a resolution to accept a plan or an amendment of a plan, provide the Minister with a copy of the plan or amended plan.

- 13.3 The Commonwealth must treat a plan or an amended plan as Confidential Information until it is publicly released by MLA.

14. REPORTS AND MEETINGS

- 14.1 MLA must provide the Minister with an Annual Report prepared in accordance with Schedule 2 at the same time as the *Corporations Act 2001* (Cth) requires an annual report to be given to members.
- 14.2 MLA acknowledges that all sections of an Annual Report, other than any material identified as Confidential Information, may be provided by the Minister to members of the Commonwealth Parliament.
- 14.3 The Chairperson of MLA, or in his or her absence, his or her nominee must meet the Minister or, in his or her absence, the Minister's nominee at least once a year, and at any other time requested by the Minister or nominee on reasonable notice, to brief the Minister or nominee on MLA's performance of its functions, its performance in progressing the Research and Development Priorities and such other matters as the Minister may require.

15. ADDITIONAL REPORTS

In addition to the reports required under clause 14, MLA must give the Commonwealth, within such reasonable period as the Commonwealth specifies, any other report relating to expenditure of the Funds that the Commonwealth requires.

16. PERFORMANCE REVIEW

- 16.1 MLA must complete a Performance Review by 30 June 2010. The following apply in relation to the Performance Review:
- (a) consistent with the Minister's approval on 8 September 2005 to increase the rate of levy for marketing, the Performance Review must specifically cover marketing expenditure and the outcomes achieved by the additional expenditure;
 - (b) MLA must consult the Secretary or his or her nominee in planning the Performance Review and developing the terms of reference of the Performance Review, including on whether a separate review of the marketing expenditure is necessary or whether this can be undertaken as part of the wider Performance Review.
- 16.2 MLA must do all the following:
- (a) engage an organisation to undertake the Performance Review and instruct it to prepare a report on all matters dealt with in the Performance Review (Performance Review Report);

- (b) give the Performance Review Report to the Minister within 14 days after acceptance by the MLA Board;
- (c) publish the Performance Review Report on MLA's website;
- (d) make copies of the Performance Review Report available to members of MLA at the next general meeting of MLA.

16.3 The organisation engaged to carry out the Performance Review must be an organisation that has not, within the previous 2 years, carried out any corporate governance reviews, performance audits or similar reviews of MLA (but this does not prevent an organisation that has merely carried out evaluations of specific projects from being so appointed).

17. AUDIT AND COMPLIANCE REPORTS

17.1 MLA must give the Minister a copy of its audited financial report for the financial year at the same time as the *Corporations Act 2001* (Cth) requires the report to be given to members.

17.2 MLA must, within 5 months after the end of its financial year, give the Minister a report (Audit Compliance Report), prepared by MLA's auditor (at MLA's expense). An Audit Compliance Report must:

- (a) be prepared in accordance with relevant Australian Auditing and Assurance Standards; and
- (b) state any qualifications to which the Audit Compliance Report is subject; and
- (c) subject to clause, 17.3, include an opinion whether MLA has complied with its obligations under clauses 6 and 7 during the financial year; and
- (d) indicate whether qualification to the Audit Compliance Report, and any non-compliances that have come to the auditor's attention, are material; and
- (e) include a statement that the Audit Compliance Report has been prepared for the Commonwealth for the purposes of this deed and an acknowledgment that the Audit Compliance Report will be relied upon by the Commonwealth.

17.3 An Audit Compliance Report need not include an opinion on whether MLA has engaged in or financed Agri-Political Activity or whether MLA has applied the Funds in a manner that is efficient, effective and ethical.

17.4 MLA must, within 5 months after the end of its financial year, give the Minister a statement (Certification Report) signed by the chairperson of the Directors and the Managing Director of MLA:

- (a) certifying whether MLA has complied with its obligations under the Act and this deed during the financial year; and
- (b) stating whether, in their opinion, any non-compliances are material; and

- (c) if any non-compliances are, in their opinion, material, giving an explanation of the non-compliance.

