



HeartKids

Heart Kids New Zealand Incorporated

Constitution

Adopted: [date]

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1. Definitions and Interpretation

1.1 Definitions

The following definitions apply in this Constitution:

Act means the Incorporated Societies Act 2022.

AGM has the meaning given at clause 10.1.

Balance Date means 31 March each year.

Board means the Officers acting as a board in accordance with this Constitution.

Board Roles means the Officers holding the positions of Chairperson and Deputy Chairperson on the Board.

Branch means a group of Members certified as a branch in accordance with clause 7.

Certificate of Affiliation means a certificate that records that a Branch has been approved to operate in accordance with Society's Policies.

Charities Act means the Charities Act 2005.

CHD means congenital heart disease or heart disease acquired before a child turns 18 years old.

Constitution means this document, together with any variations of it.

Elected Officer means Officers elected to the Board under clause 8.2(a)(i).

Financial Year means the year ending on the Balance Date.

General Meeting means an AGM or SGM of the Society.

Heart Child means a person who suffers from CHD.

Income Tax Act means the Income Tax Act 2007.

Interested Officer means an Officer who is interested in a matter for any of the reasons set out in section 62 of the Act or an Officer that:

- (a) is associated with or employed by an organisation from which the Society seeks funding or services contracts or that advocates or promotes ideas that are inconsistent with the Purposes; or
- (b) has a relationship or whose conduct (whether or not that relationship or conduct is ongoing) that compromises their ability to promote the interests or Purposes of the Society or has caused, or has the potential to cause, any harm to the Society or any of its Members.

Interests Register means the register of interests of Officers maintained by the Board under clause 11.1.

Member means a member of the Society in accordance with clause 4.

Notice means any notice or other communication given under this Constitution and in accordance with clause 19.

Officer means an officer of the Board appointed under clause 8.5 or clause 8.6 and any natural person occupying a position in the Society that allows the person to exercise significant influence over the management or administration of the Society.

Parent means the guardian or guardians of a Heart Child but also includes any other person who is a primary caregiver for a Heart Child.

Purposes means the purposes of the Society described at clause 3.

Quorum for Board Meetings means at least two thirds of the Officers of the Board, including at least two Elected Officers.

Quorum for General Meetings means at least 10 Voting Members excluding any current Board Members.

Region means the five geographical areas (known as Upper North Island, Central North Island, Lower North Island, Upper South Island and Lower South Island) with specific boundary lines determined from time to time by the Board and approved at the following General Meeting.

Register of Members means the register of Members kept under this Constitution.

Society means the incorporated society with the name specified at clause 2.1.

Society's Policies means any policy adopted by the Board in accordance with clause 9.

SGM has the meaning given at clause 10.3(a).

Special Resolution means a resolution passed by at least 80% of those persons present at a meeting and entitled to vote.

Subscription Fee means the subscription fee payable by Members under clause 5.

Voting Member means a member entitled to vote in accordance with clause 4.

Whānau means the family and friends of a Heart Child or their Parents.

1.2 Interpretation

The following rules of interpretation apply in this Constitution:

- (a) References to **persons** include natural persons, companies and any other body corporates (wherever incorporated) and unincorporated bodies (wherever formed).
- (b) **Headings** and **subheadings** have been inserted for convenience only and will not affect the interpretation of this Constitution.
- (c) A **gender** includes each other gender and the **singular** includes the plural and vice versa.
- (d) References to a **statute** or **statutory provision** means a New Zealand statute or statutory provision as amended, consolidated and/or replaced from time to time.
- (e) The Board shall determine any question of interpretation of this Constitution.

2. Name of the Society

2.1 Name

The name of the society is Heart Kids New Zealand Incorporated.

3. Purposes and Powers

3.1 Mission

The Society seeks to provide lifelong support to all those affected by CHD. The Society understands that Heart Children may need help and support not only during their early years, but throughout their lives.

3.2 Purposes

Subject to clauses 3.2 and 3.3, the Purposes of the Society are:

- (a) to support Heart Children and their Whānau;
- (b) to give practical and financial support to Heart Children and their Parents;
- (c) to educate Heart Children and their Whānau about CHD and the support available to them;
- (d) to educate the public about the needs of Heart Children and their Whānau;
- (e) to fund equipment for Heart Children; and
- (f) to provide representational advocacy for Heart Children and their Whānau.

3.3 No Purposes outside New Zealand

The Purposes cannot include furthering or attaining any Purposes outside New Zealand.

