

# Final Report

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EXTERNAL REVIEW OF CORPORATE GOVERNANCE AND  
COMPLIANCE, HEREFORDS AUSTRALIA LTD

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FAICD | DIRECTOR, THE LEADING PARTNERSHIPPTY LTD – FEBRUARY 2017

# External Review Corporate Governance and Compliance – Herefords Australia Ltd (HAL)

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## 1. Review structure

The review was conducted in three phases as outlined below. The outcomes of Phase I and II were summarised in two discussion reports for Directors. Their feedback has been incorporated into this final report.

### *Phase I*

Phase I focussed on Review objectives a), b) and c):-

That is, an assessment of:

- a) The performance in meeting obligations and compliance with the Corporations Act (2001)
- b) The development, implementation and the efficiency in the delivery of annual operating plans and financial budgets and the effectiveness of the company in meeting the priorities, targets and budgets as set out in these plans
- c) The structure, operations and policies

A version of the Phase I Interim Report dated November 21 was made available to HAL Members. In this initial report my purpose was to make Directors and Members aware of a number of governance matters which had to be addressed no matter what the outcome of this Review.

### *Phase II*

While Interim Report I focussed on recommendations to update, review and generate several key governance policies and mechanisms which are considered essential in 21<sup>st</sup> century board compliance, this report examined the Constitution and compliance with corporation's law.

On some governance issues, there are no definitive right or wrong approaches, only approaches that best fit a particular organisation, industry and state of development. For example, the size and skill set of the board.

### *Phase III*

Phase III consisted of two parts:

- A call for submissions from Members
- An on-line survey of Members with an email address seeking their feedback on the effectiveness of HAL's two-way communication with Members

This final report brings together aspects of each of the three Phases.

## 2. The process adopted

In conducting this Review, I undertook the following:

- Examined HAL current and past documents and archives
- Visited the HAL offices and interviewed staff
- Compared HAL's incorporation and related documents to other like and differing rural member organisations
- Interviewed past staff and Officer Bearers
- Interviewed and sought feedback from current HAL Directors
- Interviewed a number of HAL Members
- Sought feedback from Australian red meat industry leaders
- Conducted a confidential, on-line survey of Members with email addresses
- Produced 2 Interim Reports which acted as discussion papers and provide the basis for this report
- Informally tracked social media from HAL and related organisations such as Angus Australia and Meat and Livestock Australia

## 3. Conflict of interest declaration

- I am not involved directly in the Australian or overseas meat industry financially or otherwise. I do not hold shares in any red meat or pastoral industry businesses except possibly through my superannuation fund the investment strategy of which I do not actively manage.
- In past years, I have consulted quite extensively to rural organisations such Meat and Livestock Australia (MLA), Australian Wool Innovation (AWI) and the Rural Industry Research and Development Corporation (RIRDS) as well as to veterinary schools in Australia and overseas. None has been an active client for the past 5-6 years.
- To my knowledge, I had not previously met any of the current HAL Directors. I had worked professionally with HAL's CEO, Dr Alex Ball, through past consulting assignments at MLA.
- As a Fellow of the Australian Institute of Company Directors and a qualified Company Secretary, I have endeavoured to act independently and in the best interests of HAL Ltd.

## 4. Objectives of the review

- The Review objectives are as follows:

Assess Herefords Australia's corporate performance and make appropriate recommendations that improve the overall ability of Herefords Australia to deliver value to its members and stakeholders.

This will include an assessment of:

- a) The performance in meeting obligations and compliance with the Corporations Act (2001)

- b) The development, implementation and the efficiency in the delivery of annual operating plans and financial budgets and the effectiveness of the company in meeting the priorities, targets and budgets as set out in these plans
- c) The structure, operations and policies and procedures of the company, to ensure good practice and systems of corporate governance
- d) The structure, objectives and limitations of the constitution of Herefords Australia
- e) The effectiveness of the arrangements for engagement, consultation, and communication with, and feedback to members
- f) Provide comment on the likelihood of success and impact of implementing the recommendations from a-e above.

## 5. Overview

- I appreciated my time with Directors, Staff and Members and thank those who made themselves available to speak with me or who forwarded me documents or other inputs. It appeared to me that most individuals spoke honestly and openly.
- It is clear that Members, and many in the rural sector, have a passion for the Hereford breed and HAL itself and desire to see the breed and HAL move forward.
- Given the above, most Directors and many Members expressed varying degrees of frustration with the state of the breed, the effectiveness of HAL, governance and compliance practices and relationships with Members. Some are more frustrated than others and on different matters, as might be expected.
- Others spoke of some negative aspects they perceive in the HAL culture and amongst the broader Australian Hereford breed. For example: the ongoing, but in the view of some, diminishing tensions between horned and polled breeders, lack of trust within the board, between the board and some Members and, at times, between Members themselves, as well as perceptions of conflicts of interest.
- Culture is out of the scope for my Review except regarding Board culture but it is a very important aspect of governance practice and, indeed, organisations and industries. All boards must take the lead in setting the culture of the organisation and leading by example.
- A positive, open, accountable, outward looking and achievement orientated culture will assist in driving HAL and the Hereford breed forward. A negative, critical, closed and unaccountable culture will hold HAL and the breed back in this country.
- Time and effort spent criticising and fighting each other within the Herford breed is time and effort not applied to driving the breed ahead and gaining ground on competitors such as Angus and alternative protein sources such as pork and chicken.
- I believe there is enormous potential in the Hereford breed and hope that this report will contribute to new focus and energy within and outside HAL.

## 6. Recommendations

- The recommendations in this report are listed in two clusters:
  - Those that are within the delegation of the board and if completed will help set the foundations for strengthened governance and strategic clarity. (Listed in red at Point 7.)
  - Those that may involve a vote by Members. If Members do not back reform and support the Board in examining, discussing and then implementing the key recommendations in this report, things will not change and opportunities will be lost. (Listed in red at Point 8.)

## 7. Recommendations to strengthen governance practice and strategy formation and implementation

The recommendations that follow fall into Review objectives a), b) and c):

That is, an assessment of:

- a) The performance in meeting obligations and compliance with the Corporations Act (2001)
- b) The development, implementation and the efficiency in the delivery of annual operating plans and financial budgets and the effectiveness of the company in meeting the priorities, targets and budgets as set out in these plans
- c) The structure, operations and policies and procedures of the company, to ensure good practice and systems of corporate governance

*Recommendation 1: That the Board resolve to adopt a culture of compliance and best practice regarding corporate governance.*

- The key question to be addressed is as follows:
  - Do Members want HAL to operate as a breed society that simply administers the studbook and provides a basis level of Member services, or as a modern breed corporation that takes a strategic, long term approach to driving forward the popularity and profitability of the Hereford breed?
  - A management committee can oversee the former, a well-governed, disciplined and well-qualified board and governance process are required for the latter.
  - HAL currently sits somewhere between these two models, an issue I return to at Point 9.
- It is the Board's legal responsibility to provide leadership on all matters to do with corporate governance and compliance. The duties of directors are not negotiable. Ignorance of the law is not a defence.
- There are several key "planks" of good governance that are missing in HAL and that are essential for a modern breed corporation or, indeed, any high-performing Not for Profit (NFP).
- I strongly recommend the following policies and frameworks are developed and approved:
  - An induction policy for new Directors

- An ongoing professional development policy for Directors. That is, a policy that states directors must attend or participate in regular updates of their corporate governance knowledge
- A standard appointment letter for Directors
- A revised Code of Behaviour for Directors and possibly Members as well.
- Other items as listed in recommendations 2-9 below

***Recommendation 2: That the Board resolve to develop a Board Charter for HAL***

- In the words of the Australian Institute of Company Directors (AICD), the peak body for company directors, a board charter is defined as:
 

*A written policy document that clearly defines the respective roles, responsibilities and authorities of directors (both individually and collectively) and management in setting the direction, the management and the control of the organisation.*
- A board charter is not optional. All major expert bodies recommend that boards draft and approve such a document including the AICD, Standards Australia and the Governance Institute. The Governance Institute is the peak body for Australian Company Secretaries.
- Upon approval, Board should review the Charter every 2 or 3 years.

***Recommendation 3: That the Board resolve to develop a conflict of interest register that includes: 1. Related party transactions; and: 2. Standing conflicts***

- It is inevitable that directors of a member-based company such as an industry association, a golf club or HAL, will have some perceived conflicts of interest. This is not necessarily a problem if conflicts are well handled.
- A material personal interest is not defined in the Corporations Act. The materiality of an interest will depend on the circumstances of each case and it will be a matter of judgement for the Director, to be determined having regard to what is both material to the company and what is material to the Director.
- Where a conflict of interest exists, 'material' can be interpreted to mean the matter has 'a capacity to influence the vote of a particular director on the decision being made'. The material personal interest need not be the subject of a conflict of interest at the time it is disclosed. Furthermore, the interest need not necessarily be of a financial or pecuniary nature.
- Completing a related party transaction register meets the requirement of Section 191 of the Corporations Act that outlines the Director's duty to notify other directors of a material personal interest when a conflict arises.
- Section 192 of the Corporations Act states that Director may give other directors standing notice about an interest. This can be given at any time and can be provided before it becomes a material personal interest.
- In my view, the completion of a conflict of interest register is urgent.

***Recommendation 4: That the Board resolve to separate the roles of CEO and Company Secretary***

- Progress is well in hand on this matter at the time of writing.