17.5 If in the reasonable opinion of the Commonwealth, MLA is or may be in breach of this deed or the Act, the Commonwealth may request an audit report or opinion on any matter relevant to MLA's compliance with this deed.

17.6 If the Commonwealth requests an audit report or opinion under clause 17.5, MLA must at its own expense:

- (a) obtain the audit report or opinion from MLA's auditor; or
- (b) if, in the opinion of the Commonwealth, the audit report or opinion cannot be properly given by that auditor, engage another auditor to conduct an audit and give the audit report or opinion; and
- (c) give a copy of the audit report or opinion to the Commonwealth within 14 days after MLA receives it.

18. **ACKNOWLEDGMENT OF FUNDING**

Unless the Commonwealth otherwise agrees, MLA must ensure that all significant publications and publicity by MLA in relation to matters on which Commonwealth Matching Funds were expended, acknowledge the provision of Matching Funds by the Commonwealth.

19. **CONFLICT OF INTEREST**

19.1 MLA warrants that, at the date of this deed, no conflict exists or is likely to arise in the performance of its obligations under this deed.

19.2 If a conflict of interest or risk of a conflict of interest arises in the performance of MLA's obligations under this deed, MLA must notify the Minister or his or her authorised representative of that conflict or risk and take steps acceptable to the Minister or authorised representative to resolve or avoid the conflict.

20. **AUTHORISATION OF PERSONS TO ACT**

20.1 The rights, functions and powers of the Commonwealth under this deed may be exercised and performed on behalf of the Commonwealth by the Minister or the Secretary, or a delegate of the Minister or the Secretary.

20.2 Performance of an obligation of the Minister or the Commonwealth under this deed by the Secretary, or a delegate of the Minister or the Secretary, is taken to be performance of the obligation by the Minister or the Commonwealth.

21. **INDEMNITY**

21.1 MLA indemnifies the Commonwealth and its officers and agents against all expenses, losses, damages and costs (on a solicitor and own client basis and

whether incurred by or awarded against the person claiming the indemnity) sustained or incurred as a result, whether directly or indirectly, of:

- (a) a breach of this deed by MLA; or
- (b) loss of or damage to property or injury to or death of any person caused by a negligent act or omission or wilful misconduct of MLA or its officers or employees.

21.2 The amount payable under an indemnity under clause 21.1 is reduced to the extent that the expenses, losses, damages and costs concerned were caused or contributed to by a breach of this deed by, or a negligent act or omission of, the Commonwealth, or a negligent act or omission or wilful misconduct of an officer or agent of the Commonwealth.

21.3 MLA agrees that a person indemnified under clause 21.1 may recover a payment under an indemnity in this deed before the person makes the payment in respect of which the indemnity is given.

21.4 The indemnities in this deed are irrevocable and survive the termination of this deed.

21.5 MLA agrees that the Commonwealth holds the benefit of an indemnity under clause 21.1 in favour of an officer or agent of the Commonwealth in trust for the officer or agent.

22. RELATIONSHIP

This deed does not create a relationship of employment, agency or partnership between the parties.

23. FURTHER ACTION

Each party must use its best efforts to do all things necessary or desirable to give full effect to this deed, including the execution of any document requested by either party.

24. RESOLUTION OF DISPUTES

24.1 A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this deed (Dispute) unless it has complied with clauses 24.2 and 24.3.

24.2 A party claiming that a Dispute has arisen must notify the other party, giving details of the Dispute.

24.3 During the 20 day period after a notice is given under clause 24.2 (or a longer period agreed to in writing by the parties to the Dispute) each party must use its reasonable efforts to resolve the Dispute.

25. ASSIGNMENT

MLA must not assign this deed or any right under this deed unless it:

- (a) is not in breach of this deed; and
- (b) obtains the prior written consent of the Commonwealth; and
- (c) ensures that the assignee agrees to be bound by all of MLA's obligations under this deed.