3.4 Restrictions on Personal Benefits

- (a) Subject to clause 3.4(b), no Member or Officer, or any associated person may derive any personal pecuniary gain from membership of the Society.
- (b) The Society may provide financial benefits to a Member or Officer, or any associated person but only on arm's length terms and any payments made in respect of such transactions must be limited to:
 - (i) a fair and reasonable reward for services performed;
 - (ii) reimbursement of expenses properly incurred;
 - (iii) usual professional, business or trade changes; and/or
 - (iv) interest at no more than current commercial rates.

3.5 Powers

The Society will have the widest possible powers to further all or any of the Purposes as conferred by law. Without limiting that right, the Board will have the power to:

- (a) use such of its funds to pay the costs and expenses of furthering or carrying out the Purposes;
- (b) develop and maintain relationships with, and support, individuals, groups and organisations whose objectives are complementary to those of the Society;
- (c) undertake research into matters relating to Heart Children;
- (d) incorporate, invest in or fund any entity or organisation where it is consistent with the Purposes of the Society;
- (e) take proceedings or any other form of legal action, including but not limited to, judicial review proceedings;
- (f) purchase or otherwise acquire any property;
- (g) sell, exchange, or otherwise dispose of any property;
- (h) grant or obtain an option to purchase, sell, lease, or exchange any property;
- (i) lease, take on lease, or renew, vary, or surrender any lease of any property on any terms and conditions;
- (j) borrow money;

- (k) lend money to any person on any terms and conditions (and whether with or without security or interest);
- (l) grant security (whether by mortgage, charge, pledge, or otherwise) over any property (whether or not the liabilities or obligations secured are joint, several, or joint and several);
- (m) grant any guarantee or indemnity;
- (n) renew, confirm, or vary any debt, security, guarantee, or indemnity;
- (o) invest the funds of the Society;
- (p) employ, engage and remunerate any person for services rendered to the Society (subject to clause 3.4(b));
- (q) enter into any other commercial arrangements for the benefit of its Members;
- (r) make regulations and bylaws pursuant to this Constitution; and
- (s) do any other thing which is incidental or conducive to the attainment of the Purposes.

4. Members

4.1 New Members

- (a) An individual may apply to be a Member.
- (b) An applicant for membership must complete any application form, agree to adhere to Heart Kids' Policies, supply any information, or attend an interview, as may be required by the Board in its entire discretion, regarding an application for membership.
- (c) The Board will decide whether to accept or decline an application for membership in its entire discretion. The Board must advise the applicant of its decision, but is not required to provide reasons for that decision.
- (d) All Members must provide written consent to become a Member of the Society by signing the application form or giving consent in electronic form where permitted by the Society.

4.2 Categories of Membership

- (a) The Society has the following categories of Membership:
 - (i) Category 1 – Heart Children and Parents of Heart Children;
 - (ii) Category 2 – Whānau of Heart Children;
 - (iii) Category 3 – Life Members; and
 - (iv) Category 4 – Honorary Members.
- (b) A Member may hold more than one category of membership (for example, a Parent of a Heart Child may also be a Life Member and a Heart Child may also be an Honorary Member). For the avoidance of doubt a person who hold more than one category of membership may exercise all the rights of each category of membership that they hold (for example, a Parent of a Heart Child who is also a Life Member may be elected to the Board).

4.3 Category 1 Members: Heart Children and Parents of Heart Children

- (a) Category 1 Members have full voting and speaking rights at any General Meeting and can be elected to the Board or co-opted on to the Board.

- (b) Notwithstanding clause 4.3(a), Heart Children may only vote, be elected, or be co-opted to the Board once they are 18 years old. Heart Children of any age may speak at General Meetings.

4.4 Category 2 Members: Whānau of Heart Children

- (a) Category 2 Members have full voting and speaking rights at any General Meeting after they have been a Member for a year.
- (b) During their first year of membership, Category 2 Members may attend, but do not have voting or speaking rights at a General Meeting.
- (c) Category 2 Members cannot be elected to the Board but can, at any time, be co-opted on to the Board.

4.5 Category 3 Members: Life Members

- (a) Category 3 Members have full voting and speaking rights at any General Meeting.
- (b) Category 3 Members cannot be elected to the Board but can be co-opted on to the Board.

4.6 Category 4 Members: Honorary Members

- (a) Category 4 Members may attend, but do not have voting or speaking rights at any General Meeting.
- (b) Category 4 Members cannot be elected to the Board but can be co-opted on to the Board.