- In a smaller, less complex organisation such as an incorporated association it is not typically an issue if the Executive Officer or General Manager role is combined with that of Company Secretary, as most of the role of Company Secretary is likely to be administrative. For example, a sporting club or small charity.
- As HAL is a larger, national organisation involved in providing registry services, R&D and advice to members in an industry that directors are active participants in, separation of the CEO and Company Secretary role is essential. Such a change will send a positive message to members and bring to the fore the compliance aspects of Corporations Law.

*Recommendation 5: That the board work with the CEO to develop and approve a set of high level CEO objectives for 2017 and each year thereafter.*

- It may not be immediately apparent why I recommend that the Board develop goals for the CEO as part of a governance and compliance review. There are two key reasons. Firstly, no CEO should operate without a set of short term and even a set of long term goals and objectives signed off by the Board. How can a Board review executive performance unless goals and measure have been agreed beforehand?
- Secondly, several HAL directors indicated to me that although each past CEO had their strengths, there had, at times, been certain issues with oversight of CEO performance. I do not see it as my task to verify specific concerns but I note that most HAL directors were of a view that problems had existed.
- It appears to me that there has not been a history of regularly setting goals for HAL CEOs and annually reviewing their performance against those objectives.
- The current CEO may only need to have 4-6 high-level goals for 2017. Each goal should be supported by an agreed measure or evidence of completion. One of the 4-6 goals should be to support the Board in addressing the recommendations contained in this report.

*Recommendation 6: That based on the CEO's goals for 2017, the board empowers and resources the CEO to develop a "one page" interim strategic plan for HAL that can act as a guiding document until a new strategic plan is developed for the organisation.*

- In 2010 the Commonwealth Government commissioned the Australian Institute of Company Directors (AICD) to develop a "Corporate Governance Handbook for Company Directors and Committee Members. This guide noted the following in regards to the planning role of Boards:

*The implementation of clear strategy setting, planning and monitoring and adaptation to the changing business environment is a critical element of good governance. For most disability service providers, it is appropriate to combine the strategic, and vocational, advocacy and related support planning, with the business planning process. The important issue is to ensure that the overall strategy setting and planning of the organisation is clearly documented and communicated.*

*Some points for good planning include the following:*

- *The Board should establish the goals for the organisation, in conjunction with management, to provide the*
  - *framework for planning;*
  - *The plan should be ‘owned’ by the organisation;*
  - *Active involvement of Board Members and management is critical;*
  - *Consultation with major stakeholders including funding bodies, employees, parents, clients and key*
- All organisations need strategic direction and a clear sense of priorities. It is one of the key tasks of governance to set strategic direction, approve strategic and annual plans and to monitor performance against these key documents.
  - HAL does not have a current strategic plan in place so the interim, one page plan is a “proxy” until a more detailed plan can be formulated in consultation with HAL members, other key stakeholders and experts.
  - Appendix 2 contains a diagram indicating how the Strategic Plan, financial plan and CEO annual goals interact.

***Recommendation 7: That the board resolve to create a rolling 3-year financial plan for HAL***

- All companies must keep accurate financial records and make such records available to directors and, under appropriate circumstances, to members or shareholders. The latter may take the form of annual or quarterly reports. Members and shareholders *do not* have a right to access day to day accounts, for example.
- In developing accurate, timely and compliant company accounts, several roles must work together harmoniously and professionally:
  - The CEO and CFO or senior financial officer
  - The external accountant
  - The independent auditor
  - The board and/or the finance and audit committee if one exists
- There should be a professionally appropriate and open flow of information and advice between these roles. The external accountant can advise management and the board on best practice, accounting regulations, the law and compliance. Similarly, the auditor and accountant need to communicate to understand each other’s respective viewpoints and assumptions. Correctly used, external auditors can be a valuable source of improvements to accounting and financial management practices.
- If these processes work well directors are in possession of the information necessary to validate the company accounts and sign the annual statement of solvency. The company will also get the best possible value for money expended on financial advice and professional services.
- Given these introductory remarks, several directors and Members stated that they were unhappy with the recent financial performance of HAL. Whatever the cause of causes of these problems, I believe it is essential to continue the process of improving and professionalising financial management, reporting and planning.

- During my consultations, I came across several practices such as poor information flow between the board, past CEOs, the external accountant and external auditor which caused me some concern. Several of these issues are now resolved or in the process of being resolved.
- The creation of a rolling 3-year financial plan aligned with the strategic plan will assist the board to take a longer-term view of cost growth and management, strategic projects, investment income and Member fees and charges.
- The development of an explicit set of financial management principles or objectives would provide a basis for future financial projections. The objectives or principles might state, for example:
  - that fees will rise annually based on CPI plus or minus “x” %
  - that investment income will or will not be used to subsidise operational costs
  - that the aim is to run an annual surplus of “x” % of gross revenue minus costs until retained earnings of “y” are achieved
  - that all new Member services must “break even”

**Recommendation 8: That the board resolve to develop a risk register for HAL**

- The Governance Institute notes on its WWW site:
 

*Risk management is a critical responsibility for the board. In order to discharge their duties, directors need to know and assess the nature and magnitude of risks faced by the organisation. They also need confidence that management has an effective framework in place to manage those risks.*
- The Governance Institute goes on to state that it is the role of management to develop a risk management framework for approval by the board.
- The board risk register may be supported by an organisation-wide risk management plan.

**Recommendation 9: Other recommendations**

There are several other items to which attention should be addressed.

- 9.1 A review of the structure and content of staff letters of appointment should be completed.
- 9.2 The development of an annual calendar of board meetings which includes key policies and financial reviews are undertaken over each annual business cycle.
- 9.3 Review of the way minutes are notated

The issue of Meeting Minutes came up in several consultations. Modern board minutes do not record conversations between directors blow by blow but summarise decisions and resolutions made. If a director wishes to abstain from a vote or dissent from a decision this can and should be noted in the minutes if that director so wishes.

It should be noted that whether or not a director abstains from a particular vote or decision, the whole Board is accountable for its policies and actions. Abstention is not always a legal defence and can, at times, be an act of “grand standing” through which directors make a point to shareholders or Members.

In general, minutes are confidential and should not be circulated beyond the board but MUST be made available under when requested under conditions outlined in the Corporations Law and Constitution. The Board through the CEO or Company Secretary should have in place a system of tracking follow actions required of the CEO, Chair or others.

9.4 As Hereford Youth is separately incorporated its accounts should not be included in HAL's accounts. This practice should cease.

9.5 Revision or drafting of the Board confidentiality policy

Most Directors told me that the board "leaks". This is a serious matter. The Australian Institute of Company Directors Model Policy on board confidentiality states the following:

*"Board members must keep confidential all information pertaining to matters dealt with by the Board. This includes board meeting minutes, agendas, reports to the Board and associated documents, and information contained in those documents.*

*The obligation to maintain confidentiality continues to apply even after a person has left the Board.*

*Maintaining confidentiality as a general rule will also help ensure observance by Board members of the following legal duty:*

*A person who obtains information because they are, or have been, a member of the Board must not improperly use the information to:*

- *gain an advantage for themselves or someone else; or*
- *cause detriment to the organisation"*

Several directors stated to me that they would value training or case study examples of how to best manage situations where HAL members – who may also be business associates or even friends – ask for details of board processes or decisions they are critical of or dislike. I will attempt to provides some further materials on this topic.

## 8. Phase II of the Review

- In the second phase of the Review I focussed on more complex and, perhaps, more controversial aspects of the review objectives including the constitution.
- Over the passage of time most company constitutions need review in two key areas:
  - **Modernisation** – this process consists of updating the compliance and "best practice" aspects of the constitution including its alignment with current legal decisions. By this I refer to the fact that Australia is a country bound by common law or the law of precedence. As judges make decisions over time, it is important to ensure organisations are compliant with and up to date regarding any new common law precedents or changes in statute. This is a technical aspect of the law and any good lawyer or company secretary has templates that cover off these items so directors do not need to be expert in the law.

HAL's constitution does appear overly complex: it has 37 objects, for example. The Canadian Hereford Association has 8 objects; Angus Australia has 5. As will be noted below, I believe that HAL's objects could be simplified and, in legal technical terms, "modernised" without changing their intent.

- **Review of "company specific" aspects of the constitution that may no longer apply or add value** – such a review might cover issues such as whether the "6 + 6" rule should be changed or whether the size of the board or membership categories are appropriate.

Prior to making further recommendations I will draw attention to several other matters I suggest the Board should turn its mind to.

### *8.1 Appropriate behaviour*

- During consultations, some individuals made allegations of past instances of what might be termed inappropriate behaviour by a limited number of directors, Members and employees of HAL. Most of the allegations would be broadly described as verbal harassment (via emails, phone calls or face to face) or bullying. As I did not attend the meetings concerned and was not party to the conversations I cannot verify the allegations put to me and some were easily discounted in any case.
- It is a positive to have a passionate and committed membership but if, and when, passion crosses the line to abuse or harassment, the Board must respond quickly if such behaviour is drawn to its attention.
- Section 11.2 of the HAL Constitution gives the Board the power to sanction a member who "has acted (or omitted to act) in a manner which is unbecoming to a Member or prejudicial to the material interests of the Company". The use of such powers should be rare in the life of any organisation but exist to deal with examples of poor or inappropriate behaviour.
- Members may benefit from being reminded every now and again that while vigorous debate is encouraged, personal comments and insults should be avoided at all times.
- In addition, a Code of Conduct for Members may be worth considering.

### *8.2 The role of the Constitution*

- The Corporations Act and the company Constitution are two of the most important documents for an incorporated entity. A company constitution cannot contradict, ignore or override corporations law or any other relevant legislation but within the boundaries of the law, the Constitution lays out important items such as the objects of the company, whether profits may be distributed, the nature of shareholdings, how many directors are elected or appointed and their terms and the calling of annual or special meetings of shareholders and members
- Small Pty Ltd companies do not require a Constitution. If they do not have a Constitution, the Replaceable Rules included in the Corporations Act are set in play. As HAL is a Public Company Limited by Guarantee it must have a constitution and the Board, members and staff are bound by what it states.