26. ENTIRE AGREEMENT

This deed and the MoU:

- (a) constitute the entire agreement between the parties as to their subject matter; and
- (b) in relation to that subject matter, supersede any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

27. ALTERATION

This deed may be amended, but only by deed by the parties.

28. WAIVER

Waiver of a provision of or right under this deed:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

29. SEVERABILITY

Any provision of this deed that is illegal or unenforceable must be severed, and does not affect the enforceability of the remaining provisions of this deed.

30. GOVERNING LAW AND JURISDICTION

30.1 This deed is governed by the law applicable in the Australian Capital Territory.

30.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in relation to matters arising in connection with this deed.

31. NOTICE

31.1 A party giving a notice or notifying under this deed must do so in writing:

- (a) directed to the recipient's address specified in this clause, as varied by any notice; and

- (b) hand delivered or sent by prepaid post to that address.

The parties' addresses:

Commonwealth The Secretary
Department of Agriculture, Fisheries and Forestry
GPO Box 858
CANBERRA ACT 2601

MLA Managing Director
Meat & Livestock Australia Limited
Level 1, 165 Walker Street
NORTH SYDNEY NSW 2060

31.2 A notice given in accordance with clause 31.1 is taken to be received:

- (a) if hand delivered— on delivery; or
- (b) if sent by prepaid post—3 days after the date of posting.

32. INTERPRETATION

32.1 In this deed, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this deed;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this deed;
- (e) a reference to a document or agreement, including this deed, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to A\$, \$A, dollar or \$ is a reference to Australian currency;
- (g) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (h) a reference to a party includes a reference to its executors, administrators, successors and permitted assigns;
- (i) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;

- (j) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth); and
- (k) a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form.

32.2 A provision of this deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the deed or the inclusion of the provision in the deed.

32.3 The schedules are provisions of this deed, but notes and headings are not provisions of this deed.

Schedule 1—Payment of Funds

clause 5

1. TIMING AND MANNER OF PAYMENTS

- 1.1 The Commonwealth must pay the Levy Funds to MLA as soon as reasonably practicable after the Commonwealth receives the relevant levy or charge payments in cleared funds. Payments to MLA must be made as soon as reasonably practicable after the 15th day and the final Business Day of each month.
- 1.2 The Commonwealth must use its reasonable endeavours to pay the Commonwealth Matching Funds to MLA within 1 calendar month after receiving from MLA a claim for payment, together with evidence reasonably satisfactory to the Commonwealth that the MLA has already spent the amount that forms the basis of the claim on Research and Development.
- 1.3 For the purposes of clause 1.2 of this Schedule 1, a certificate signed by the Managing Director (or equivalent), the Chief Executive Officer, the Chief Financial Officer or the Secretary of MLA, certifying that MLA has spent a particular amount on Research and Development, is reasonably satisfactory evidence, in the absence of any evidence to the contrary.
- 1.4 Payment must be by direct deposit or cheque or other method agreed between the parties.

Schedule 2—Annual Reports

Clauses 11.3(d), 12.3 & 14.1

- 1.1 MLA must prepare an annual report that complies with the financial reporting and other reporting requirements of the *Corporations Act 2001* (Cth). For the purpose of meeting Commonwealth accountability requirements, the Annual Report must include reasonably comprehensive coverage of the following matters:
- (a) significant activities and transactions undertaken in the year in the conduct of MLA's functions as the industry marketing body and industry research body;
 - (b) progress made in implementing Plans, including progress against key marketing and research and development performance indicators specified in the Plans;
 - (c) collaboration with Industry and other research providers;
 - (d) commercialisation;
 - (e) intellectual property creation and protection, including management of intellectual property arising from research and development activities or acquired with Funds;
 - (f) subsidiaries and joint ventures formed;
 - (g) material changes to MLA's membership;
 - (h) how MLA's research and development activities contributed to the Research and Development Priorities and achieved public benefits;
 - (i) funds spent on research and development and marketing programs, allowing identification of total expenditure of Commonwealth Matching Funds and the full cost of research and development and marketing programs (after the apportionment of all indirect costs);
 - (j) research and development agreements entered into by MLA with third parties;
 - (k) corporate governance practices in place during the financial year;
 - (l) other significant matters notified to MLA by the Minister.
- 1.2 The Annual Report, dealing with the matters referred to in clause 1.1 of this Schedule 2, may be in a separate document to the annual report prepared for the purposes of the *Corporations Act 2001* (Cth).