4.7 Register of Members

- (a) The Society must keep an up-to-date Register of Members recording:
 - (i) the name of each Member;
 - (ii) the last known contact details of each Member;
 - (iii) the date on which each person became a Member; and
 - (iv) all other information required under this Constitution or prescribed by the Act (if any).
- (b) Members must provide Notice to the Chief Executive or their delegate of any change to the details in clause 4.7(a).
- (c) The Society will ensure the Chief Executive or their delegate updates the Register of Members as soon as possible after becoming aware of changes to the information recorded in the Register of Members.

5. Subscription Fees and Levies

5.1 Subscription Fees

An annual Subscription Fee may be fixed from time to time by the Board.

5.2 Membership Levies

The Board may, at any time and in its discretion, create a further levy required to be paid by Members to meet any extraordinary expenditure.

5.3 Payment of Subscription Fees and Levies

The Board will decide when Subscription Fees and any further levies payable by Members under clause 5.2 must be paid.

5.4 Consequences of Non-payment

A Member who fails to pay their Subscription Fee or any further levy payable under clause 5.2 may:

- (a) not vote at a General Meeting;
- (b) not enjoy any of the other rights or privileges of membership; and
- (c) be removed as a Member in accordance with clause 6.1(b).

6. Termination of Membership

6.1 Removal of a Member

The Board may, by Special Resolution, decide to end or, where appropriate, suspend or impose certain conditions on the membership of any Member:

- (a) who ceases to be qualified to be a Member;
- (b) if any payment due by the Member to the Society is overdue;
- (c) if the Member fails to observe this Constitution or any regulations made under this Constitution;
- (d) if the Member dies, becomes bankrupt or, if a corporate body, is liquidated or otherwise ceases to exist;
- (e) if the Member fails to comply with the Society's Policies;
- (f) if the Board considers that the Member's conduct (whether it occurred before or after the adoption of this Constitution) has caused, or has the potential to cause, any harm to the Society or any of its Members;
- (g) an adverse finding is made against them following a dispute resolution process in accordance with clause 20.2(b)(ii); or
- (h) if the Member is convicted of a category 3 or 4 offence under the Criminal Procedure Act 2011 or an offence for which a convicted person may be imprisoned.

6.2 Investigative process

Before taking any action under clause 6.1, the Board must ensure that:

- (a) the matter has been investigated in accordance with the Society's Policies; and
- (b) the Member concerned is given a reasonable opportunity to make submissions to the Board.

6.3 Resignation of a Member

A Member may resign from the Society by giving Notice to the Society. The resignation will take effect from the date of the Notice of resignation.

6.4 Consequences of Termination of Membership

If a Member's membership is terminated for any reason, the Member:

- (a) will still be liable to the Society for payment of all moneys which are due for payment before their membership ends;
- (b) will be refunded any subscriptions, levies or other payments paid to the Society in relation to the then current Financial Year on a pro-rata basis;
- (c) must immediately return to the Chief Executive or their delegate all the Society's

- property which is in the Member's possession or control; and
- (d) must not hold themselves out in the future as a Member of the Society.

7. Branches

7.1 Purpose

The Society's Branches are groups of Members approved by the Board to carry out fundraising and support activities for the Society in specified geographic areas. The Society's Branches are a vital and integral part of the Society's operations and its ability to fulfil its Purposes.

7.2 Affiliation

Branches must at all times:

- (a) hold a certificate of affiliation issued in accordance with the Society's Policies (**Certificate of Affiliation**); and
- (b) comply with the Society's Policies.

7.3 Legal Status

- (a) The Society's Branches are part of the Society and are not separate legal entities.
- (b) The Society's Branches must not purport to represent the Society other than in accordance with the Society's Policies.
- (c) The Society is not liable for any action, obligations or debts incurred by a Branch which arose in breach of this Constitution or the Society's Policies. Any such action, obligations, or debts are the personal responsibility of the Members concerned.
- (d) All assets held by a Branch are assets of the Society.