- Changes to a company's constitution should be made with care and be underpinned by sound strategic, governance and operational logic. Changes might be made in order to:
  - Align the Constitution with changes in the law or judicial decisions that have come about since the document was first drafted
  - Reflect best practice
  - Take up any significant shifts in direction or focus agreed by shareholders or members
  - Streamline functions such as the size or makeup of the board, the operation of annual general meetings and elections etc
- It is almost always the case that a specialist lawyer or company secretary should be retained to assist in constitutional drafting to ensure compliance with relevant legislation and judicial decisions.
- When reviewing the HAL Constitution, I had several questions in mind:
  - Are the objects up to date and well-focussed?
  - Have there been court judgements or changes in legislations that need to be addressed?
  - Is the size and makeup and terms of appointment of the board appropriate?
  - Are there provisions for sub-committees including a Board Executive if deemed appropriate?
  - How is conflict of interest dealt with if at all?
- I did not review the HAL Constitution in isolation but obtained copies of several constitutions from a range of cattle breeding and other rural industry organisations. A table of comparison is included below.

### *8.3 Table of comparison of rural organisation Constitutions*

- Care should be taken when making comparisons between organisations based on this table alone as it summarises literally hundreds of pages of text and does not provide any legal analysis or reasoning. The table does provide interesting comparative data.
- I would highlight the fact that many organisations do not make their Constitution freely available to non-members so this Table is made up of those examples I could easily download or obtain. In addition, the versions I obtained may not be the most up to date.

Items in Constitution	Herefords Australia	Murray Grey Cattle Society	Australian Quarterhorse Association	Canadian Hereford Association	Angus Australia	Droughtmasters Stud Breeders' Society
Number of Company Objects	37	29	31	8	5	17
Board size and make up	12 6 horned & 6 polled directors	8 6 elected by geographical zones 2 appointed	12 No more than 6 elected from any one state	12 Appointed by Province	11 1 per state Up to 3 national directors Up to 2 appointed by the Board	11 The President 7 x Zone Directors Up to 3 national directors
Geographical zones or state-based directors	Not mentioned	Yes, x 6	No, but no more than 6 directors from any one state	Yes, aligned with Canadian Provinces	Has State Committees	7 x zones
Clause explaining when directors may engage in "for profit" activities *	No	Yes	Yes	No	Yes	No
Board Executive committee	Yes			Yes		
Classes of members	6	9	7	5	6	6
Director term of office	3 years	3 years	3 year terms but eligible for re-election	?	2 year terms for up to 8 consecutive years then step down	3 years; eligible for appointment
Form of incorporation	Company Limited by Guarantee	Company Limited by Guarantee	Company Limited by Guarantee	An Association incorporated under the Canadian Pedigree Act	Company Limited by Guarantee	Company Limited by Guarantee

\*Several entities have a clause outlining the circumstances when directors may hold office or enter into a contract with the company but NOT in contravention of the Corporations Act. Eg Angus. Directors may “enter into a contract or arrangement with the Company”; and: “act in a professional capacity...for the Company, except as auditor”. When I sought informal legal advice on this clause I was told it was an explanation of sections 191 and 192 of Corporations Act. It appears to clarify in more plain English terms the restrictions placed on directors when there is a conflict and thus serves to help directors and members better understand the provisions of the Act. Such clauses cannot serve to override the Corporations Act as that would make them invalid.

#### 8.4 Company Objects

- It is no longer required practice to list literally all the activities a company undertakes in its objects.
- Of those organisations analysed, Angus is the most succinct in its objects as listed below. HAL has the most objects at 37.
- Objects of Angus Australia:
  - To maintain the **Breeding Registers** and any other pedigree and **performance records** needed for the genetic advancement of Angus-based cattle
  - To increase Members’ ability to develop and **produce world-leading Angus-based cattle** and related genetics
  - To increase Members’ ability **to market world-leading Australian Angus-based cattle** and related genetics
  - To increase Members’ ability to **produce and market world-leading Australian Angus-based beef and related animal by-products**
  - To **establish relationships** with other organisations whose purpose is to improve and promote the beef cattle industry
- The first 6 of HAL’s Constitution cover similar ground and are summarised below:
  - To maintain the **purity** of Hereford cattle
  - To promote **improvement and popularity** of Hereford cattle
  - To **collect and verify information** relating to Hereford cattle
  - To **market and publicise** Hereford cattle
  - To **establish relationships** with other firms with similar objectives
  - Object 5.11 also adds **research and development**

#### *Recommendation 10: That the Board resolve to put to Members that*

- *Company Objects be revised and limited to 6-8 objects*
- *Consideration be given to removing “breed purity” as a stand-alone Object*
- *That the objects include promoting “world-leading/world class Herefords cattle” or a similar phrase*

#### 8.5 Board make up, size and appointment

- There is no universal view on board size. One study found the average board size to be 9 directors and the ideal size to be 7 but some board are larger and others, smaller. For profit boards, even of large listed companies tend, to be smaller than not for profit boards (NFPs).
- The Australian Institute of Company Directors states:
  - *“A board needs to have the right group of people having particular regard to each individual's background, skills and experience, and how the addition of an individual builds the collective capability and effective functioning of the board.”*
- And:
  - *“To be effective a board needs the right group of people, with an appropriate mix of skills, knowledge and experience (e.g. professional backgrounds, industry experience, philanthropic support) that fits with the organisation's objectives and strategic goals. This should be considered not only when new appointments are being contemplated or made, but in the context of regular board evaluations.”*
- The size of the board came up frequently in my consultations along with the 6 + 6 split of horned and polled breeders and the skill set of directors.
- I had thought the HAL board to be too large and this may well be the case, but at up to 12 directors it is about the same size as similar organisations. Given this point, I would still argue that a lesser number of directors could govern HAL as well or better than 12.
- The skillset of directors needs to be examined in more detail and to be thought about more deeply. Clearly, it is essential that a member-based industry organisation appoint a majority of directors who operate within the industry itself, but there are downsides to having all directors with the same business or industry background.
- For example, the Angus Australia Constitution states the following at 13.1 (d)
  - *“The Board has the option to appoint at a properly constituted meeting of the Board and with the approval of at least 75% of the elected Directors up to 2 Members or non-members as Optional Appointed Directors to serve until the conclusion of the next AGM. Optional Appointed Directors would have specific expert skills and/or experience that the Board believes are appropriate for the Board and which are not available from the elected Directors. The Board may re-appoint an Optional Appointed Director on the completion of their term if the Board considers the specific expert skills and/or experience continues to be appropriate for the Board”*
- One of the important tasks of a modern board is to develop a skills matrix or desired skill sets for the board to guide Members or shareholders when they select directors and to encourage a more diverse range of directors to serve on the Board.
- For the purposes of discussion, I would suggest that the ideal HAL board might consist of:
  - 5-6 industry participants, whether horned/polled or stud breeders/commercial
  - An accountant and/or lawyer with financial experience
  - A marketing and communications expert
  - An animal scientist or geneticist

- If, for discussion, the board was downsized by 25% to 9 directors, 6 could be Hereford industry experts and 2-3 with other important skill sets. The latter may be active in the Hereford or broader beef or agriculture/agribusiness sector.
- I would also be in favour of removing the polled/horned divide although I am aware this has been put to Members unsuccessfully in the past.
- Finally, I did review the process of how Directors are appointed. There are several possible models, none of which is perfect:
  - a. The current HAL model of Members voting for all directors
  - b. The current HAL model but allow the Board to appoint, say, 2-3 directors aligned with the HAL Board Skills Matrix. This model is similar to that of Angus Australia.
  - c. Align a limited number of HAL directorships with key regional or State Hereford associations such as the Droughtmaster or Angus model. This is not likely to be functional for HAL as most Hereford members reside in only 2 or 3 states.
  - d. Continue with the current system but invite expert non-Directors to sit as full members on key board committees such as Finance and Audit etc. This is a conventional model for many not for profit and for profit companies.
- Although some Directors are not convinced that the effort required in making a fundamental change to the way directors are appointed will provide a strategic benefit to HAL or Members, I believe such a change is worth contemplating.
- In any case, every effort must be made to attract and elect the best possible directors who possess a both an interest in the breed and a broad range of business and associated skills.

*Recommendation 11: That the Board resolve to put to Members that*

- The maximum number of Directors be reduced from 12 to 8
- The board be given the power to appoint up to 2 directors with relevant skills and interests for a period up to 2 years. The maximum board size elected and appointed to be no more than 8
- A further attempt is made to remove the 6 polled – 6 horned director clause
- In addition, although it is not a matter for Members, the Board should develop a skills matrix and review the matrix periodically

*8.6 Board Executive and other committees*

- The HAL Constitution does not mention Board Committees but the Board has in any case the power to form committees
- I have mixed feelings about the formation of Board Executive Committees as while they can streamline operations, they may also lead to concentration of power, blurring of management and governance roles and a lessening of the responsibilities given to the CEO the his or her team.

- All Board Committees, including the Executive Committee, should be guided by a written Charter approved by the whole Board. Committees should not make budget decisions but make recommendations to the Board for approval.
- I am not convinced that HAL needs as many board committees as currently operate. Several Committees seem to cover work that should be done by Management under instruction from the Board.