Note Clause 1.2 of this Schedule, does not affect MLA's reporting obligations under the *Corporations Act 2001* (Cth).

Schedule 3—Research and Development

clause 7.2

1. RESEARCH AND DEVELOPMENT

Examples of activities that may be Research and Development are:

- (a) research and development projects;
- (b) the training of people to carry out Industry Research and Development;
- (c) the investigation and evaluation of the requirements for Research and Development in relation to the Industry, and, on the basis of such investigation and evaluation, the preparation, reviewing and revising of Research and Development plans;
- (d) the carrying out, and the coordination and funding of the carrying out of Industry Research and Development;
- (e) the monitoring, evaluating and the reporting to the Commonwealth and the Industry, on Research and Development related to the Industry funded by MLA;
- (f) facilitating the dissemination, adoption and commercialisation of the results of Research and Development or of practices or technological developments that have been designed or adapted to improve the operation or efficiency of the Industry;
- (g) dissemination of information related to any aspect of Industry Research and Development, whether electronically, by print or by any other means;
- (h) improving the accountability for expenditure upon Research and Development activities in relation to the Industry;
- (i) the development in the Industry of an awareness of the contribution that can be made by Research and Development in improving its efficiency and competitiveness;
- (j) any other activity approved by the Minister;
- (k) activities incidental but considered important to an activity referred to in clause 1(a) to (i) of this Schedule 3;
- (l) engaging directors, employees, consultants and agents of MLA and meeting administration, operating or capital expenses (including lease costs and legal and other professional expenses) reasonably necessary or appropriate to be incurred by MLA to support its activities in relation to clause 1(a) to (k) of this Schedule 3.

2. **DIFFERENTIATION OF RESEARCH AND DEVELOPMENT AND OTHER EXPENDITURES**

The Directors must ensure that there is a clear distinction between expenditure on Research and Development and expenditure on other activities.

3. **RESEARCH AND DEVELOPMENT EXPENDITURE MANAGEMENT**

MLA must implement a documented system and appropriate internal controls to ensure:

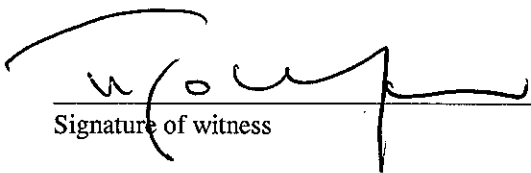
- (a) that Commonwealth Matching Funds are only spent on Research and Development; and
- (b) that expenditure by MLA on Research and Development is within the research and development component of the MLA Corporate and Annual Operating Plans; and
- (c) clear lines of accountability are present and identifiable.

EXECUTED as a deed.

SIGNED, SEALED AND DELIVERED
by the **Hon. Peter McGauran MP**,
Minister for Agriculture, Fisheries and
Forestry, for and on behalf of the
COMMONWEALTH OF AUSTRALIA
in the presence of:



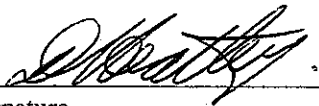
Signature



Signature of witness

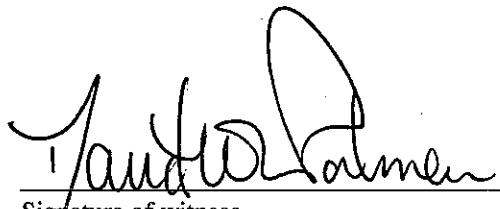
TIMOTHY WILLIAM JOHNSTON
Name

EXECUTED for and on behalf of Meat &
Livestock Australia Limited by:



Signature

DON HEATLEY
Name



Signature of witness

DAVID PALMER
Name