7.4 Termination of Certificate of Affiliation

- (a) Any Branch may request that its Certificate of Affiliation be cancelled by sending a written request to the Board. Cancellation takes effect as determined by the Board in accordance with the Society's Policies.
- (b) If a Branch does not comply with the Society's Policies the Board may review that Branch's Certificate of Affiliation and the conduct of the Members involved.
- (c) A Branch's Certificate of Affiliation may be suspended, cancelled, or made subject to specific conditions, by a Special Resolution of the Board for:
 - (i) any failure to comply with the Society's Policies; or
 - (ii) any other conduct (whether it occurred before or after the adoption of this Constitution) that has caused, or has the potential to cause, any harm to the Society or any of its Members.
- (d) Before taking any action under clause 7.4(c), the Board must ensure that:
 - (i) the matter has been investigated in accordance with the Society's Policies; and
 - (ii) the Members concerned have been given a reasonable opportunity to make submissions to the Board.
- (e) A Certificate of Affiliation is cancelled from the time provided for in the resolution of the Board made in accordance with 7.4.
- (f) The decision to cancel a Certificate of Affiliation may be appealed to the next General Meeting, at which meeting the Members (not including the Members who participated in the Branch in issue) shall vote to determine whether to confirm the decision of the

Board or to reinstate the Certificate of Affiliation.

- (g) The cancellation of a Branch's Certificate of Affiliation or imposition of conditions in no way limits the power of the Board to suspend or expel a Member or make their membership subject to specific conditions.

8. The Board

8.1 Role of the Board

- (a) The Board must govern, manage, direct, or supervise the operation and affairs of the Society and has full power to do so.
- (b) The Board shall be responsible for, either directly or through the Society's subcommittees, employees, contractors or volunteers:
 - (i) administer the affairs of the Society;
 - (ii) develop, implement and govern the Society's policies, plans and resolutions;
 - (iii) at regular intervals inform, consult, and seek direction from Members on the affairs of the Society;
 - (iv) employ the paid employees of the Society or engage contractors;
 - (v) enlist the aid of professional organisations, advisors, or volunteers;
 - (vi) approve contracts for services to the Society;
 - (vii) be accountable for the Society's funding and finances;
 - (viii) receive and consider recommendations from the Society's subcommittees, Officers, Members, employees, contractors, and volunteers and act as it considers appropriate;
 - (ix) convene the AGM and present an annual report;
 - (x) accept, suspend, terminate, or place conditions on membership of the Society;
 - (xi) receive, investigate, and determine complaints in accordance with the Society's Policies;
 - (xii) review the operational procedures of the Society; and
 - (xiii) do such things that promote the Purposes.

8.2 Composition of the Board

- (a) The Board shall comprise the following Officers:
 - (i) six Category 1 Members elected or otherwise appointed under this clause 8; and
 - (ii) at least one other person, and up to four other persons, co-opted by the Elected Officers. When deciding who to appoint to the Board, consideration will be given to the ability of each nominee to promote the purposes of the Society and whether they possess skills of value to the Society additional to those of the Elected Officers.
- (b) If the Elected Officers are all:
 - (i) Parents of a Heart Child, then (in addition to the co-opted Board members provided for in clause 8.2(a)(ii)) a Heart Child (who is 18 years of age or older) shall be co-opted to the Board; or
 - (ii) Heart Children, then (in addition to the co-opted Board members provided for

in clause 8.2(a)(ii)) a Parent of a Heart Child shall be co-opted to the Board.

- (c) A co-opted member of the Board under clause 8.2(a)(ii) may be, but does not need to be, a Member. A General Meeting may, on the request of a Voting Member, consider the appointment of a co-opted member of the Board. The General Meeting may, if no other satisfactory resolution is reached, vote to remove the co-opted member of the Board by a simple majority vote.
- (d) The Board shall appoint from the Board members on an annual basis, persons to hold the following Board Roles:
 - (i) a Chairperson; and
 - (ii) a Deputy Chairperson.
- (e) From the Elected Officers:
 - (i) one Category 1 Member shall be elected to represent each of the Central North Island, Lower North Island, Upper South Island, and Lower South Island Regions by Voting Members who reside in the relevant Region; and
 - (ii) two Category 1 Members shall be elected to represent the Upper North Island Region by Voting Members who reside in that Region.
- (f) If no Category 1 Member is nominated to represent a Region in accordance with clause 8.2(e), or a vacancy arises during an Officer's term on the Board, the Board may appoint a Category 1 Member from the relevant Region to the Board. When making such appointment the Board must consider the composition of the Board and importance of having both Parents of Heart Children and Heart Children participate on the Board. For the avoidance of doubt, an appointment under this clause 8.2(f):
 - (i) does not terminate any appointment already made under clause 8.2(b); but
 - (ii) satisfies the requirements of clause 8.2(b) if no appointment has yet been made.

8.3 Board Roles

The Chairperson and, in the absence of the Chairperson, the Deputy Chairperson is responsible for:

- (a) Leading the Society.
- (b) Chairing General Meetings and Board meetings in accordance with clauses 9.3 and 10.6.
- (c) Calling a Board meeting, if clause 9.2(a) applies.
- (d) Liaising with the Chief Executive.