*Recommendation 12: That the Board resolve to develop charters for the following 4 committees:*

- Audit and Risk
- Investment
- Research and Development
- Youth

All other committees to be dissolved. Key operational tasks be allocated to management with the necessary resources to deliver or addressed though means other than that of a Board committee.

### *8.7 Classes of membership*

- The number of membership types appears in line with other organisations but Clause 9 contains some anomalies that may be worth reviewing.
- Should Youth Members over 18 get a vote, for example?
- It appears that the Constitution states that Life Membership can only be held by “natural persons”, that is, individuals rather than incorporated entities. At the moment, it may be inferred by some Life Members that their life membership is held in perpetuity via incorporated entities they may be directors of.
- It is also not clear to me why Life Members, who may no longer own live cattle, get two votes at general meetings of the company (Clause 9.4.2 of the Constitution). I would not be in favour of removing the rights of existing Life Members but, as suggested below, new Life Members may be appointed under revised conditions.

*Recommendation 13: That the Board resolve to put to Members that*

- Clause 9 be reviewed
- Youth Members over 18 years of age be given 1 vote
- No change be made to existing Life Member privileges and voting rights
- That the term “Life Membership” be replaced by “Honorary Membership” in future
- Honorary Members appointed from this point in time onwards lose their voting rights if they cease to own cattle. It should be confirmed that life membership is only awarded to “natural persons”
- Honorary Memberships not be sold but be awarded on the basis of long term service to the breed and HAL

### 8.8 Director term of office

- All organisations and companies need to renew their boards over time. There are no universal rules – and nor should there be in my view – but it often stated in the governance literature that 8- 10 years or so is a “good stint” for a company director.
- Like organisations to HAL have 2-3 year terms with about a third of directors standing down each year as the norm. Annual elections are costly, however, and disruptive to board culture and continuity.
- I would recommend considering a clause that would limit board service to 8 continuous years with Directors eligible to stand again after at least one year’s break.

#### *Recommendation 14: That the Board resolve to put to Members that*

- *Directors be elected for a maximum 2 x 4 year terms or 8 continuous years’ service. Directors to be eligible again for election after a 12-month break. Elections to be held every second year.*

## 9. What kind of Board does HAL have? What kind of Board does it need?

- A key aspect of effective governance is articulating a clear vision for the board’s role and focus. As illustrated in the table below, at one extreme a board may be quite passive, at the other extreme, operationally engaged literally daily.

**Continuum of Board Involvement**

The Passive Board	The Certifying Board	The Engaged Board	The Intervening Board	The Operating Board
<ul style="list-style-type: none"> <li>▪ Functions at the discretion of the CEO.</li> <li>▪ Limits its activities and participation.</li> <li>▪ Limits its accountability.</li> <li>▪ Ratifies management's preferences.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Certifies to shareholders that the CEO is doing what the board expects and that management will take corrective action when needed.</li> <li>▪ Emphasizes the need for independent directors and meets without the CEO.</li> <li>▪ Stays informed about current performance and designates external board members to evaluate the CEO.</li> <li>▪ Establishes an orderly succession process.</li> <li>▪ Is willing to change management to be credible to shareholders.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Provides insight, advice and support to the CEO and management team.</li> <li>▪ Recognizes its ultimate responsibility to oversee CEO and company performance; guides and judges the CEO.</li> <li>▪ Conducts useful, two-way discussions about key decisions facing the company.</li> <li>▪ Seeks out sufficient industry and financial expertise to add value to decisions.</li> <li>▪ Takes time to define the roles and behaviours required by the board and the boundaries of CEO and board responsibilities.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Becomes intensely involved in decision making around key issues.</li> <li>▪ Convenes frequent, intense meetings, often on short notice.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Makes key decisions that management then implements.</li> <li>▪ Fills gaps in management experience.</li> </ul>



From: David A. Nadler, *Building Better Boards*; Harvard Business Review, May 2004

- David Gonski, widely recognised as one of Australia's most experienced and thoughtful Chairmen, seems to have the *engaged board* in mind when he writes:

*“A good board does not seek to micromanage the operations of the entity. The most important thing that a board does is to hire and fire and CEO and his or her immediate reports. The corollary of appointing the best person to those jobs is that you have to allow him or her to operate.”*

From: Gonski, D. *I Gave a Gonski*; pub Viking (2015) p107

- When consulted, most HAL Directors were of a view they had been operating as a “Certifying Board” and at times, an “Intervening Board”. Their stated desire is to function as an “Engaged Board”, a choice I would agree with.

**10. Phase III of the Review**

As outline earlier in this Report, Phase III consisted of two parts:

- A call for submissions from Members
- An on-line survey of Members with an email address seeking their feedback on the effectiveness of HAL's two-way communication with Members

### *10.1 Submission summary*

The HAL CEO made a call to Members to make written confidential, written submissions to this Review in January 2017. At the time of writing, mid-February 2017, no submissions had been received.

### *10.2 Member communication survey*

This part of the Review related to point e) in the Brief: The effectiveness of the arrangements for engagement, consultation, and communication with, and feedback to members

- The on-line survey – which used Survey Monkey technology – was an attempt to obtain feedback from Members on two-way communication and other issues as input into the independent Review.
- As far as we are aware, this is the first time this kind of member survey has been done and we were not sure how Members would respond. In consultation with the CEO, Dr Alex Ball, the board chair and deputy, it was decided to do an on-line only to keep costs down. Posting out paper survey copies and then processing the returns manually would have incurred significant, unbudgeted expense. My thinking being that if member response to the email survey was high HAL might consider repeating the survey in the future and mail copies out to members, perhaps with a regular mailout to keep costs down.
- The data obtained via the on-line survey is NOT definitive as all Members were not able to participate, but it does give some sense of Member views. As such it provides a sound basis for more and better surveys in the future.

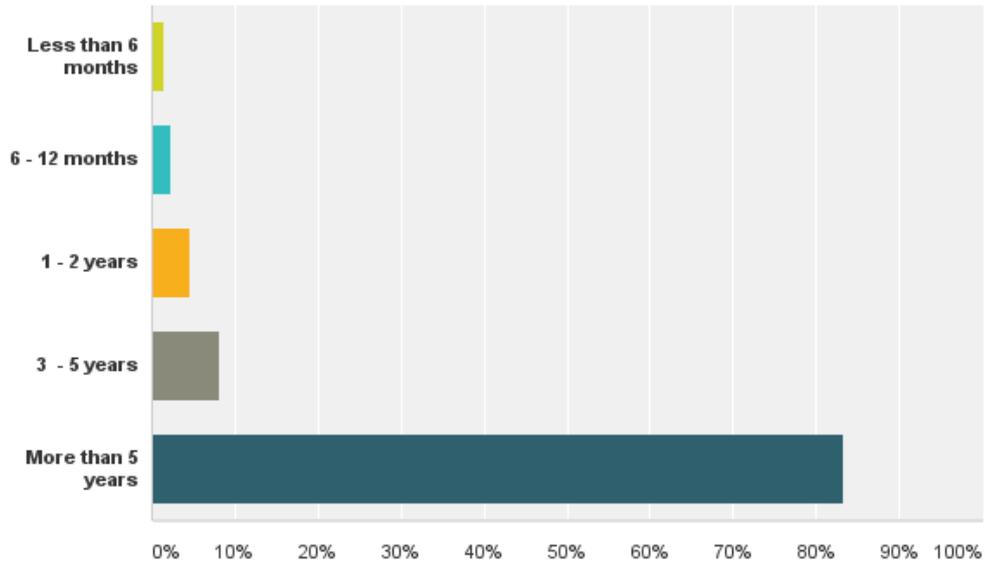
### *10.3 Survey Summary*

The survey data follow. 262 Members participated. I have not at this stage made formal recommendations based on these data as they are quite complex.