8.4 Eligibility of Officers

To qualify for appointment as an Officer, a nominee must satisfy the qualifications for appointment as an Officer under section 47 of the Act.

8.5 Appointment of Officers

Elected Officers will be appointed as follows:

- (a) The Board may choose to operate either:
 - (i) a postal vote election; or
 - (ii) an online election using online voting software and/or an external elections provider.
- (b) The Board will call for nominations for any vacancies on the Board.

- (c) No later than 45 days prior to the AGM, Category 1 Members prepared to stand for election to the Board shall send their nomination form to the Board. The nomination form of each candidate must be signed by two Voting Members who reside in the nominated person's Region.
- (d) When considering nomination for membership of the Board under clause 8.2(a), the Voting Members must consider the ability of each nominee to:
 - (i) promote the purposes of the Society; and
 - (ii) fulfil the obligation of collective responsibility outlined in clauses 8.8(c) and 8.8(d).
- (e) No later than two weeks prior to the AGM, the Board shall send voting forms to all Voting Members within a Region with names of those Category 1 Members standing for election to the Board from that Region.
- (f) Voting forms must be returned to the Board or online voting must be completed (as the case may be) prior to the AGM. At the AGM the voting forms shall be opened, counted and witnessed by at least three Members appointed by the Board. If an online election is held, the voting forms shall be counted by the online voting software and/or external elections provider.
- (g) If there is only one nomination for each vacancy on the Board, the Board is not required to send voting forms for that Region. The person nominated will be declared to be elected without the need for a vote.
- (h) If any vote is tied, the tie must be resolved by the other members of the incoming Board.

8.6 **Casual Vacancies**

- (a) If, between AGMs, a vacancy arises on the Board, that vacancy must be filled by the Board.
- (b) When making an appointment for a vacancy under 8.2(e), the Board must have consideration for the factors outlined in clause 8.2(f).

8.7 **Term**

- (a) Elected Officers will hold office from the AGM at which they were elected to the end of the AGM two years after the AGM at which they were elected.
- (b) Officers appointed under clauses 8.2(b) and clause 8.2(f) will hold office from the date of their appointment until the end of the next AGM.
- (c) Co-opted Officers appointed under clause 8.2(a)(ii) will hold office for the period of time set by the Board when the co-opted Officer is appointed but this term must not exceed two years.
- (d) At the expiry of the term of service of an Officer on the Board, that Officer may seek re-election or re-appointment provided that such re-election or re-appointment would not cause the Officer to serve five consecutive terms of appointment. Following a stand-down period of at least two years that person will then be eligible to be re-elected or re-appointed. For the avoidance of doubt, when applying this clause 8.7(d), service on the Board before the adoption of this Constitution is to be included.
- (e) If all the Elected Officers are due for their term of appointment to expire at the same AGM, at least one such Officer must be re-elected to the Board. If none are seeking re-election, the Officers will decide between themselves as to which of their number shall remain on the Board for a further one year term, and, in the absence of unanimous agreement, it shall be determined by lot.

8.8 **Duties owed by Officers**

An Officer:

- (a) when exercising powers or performing duties as an Officer, must act in good faith and in what the Officer believes to be the best interests of the Society;
- (b) must exercise a power as an Officer for a proper purpose;
- (c) is individually and collectively responsible for promoting the interests of the Society;
- (d) is individually and collectively accountable to all of the Members;
- (e) must not act, or agree to the Society acting, in a manner that contravenes the Act or this Constitution;
- (f) when exercising powers or performing duties as an Officer, must exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances, taking into account, but without limitation:
 - (i) the nature of the Society;
 - (ii) the nature of the decision; and
 - (iii) the position of the Officer and the nature of the responsibilities undertaken by them;
- (g) must not:
 - (i) agree to the activities of the Society being carried on in a manner likely to create a substantial risk of serious loss to the Society's creditors; or
 - (ii) cause or allow the activities of the Society to be carried on in a manner likely to create a substantial risk of serious loss to the Society's creditors;
- (h) must not agree to the Society incurring an obligation unless the Officer believes at that time on reasonable grounds that the Society will be able to perform the obligation when it is required to do so; and
- (i) when exercising powers or performing duties as an Officer, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by:
 - (i) an employee of the Society whom the Officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (ii) a professional adviser or expert in relation to matters that the Officer believes on reasonable grounds to be within the person's professional or expert competence; or
 - (iii) any other Officer or subcommittee of Officers upon which the Officer did not serve in relation to matters within the Officer's or subcommittee's designated authority,

provided the Officer acts in good faith, makes proper inquiry where the need for inquiry is indicated by the circumstances, and has no knowledge that the reliance is unwarranted.