1. How long have you been a HAL member?

**Q1 How long have you been a member of HAL?**

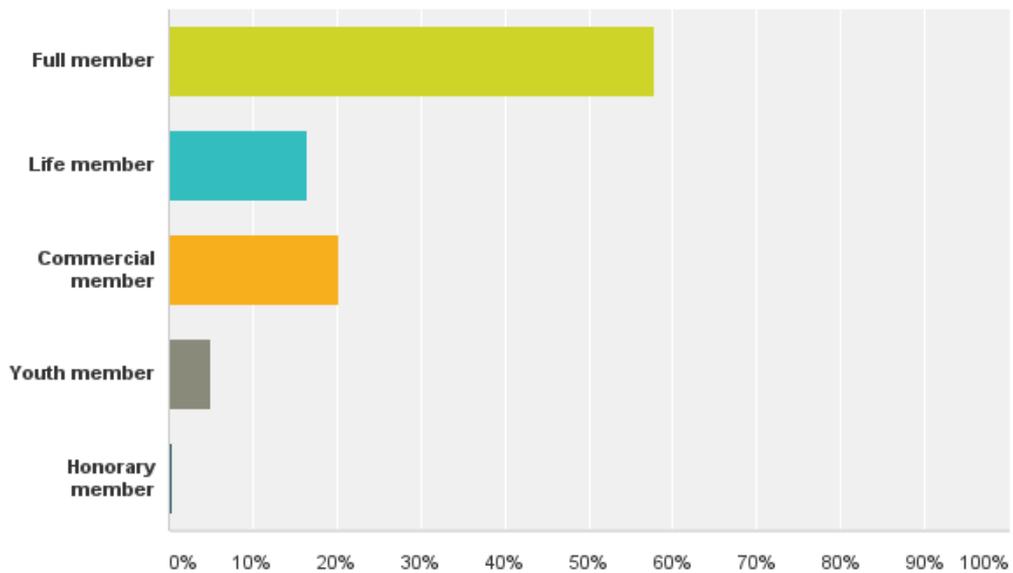
Answered: 256 Skipped: 0



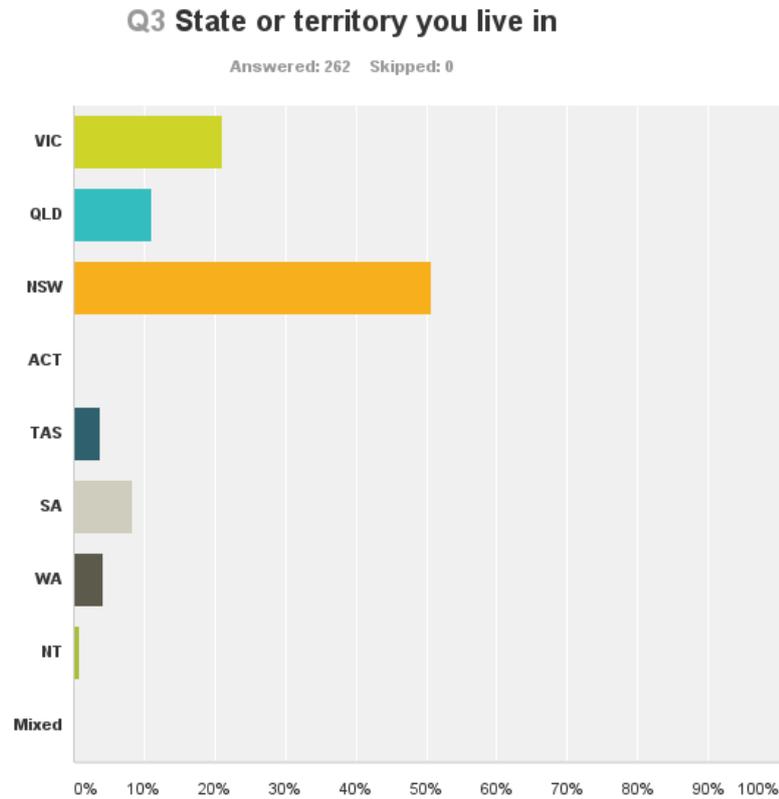
2. Indicate your type of membership.

**Q2 Indicate your type of membership**

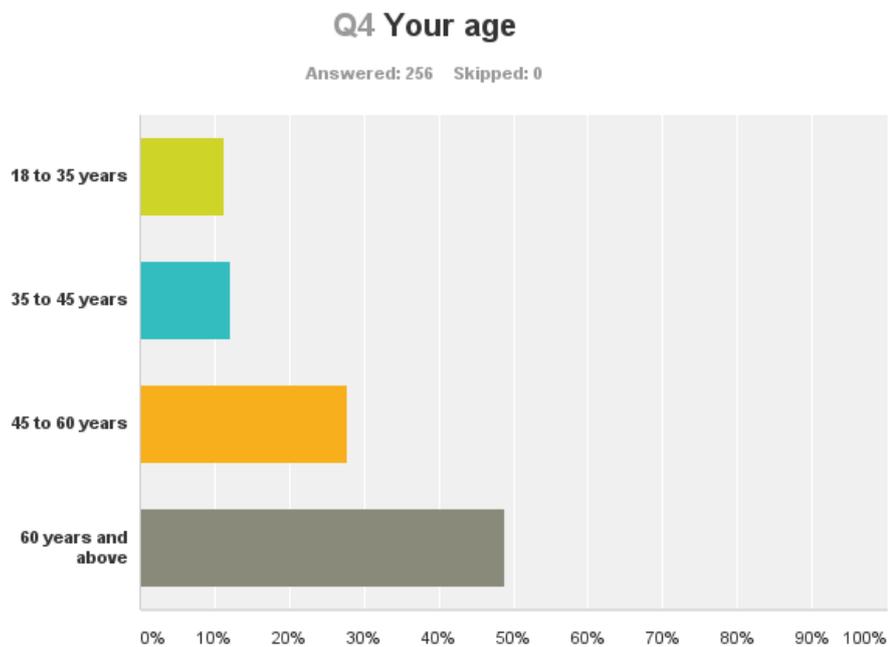
Answered: 256 Skipped: 0



### 3. State or territory you live in.



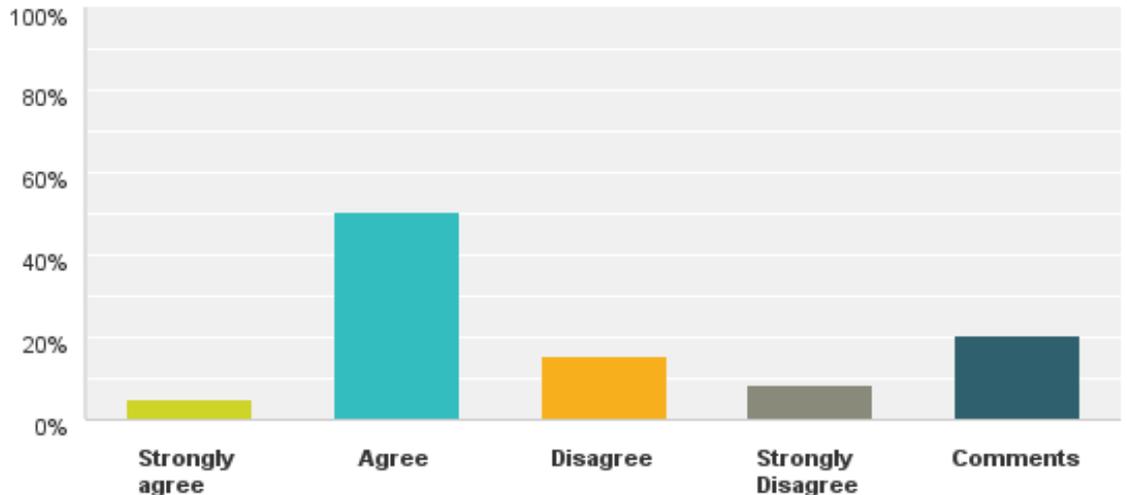
### 4. Your age



5. In my view, overall, HAL communicates and engages with Members effectively.

**Q5 In my view, overall, HAL communicates and engages with Members effectively.**

Answered: 261 Skipped: 1



**Comments**

In total, 54 individual comments were received.

*The general theme of the responses to question 5 is that communication has improved. However, members feel that they are not given adequate communications on the relevant themes addressed in the survey (breed promotion, registration/technical). Geographic issues are a common theme; members from WA feel particularly disenfranchised. The board are encouraged to be inclusive and specific with its member communications. Communications need to be better crafted and the appropriate medium chosen.*

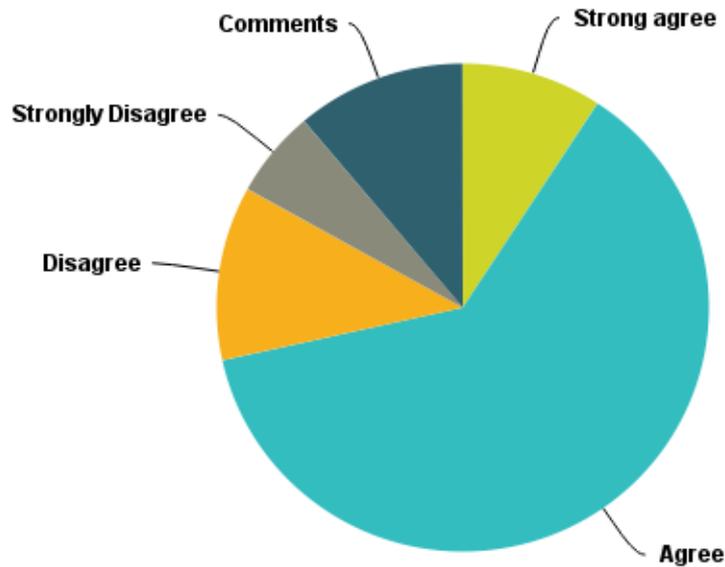
The broad themes expressed in the comments were as follows:

- Improved communication – it is getting better since the new CEO arrived
- Geographic issues – some States not as well covered as others
- Quality communication – better explanation of decisions and policies
- Board engagement with members – needs to be more inclusive
- More/better communication with members is needed
- Breed/registration issues – some issues around advice

6. As a member, I feel I can make my views known to staff and directors

**Q6 As a member, I feel I can make my views known to staff and directors**

Answered: 260 Skipped: 2



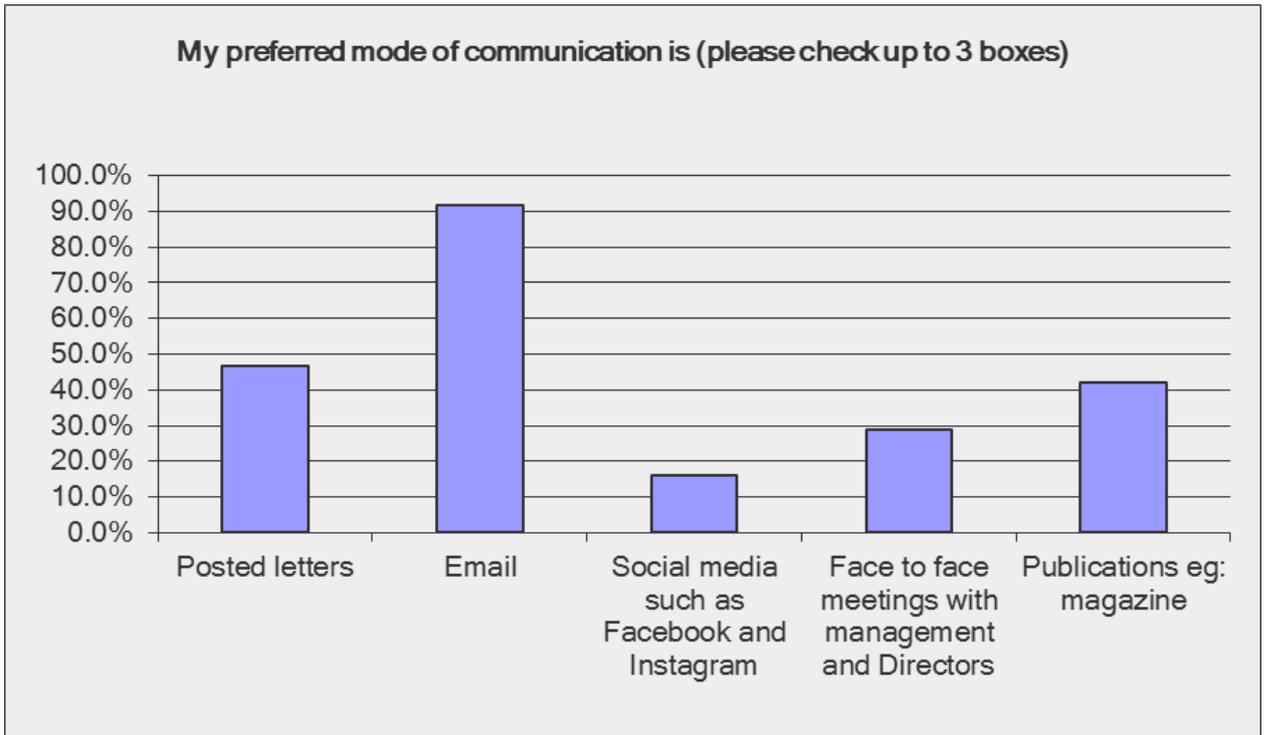
**Comments**

The answers to this question were grouped according to the themes below. The responses were generally positive, with the relationships being reported as adequate. However, many respondents felt that on specific issues, that HAL (or their contact within HAL) was unresponsive, and that the respondents' ability to make their views known and opinion heard was very much relationship dependent. There was not a great deal of confidence that Member opinions expressed during consultations were taken into consideration in actual decision making processes.

The broad themes expressed in the comments were as follows:

- Adequate
- Improving
- No relationship
- Relationship dependent (eg with a particular staff member)
- Unresponsive

**7. My preferred mode of communication is (Members could tick up to 3 boxes).**

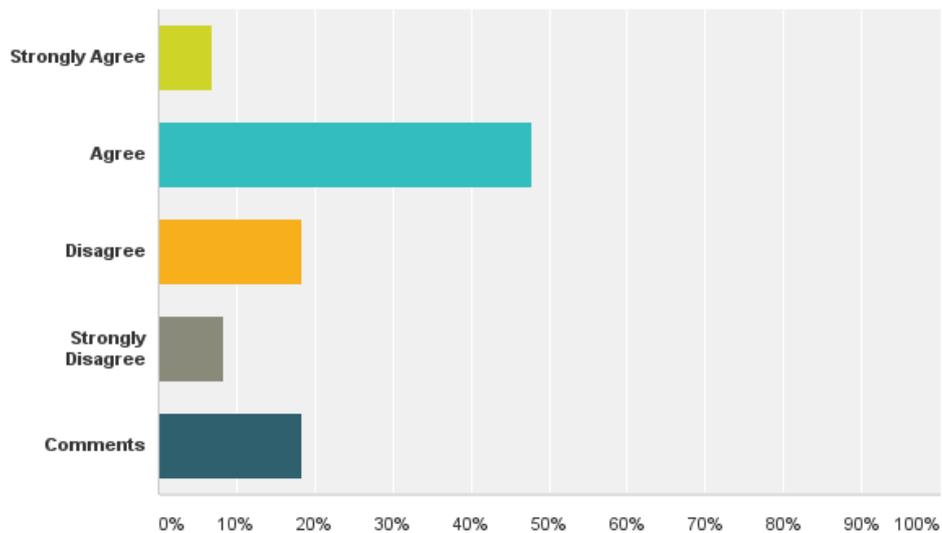


*NB With hindsight I should have included the HAL www site as an option.*

**8. HAL has clear priorities which align with the needs and interests of the Membership.**

**Q8 HAL has clear priorities which align with the needs and interests of the Membership**

Answered: 261 Skipped: 1



**Comments**

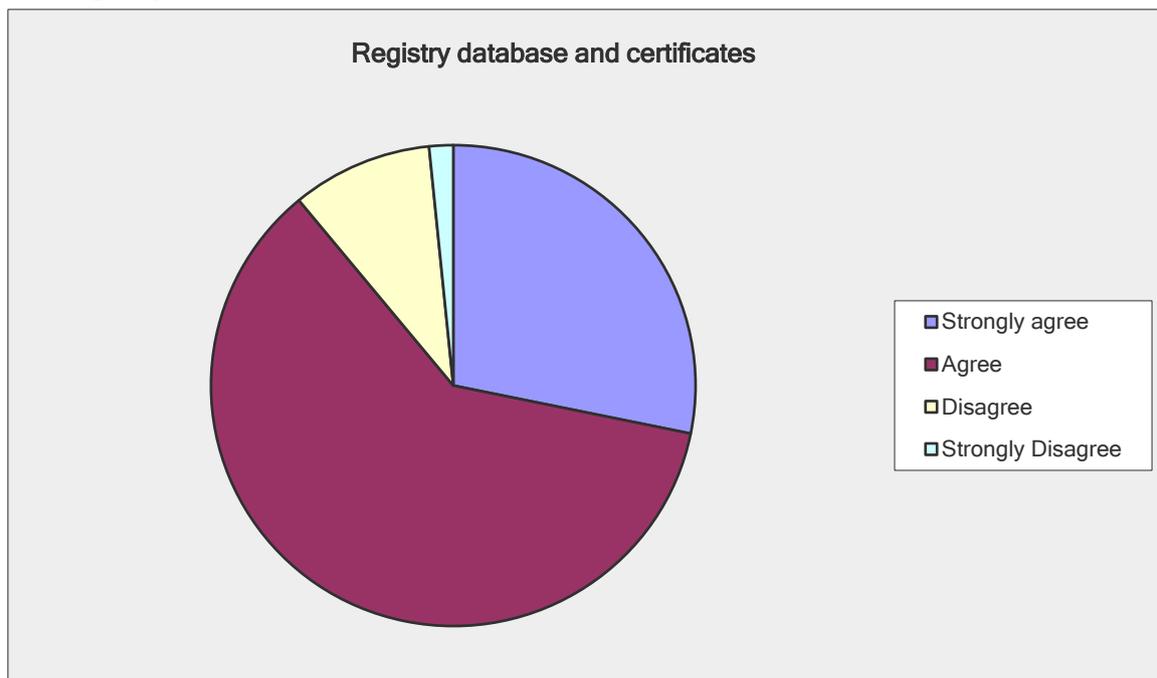
*There was a large body of comments received (48) on this question. The majority of comments were not positive, with most feeling that the organisation is out of touch with members needs and current issues. There are real concerns about the technical aspects of breed registration, the lack of focus on the geographic needs of members, and the feeling that HAL’s priorities are too narrow. This could be mitigated by utilising more focussed and targeted communications and taking advantage of opportunities to be more responsive and communicative, particularly post board meetings. There is a strong desire to see effective promotion of the breed, with less focus on polled versus horned and more on the Hereford brand.*

The broad themes expressed in the comments were as follows:

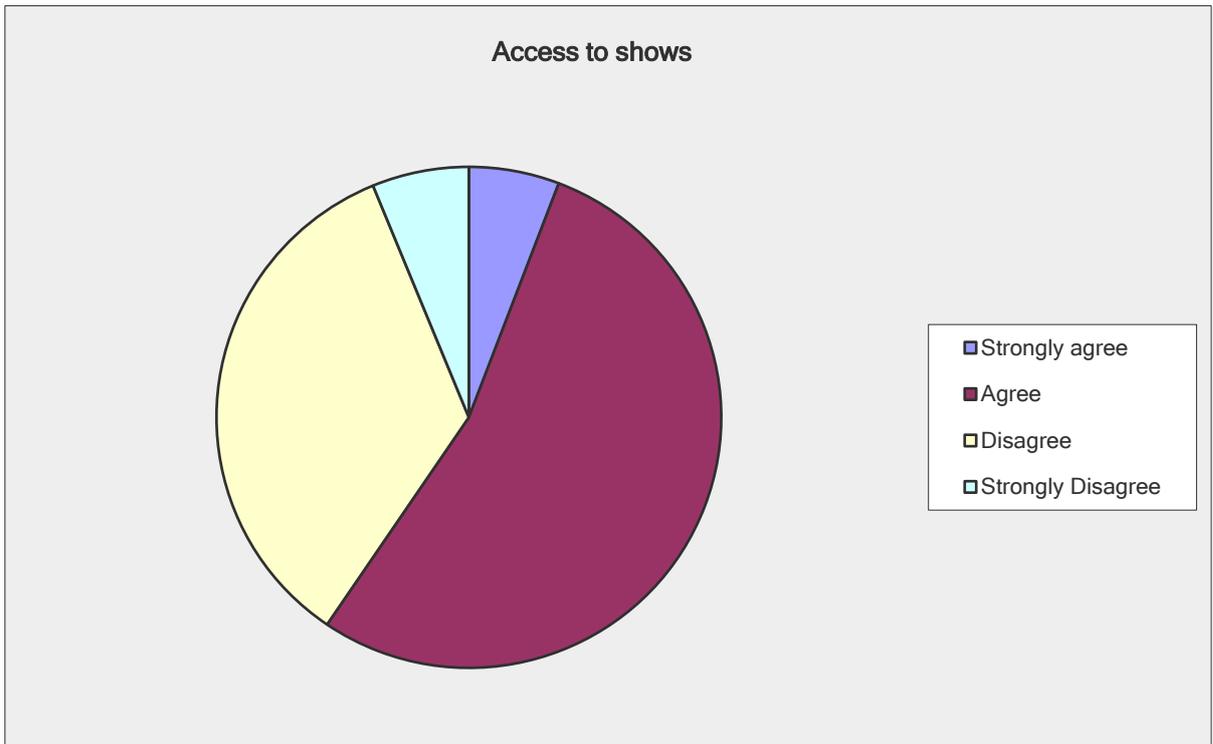
- Breed registration Issues
- Don't know (HAL is out of touch with member needs and current issues)
- Geographic issues
- More commercial focus (promotion of the benefits of the brand/breed)
- More focussed/targeted communications – not sure what is going on and where breed is headed
- Not responsive
- Polled versus horned – need to move on
- Priorities too narrow