8.9 Sub-committees

- (a) The Board may appoint such sub-committees, with or without delegated authority, as it considers necessary to achieve the Purposes of the Society.
- (b) Any sub-committee shall consist of at least one Officer. Members may be co-opted, from whatever sources or areas of expertise as the Board thinks fit.

8.10 Honoraria and Expenses

Subject to clause 3.4(b), Officers:

- (a) may receive such honoraria as may be set by resolution of a General Meeting; and

- (b) are entitled to be reimbursed by the Society for any reasonable actual expenses incurred by them on behalf of the Society as approved by resolution of the Board.

8.11 Officer Ceasing to Hold Office

- (a) An Officer ceases to hold office if that person:
 - (i) resigns in accordance with clause 8.11(b);
 - (ii) is removed from office in accordance with clause 8.11(c);
 - (iii) has been absent without permission of the Board from two meetings of the Board;
 - (iv) is unable, for any reason, to properly fulfil their obligations as a member of the Board.
 - (v) becomes disqualified from being an Officer under section 47(3) of the Act;
 - (vi) dies;
 - (vii) has an adverse finding made against them following a dispute resolution process in accordance with clause 20.2(b)(iii); or
 - (viii) otherwise vacates office in accordance with this Constitution.
- (b) An Officer may resign by giving written Notice to the Chairperson. The resignation will take effect from the date it is received by the Chairperson or at any later time specified in the Notice.
- (c) The Board may, by Special Resolution of the Board, remove any Officer from the Board before the expiry of their term if the Board considers that Officer has seriously breached duties under this Constitution or the Act or is no longer suitable to be an Officer. That Officer will be counted for the purpose of reaching a Quorum for Board Meetings, but will not participate in the vote. Before considering removal, the affected Officer must be given Notice that a Board meeting is to be held to discuss their removal and the basis for that motion and the opportunity to provide written submissions or be heard at the Board meeting.
- (d) Each Officer must, within 10 Working Days of the date they cease to hold office, deliver to the Board all the Society's property which is in the Officer's possession or control.

9. Board Meetings

9.1 Self-regulation

Except as otherwise prescribed by the Act, this Constitution or any bylaw, the Board may regulate its own procedures.

9.2 Calling a Board Meeting

- (a) A Board meeting may be called at any time:
 - (i) by the Chairperson; or
 - (ii) in the absence of the Chairperson, by the Deputy Chairperson; or
 - (iii) at the request of two Officers.
- (b) A Board meeting shall be held at least four times during each Financial Year.

9.3 Chairperson

All Board meetings must be chaired by the Chairperson, or in the Chairperson's absence by the Deputy Chairperson, or in the absence of both of them by another Officer appointed by the Board.

9.4 **Quorum**

No business may be transacted at a Board meeting if a Quorum for Board Meetings is not present. For the purposes of constituting a Quorum for Board Meetings, an Officer is present if they are attending in person or by telephone (or any other equivalent audio or audio and visual means).

9.5 **Voting**

- (a) Each Officer has one vote. The Chairperson of each Board meeting is entitled to a casting vote.
- (b) Voting at each Board meeting will generally be by voice or show of hands as determined by the Chairperson of the Board meeting, unless any request for a secret ballot is made by an Officer. Voting by electronic means is permitted.
- (c) A declaration by the Chairperson of the Board meeting that a resolution is carried by the necessary majority is conclusive evidence of that fact.

9.6 **Decisions**

All decisions of Board meetings will be made by a simple majority of the votes of Officers present and entitled to vote, unless this Constitution provides otherwise.

9.7 **Minutes**

The Board must keep minutes of each Board meeting. The Chairperson of that meeting must appoint an Officer or such other individual in attendance to keep minutes of the meeting. Minutes shall be circulated to the Board after each meeting.

9.8 **Method for Holding Meetings**

Board meetings may be held by a Quorum for Board Meetings:

- (a) being assembled together at the place, date and time appointed for the Board meeting;
- (b) by means of audio, or audio and visual, communication by which all those participating can simultaneously hear each other throughout the Board meeting; or
- (c) by a combination of both of the methods described in clauses 9.8(a) and 9.8(b).