**Questions 9 to 12 focused on key HAL services, asking Members how important each service is to them. That is, what are the most valuable services HAL offers?**

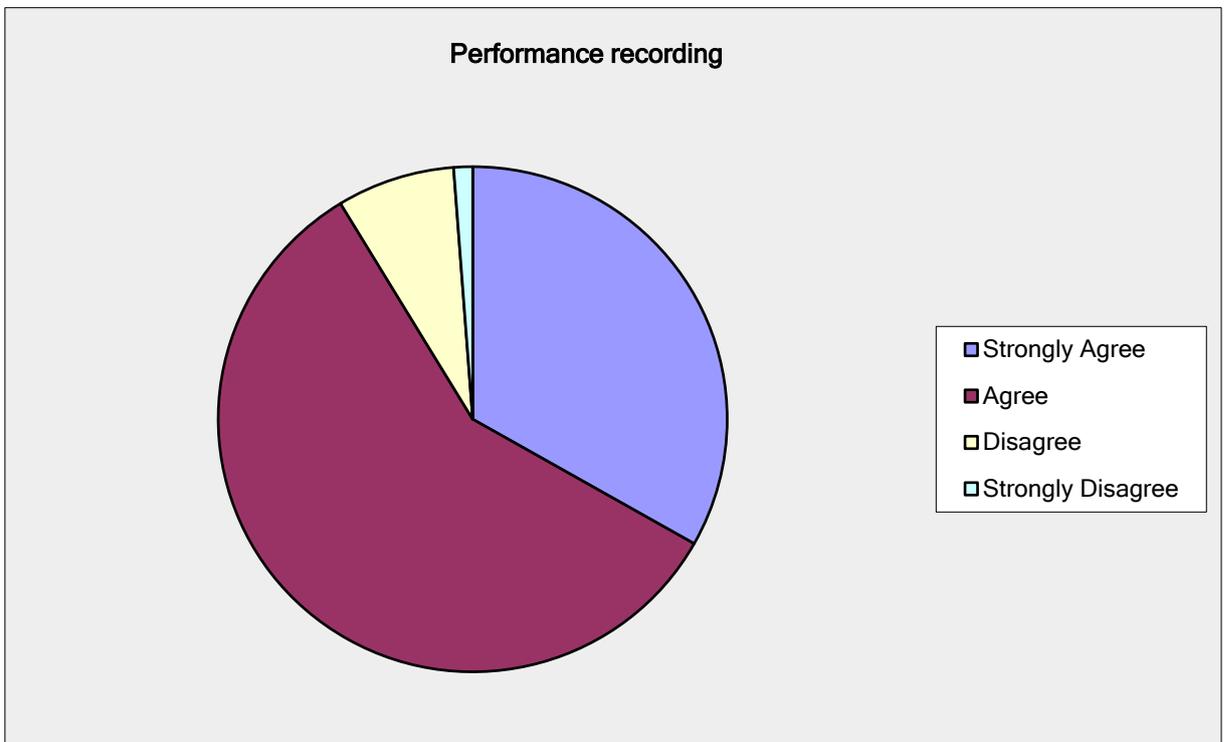
**9. Registry database and certificates**



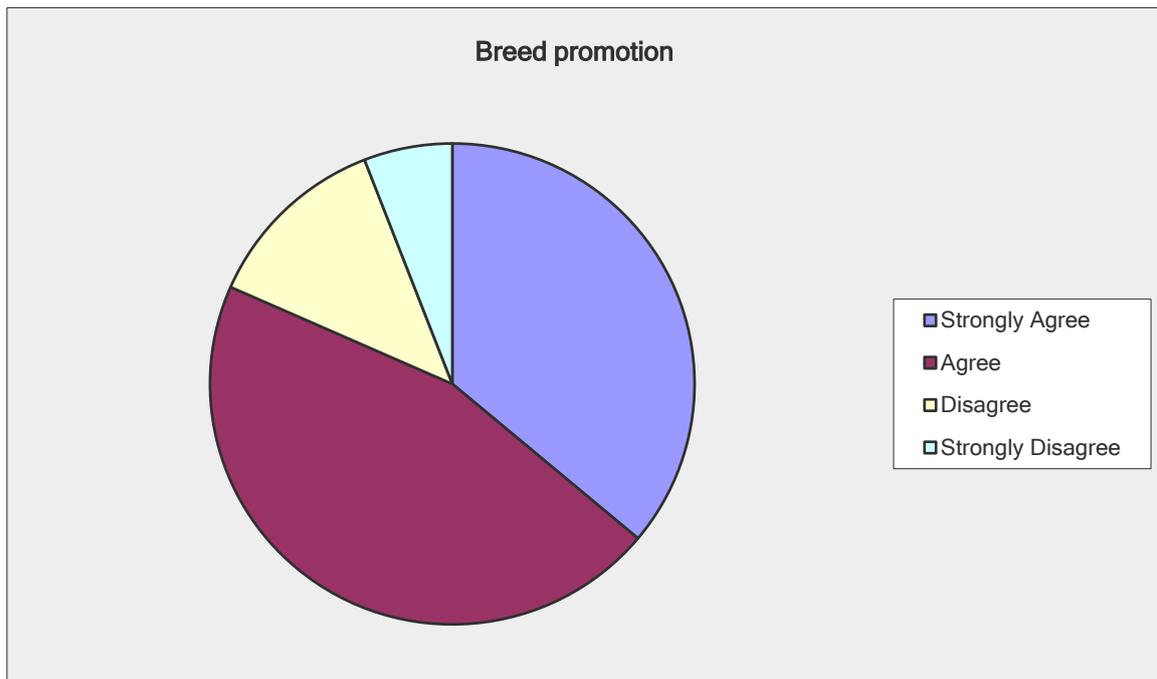
### 10. Access to shows



### 11. Performance recording



## 12. Breed promotion



## 13. Other comments on HAL services

These comments are analysed in the Word Cloud below and in the Comments section that follows.

### Q13 Other

Answered: 44 Skipped: 218



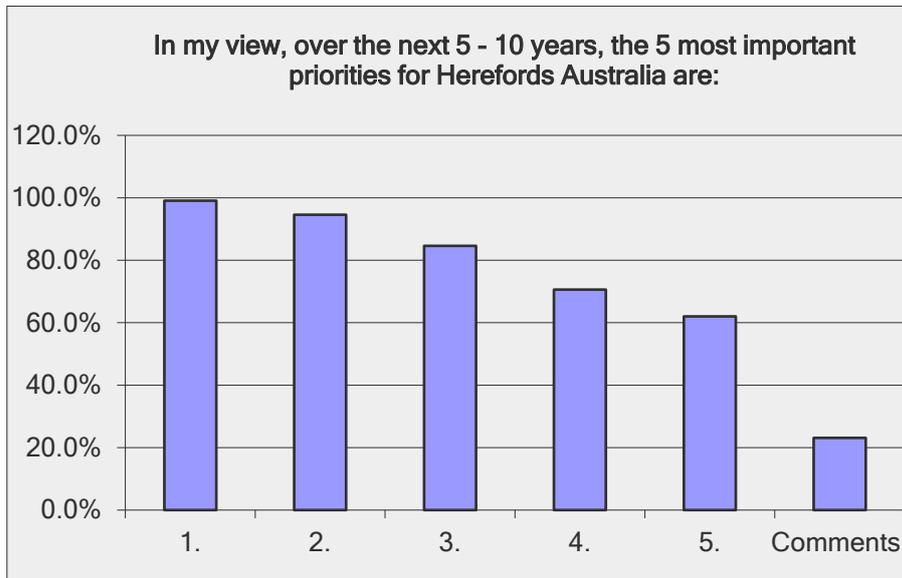
### Comments

*There were 43 responses to this question, with 4 consistent themes coming through. Most respondents mentioned the need to be consistent in the marketing strategy and in working with both horned and polled aspects of the breed as one brand: "Hereford". Clarity and focus along with support for the technical side of breeding was also mentioned. Members questioning the consistency of service delivery.*

The broad themes expressed in the comments were as follows:

- Breed promotion
- Consistent marketing
- Work with both horned and polled
- Technical support

**14. In my view, over the next 5-10 years, the five most important priorities for Herefords Australia are:**



**Comments**

*This was a free-form question and Members could enter whatever they liked into the 5 boxes provided to record their priorities. There was an interesting response to this question, with the results grouped below. As can be seen from the graph, more than 80% of respondents included at least 3 priorities. There appears to be very much a traditionalist versus modernist approach in these responses, reflected in the desire to receive fair treatment as a Member, regardless of status as a breeder or what type of cattle were produced. Members would like to be consulted more often, their needs/interests heard and then reflected in the promotion of the breed. The challenge of creating consumer desire for the product was also noted. There is a fair degree of angst about technical/registration going forward and how this will be managed, with rising costs. The ever-present geographic issues are also present. It will be worth exploring the suggested priorities in greater detail at a later date.*

The broad themes expressed in the comments were as follows. They are not assembled in any particular order:

- Eliminate shows
- Fair member treatment (large commercial breeders v everyone else)
- Geographic issues
- Promotion of the breed
- Registration
- Work with members



- Geographic issues
- Learning and development
- Member benefits
- Marketing and promotion
- Post board communications
- Public presence
- Regional events
- Shared vision
- Technical/social communications
- Work with members

*Recommendation 15: That the Board resolve to*

- Further analyse the data gained from this survey and, where applicable, integrate the data into future plans and priorities as well as Member communication and engagement strategies
- Consider repeating this kind of survey at a later date including a paper version mailed out to Members.

**11. Conclusion**

- The Hereford breed has a long and rich history in Australia and across the globe. There is much in the past and present that the breed, HAL and individual farmers should be proud of and celebrate.
- It is, however, clearly a time of great change and opportunity for the red meat industry, Hereford breeders, related commercial enterprises and HAL. Genomic technologies will transform cattle breeding over the coming years; competition from other protein sources will continue; the uncertainties of operating “on the land” in Australia will not abate; community and government expectations of organisations and their governance will continue to rise.
- Good governance is not an end in itself: it is a means to a greater end. The ongoing drive to create and sustain a strong, successful Hereford breed will be enhanced by a strong, successful, well-managed and governed breed corporation in HAL.
- In this report I have attempted to lay out a series of Recommendations that will strengthen HAL’s governance while not imposing an unsustainable compliance burden beyond the initial implementation phase.
- I wish the Board and HAL all the best in the future.

Philip Pogson FAICD  
 Director, The Leading Partnership Pty Ltd  
 February 22, 2017

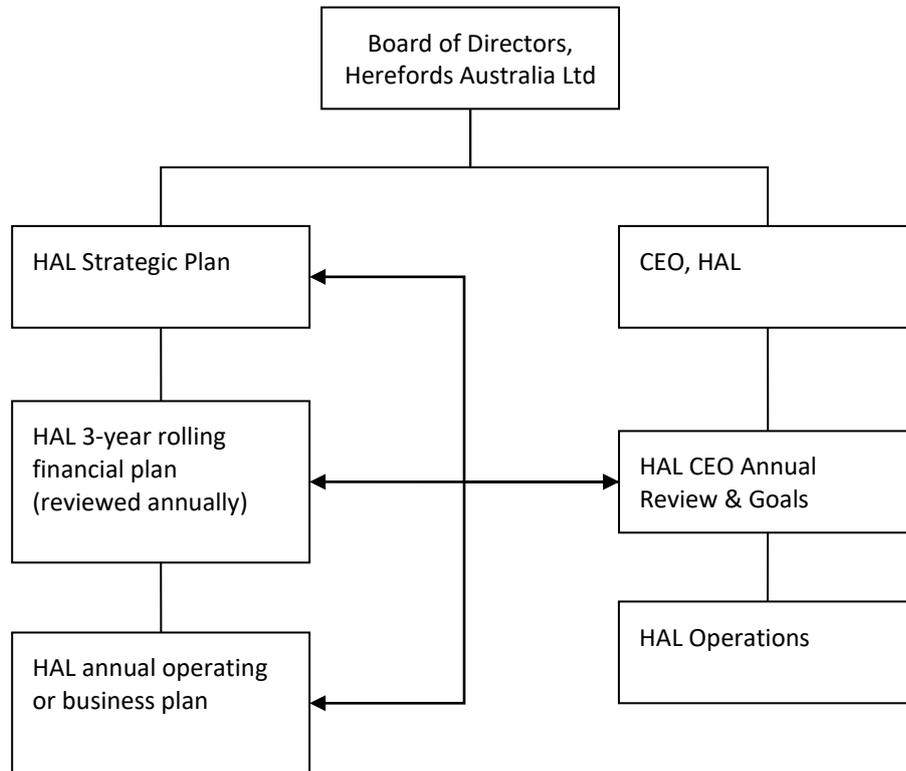
## Appendices

### Appendix 1 – table of recommendations

Recommendation Number	Detail
<b>Recommendation 1</b>	That the Board resolve to adopt a culture of compliance and best practice regarding corporate governance.
<b>Recommendation 2</b>	That the Board resolve to develop a Board Charter for HAL
<b>Recommendation 3</b>	That the Board resolve to develop a conflict of interest register that includes: 1. Related party transactions; and: 2. Standing conflicts
<b>Recommendation 4</b>	That the Board resolve to separate the roles of CEO and Company Secretary
<b>Recommendation 5</b>	That the board work with the CEO to develop and approve a set of high level CEO objectives for 2017 and each year thereafter
<b>Recommendation 6</b>	That based on the CEO's goals for 2017, the board empowers and resources the CEO to develop a "one page" interim strategic plan for HAL that can act as a guiding document until a new strategic plan is developed for the organisation.
<b>Recommendation 7</b>	That the board resolve to create a rolling 3-year financial plan for HAL
<b>Recommendation 8</b>	That the board resolve to develop a risk register for HAL
<b>Recommendation 9</b>	<p>There are several other items to which attention should be addressed.</p> <p>9.1 A review of the structure and content of staff letters of appointment should be completed.</p> <p>9.2 The development of an annual calendar of board meetings which includes key policies and financial reviews are undertaken over each annual business cycle.</p> <p>9.3 Review of the way minutes are notated</p> <p>9.4 As Hereford Youth is separately incorporated its accounts should not be included in HAL's accounts. This practice should cease.</p> <p>9.5 Revision or drafting of the Board confidentiality policy</p>
<b>Recommendation 10</b>	<p>That the Board resolve to put to Members that</p> <ul style="list-style-type: none"> <li>▪ Company Objects be revised and limited to 6-8 objects</li> <li>▪ Consideration be given to removing "breed purity" as a stand-alone Object</li> <li>▪ That the objects include promoting "world-leading/world class Herefords cattle" or a similar phrase</li> </ul>
<b>Recommendation 11</b>	<p>That the Board resolve to put to Members that</p> <ul style="list-style-type: none"> <li>▪ The maximum number of Directors be reduced from 12 to 8</li> <li>▪ The board be given the power to appoint up to 2 directors with relevant skills and interests for a period up to 2 years. The maximum board size elected and appointed to be no more than 8</li> </ul>

Recommendation Number	Detail
	<ul style="list-style-type: none"> <li>▪ A further attempt is made to remove the 6 polled – 6 horned director clause</li> <li>▪ In addition, although it is not a matter for Members, the Board should develop a skills matrix and review the matrix periodically</li> </ul>
<b>Recommendation 12</b>	<p>That the Board resolve to develop charters for the following 4 committees:</p> <ul style="list-style-type: none"> <li>▪ Audit and Risk</li> <li>▪ Investment</li> <li>▪ Research and Development</li> <li>▪ Youth</li> </ul> <p>All other committees to be dissolved. Key operational tasks be allocated to management with the necessary resources to deliver or addressed though means other than that of a Board committee.</p>
<b>Recommendation 13</b>	<p>That the Board resolve to put to Members that</p> <ul style="list-style-type: none"> <li>▪ Clause 9 be reviewed</li> <li>▪ Youth Members over 18 years of age be given 1 vote</li> <li>▪ No change be made to existing Life Member privileges and voting rights</li> <li>▪ That the term “Life Membership” be replaced by “Honorary Membership” in future</li> <li>▪ Honorary Members appointed from this point in time onwards lose their voting rights if they cease to own cattle. It should be confirmed that life membership is only awarded to “natural persons”</li> <li>▪ Honorary Memberships not be sold but be awarded on the basis of long term service to the breed and HAL</li> </ul>
<b>Recommendation 14</b>	<p>That the Board resolve to put to Members that</p> <ul style="list-style-type: none"> <li>▪ Directors be elected for a maximum 2 x 4 year terms or 8 continuous years’ service. Directors to be eligible again for election after a 12-month break. Elections to be held every second year.</li> </ul>
<b>Recommendation 15</b>	<p>That the Board resolve to</p> <ul style="list-style-type: none"> <li>▪ Further analyse the data gained from this survey and, where applicable, integrate the data into future plans and priorities as well as Member communication and engagement strategies</li> <li>▪ Consider repeating this kind of survey at a later date including a paper version mailed out to Members.</li> </ul>

## Appendix 2 – the relationship between corporate plans and CEO goals



- The strategic plan is HAL’s core planning document (public document owned by the Board)
- The 3-year rolling financial plan provides the financially underpinning for achieving HAL’s strategic and operational goals and maintaining solvency. It also lays out the principles by which HAL’s finances are managed. (possibly developed by the Finance Committee and CEO; approved by the board)
- The operating or business plan is a functional document that operationalises HAL’s plans on an annual basis (developed by the CEO & Exec; inward focus for CEO and staff; may be approved by the board)
- The CEO performance review and goal setting process is informed by strategic and operational elements of all HAL’s plans (performance review by a Board committee in December or towards the end of the financial year; goals formulated for the following year and embodied in the business plan and other plans as appropriate)

### Appendix 3 – Word Cloud diagram Question 14

Q14 In my view, over the next 5 - 10 years, the 5 most important priorities for Herefords Australia are:

Answered: 225 Skipped: 37