9.9 **Resolution in Lieu of a Board Meeting**

- (a) Subject to clause 9.9(d), a written resolution may be passed in lieu of a Board meeting and is as valid as if it had been passed at a Board meeting if it is approved by the required majority of Officers.
- (b) A written resolution may consist of one or more documents in similar form (including letters, electronic mail, or other similar means of communication) each approved by one or more Officers.
- (c) An Officer may give their approval to a written resolution by signing the resolution or providing approval by email or other electronic means approved by the Board.
- (d) A written resolution may not be passed in lieu of a Board Meeting in relation to the matters outlined in clauses 6.1, 7.4(c), and 8.11(c).

9.10 **Irregularities**

Any inadvertent failure to comply with any procedural requirement for any Board meeting does not invalidate the Board meeting nor prevent the Board from considering the business of the Board meeting.

10. General Meetings

10.1 Annual General Meetings

An annual general meeting of Members must be held every year (**AGM**) not later than:

- (a) six (6) months after the Balance Date; and
- (b) fifteen (15) months after the previous AGM.

10.2 Business of AGM

The following business will be considered at the AGM:

- (a) Approving the minutes of the previous AGM.
- (b) Presentation from the Board of:
 - (i) an annual report on the operations and affairs of the Society during the most recently completed Financial Year;
 - (ii) the financial statements of the Society for that period; and
 - (iii) Notice of any disclosures of conflicts of interest made by Officers during that period, including a brief summary of the matters, or types of matters, to which those disclosures relate.
- (c) The election of Officers.
- (d) Consideration of any remits submitted under clause 10.5.
- (e) The appointment of an auditor.
- (f) General business.

10.3 Special General Meetings

- (a) A special general meeting is a meeting of Members, other than an AGM, called for a specific purpose (**SGM**).
- (b) A SGM may be called at any time by the Board if it receives a request in writing stating the purpose of the SGM:
 - (i) from the Board; or
 - (ii) from a Member at least 30 days prior to when the SGM will be held.
- (c) A SGM will only consider and deal with the business specified in the request for the SGM.

10.4 Notice of Meetings

- (a) The Board must give every Member at least 30 days' Notice of an AGM and at least 14 days' Notice of a SGM. In the case of a SGM, if the Board determines that it is not reasonably practicable to give 14 days' notice in the circumstances, the Board shall give as much notice of the SGM as is reasonably practicable in the circumstances.
- (b) Each Notice must include:
 - (i) the date, time and place of the General Meeting;
 - (ii) an agenda setting out the nature of the business to be conducted at the General Meeting;
 - (iii) the text of any resolution to be put to the General Meeting;
 - (iv) copies of any remits submitted under clause 10.5 or details of how they can be accessed on the Society's website;

- (v) the right of a Voting Member to vote by voting form or by electronic means;
- (vi) in the case of an AGM, a draft copy of the annual accounts and annual report or details of how they can be accessed on the Society's website; and
- (vii) in the case of an AGM, details of the individuals nominated for election to the Board or details of how they can be accessed on the Society's website.

10.5 Remits

Any remits must be received by the Board no later than:

- (a) 45 days prior to an AGM; and
- (b) 30 days prior to an SGM,

provided that in no case will a remit be considered at a General Meeting if it is received on or after Notice of the General Meeting is given under clause 10.4.

10.6 Chairperson

The Chairperson will chair all General Meetings or, in the Chairperson's absence by the Deputy Chairperson, or in the absence of both of them the Members present will elect a chair of the General Meeting.

10.7 Quorum

- (a) Subject to clauses 10.7(b) and 10.7(c), no business may be transacted at a General Meeting if a Quorum for General Meetings is not present.
- (b) If a Quorum for General Meetings is not present within 30 minutes of the start time for the meeting, the meeting will be adjourned to a date and at a time and place decided by the Chairperson.
- (c) If a Quorum for General Meetings is not present for the adjourned meeting within 30 minutes of the start time, the Members present will be a Quorum for General Meetings.

10.8 Decisions

All decisions of General Meetings will be made by consensus in the first instance. Where a decision cannot be made by consensus, it will be determined by a vote of the Voting Members.

10.9 Voting

- (a) Voting at each General Meeting will generally be by voice or show of hands as determined by the Chairperson of the General Meeting, unless the Chairperson of the General Meeting determines that a secret ballot is appropriate. Voting by electronic means is permitted.
- (b) A declaration by the Chairperson of a General Meeting that a resolution is carried by the necessary majority is conclusive evidence of that fact.
- (c) The Chairperson of each General Meeting will be entitled to a second or casting vote.
- (d) Subject to this Constitution every other Voting Member present is entitled to one vote.

10.10 Minutes

The Board must keep minutes of each General Meeting. The Chairperson of that meeting must appoint an Officer or such other individual in attendance to keep minutes of the meeting.

10.11 Method for Holding Meetings

General Meetings may be held by a Quorum for General Meetings:

- (a) being assembled together at the place, date and time appointed for the General

Meeting;

- (b) by means of audio, or audio and visual, communication by which all those participating can simultaneously hear each other throughout the General Meeting; or
- (c) by a combination of both of the methods described in clauses 10.11(a) and 10.11(b).

10.12 Resolution in Lieu of a General Meeting

- (a) A written resolution may be passed in lieu of a General Meeting and is as valid for the purposes of the Act and this Constitution as if it had been passed at a General Meeting if it is approved by no less than 80% of the Voting Members.
- (b) A written resolution may consist of one or more documents in similar form (including letters, electronic mail, or other similar means of communication) each approved by or on behalf of one or more Members.
- (c) A Member may give their approval to a written resolution by signing the resolution or providing approval by email or other electronic means approved by the Board.

10.13 Irregularities

- (a) An irregularity in the manner of calling a General Meeting is waived if all Members entitled to attend and vote at the meeting attend the General Meeting without protest as to the irregularity, or if all such Members agree to the waiver.
- (b) An accidental omission to give Notice of a General Meeting to, or a failure to receive Notice of a General Meeting by a Member does not invalidate the General Meeting nor prevent the General Meeting from considering the business of the General Meeting.
- (c) Without limiting clauses 10.13(a) and 10.13(b), any inadvertent failure to comply with any other procedural requirement for any General Meeting does not invalidate the General Meeting nor prevent the General Meeting from considering the business of the General Meeting if:
 - (i) the Chairperson in their discretion determines that it is still appropriate for the General Meeting to proceed despite the irregularity; and
 - (ii) a motion to proceed is put to the General Meeting and such motion is passed by a Special Resolution.

11. Conflicts of Interest

11.1 Interests Register

The Board shall maintain and update the Interests Register as necessary, recording the interests disclosed by Interested Officers.

11.2 Interested Officer

An Officer who is an Interested Officer in respect of any matter being considered by the Society, must disclose details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified) to the Board (to record in the Interests Register).

11.3 Disclosure and Submissions

- (a) Disclosure must be made as soon as practicable after the Officer becomes aware that they are interested in the matter.
- (b) The Board will consider the nature and extent of the interest disclosed, including where appropriate giving the Interested Officer an opportunity to make submissions.

11.4 **Consequences of being an Interested Officer**

An Officer who is an Interested Officer regarding a matter:

- (a) must not vote or take part in the decision of the Board relating to the matter;
- (b) must not sign any document relating to the matter; and
- (c) may take part in any discussion of the Board relating to the matter and be present at the time of the decision of the Board (unless the Board decides otherwise).

11.5 **Determining Quorum for Board Meetings**

However, an Officer who is prevented from voting on a matter may still be counted for the purpose of determining whether there is a Quorum for Board Meetings at which the matter is considered.

11.6 **Requirement for SGM**

Where 50% or more of Officers are prevented from voting on a matter because they are an Interested Officer, an SGM must be called to consider and determine the matter, unless all Officers who are not Interested Officers agree otherwise.

12. **Finances**

12.1 **Bank Accounts**

- (a) The Board must maintain bank accounts in the name of the Society.
- (b) All funds received by the Society must be paid into its nominated bank account.
- (c) All deposits or withdrawals made from the bank account must be approved by the account signatories, being two Officers or such other employees of the Society acting in accordance with the Society's Delegated Authority Policy.

12.2 **Financial Statements**

- (a) The Board must arrange for financial statements of the Society that comply with the Act to be promptly prepared after the Balance Date each year.
- (b) The Board must ensure copies of the Society's financial statements are registered with the Registrar of Incorporated Societies within six months after the Balance Date each year.

12.3 **Auditor**

- (a) The Society's financial statements must be reviewed or audited each year by a chartered accountant elected annually at the AGM in accordance with clause 10.2(e).
- (b) The auditor must not be an employee of the Society, a member of the Board, or an Interested Officer.
- (c) If the auditor resigns or is unable to fulfil their responsibilities for any reason, the Board shall appoint a new auditor.
- (d) The auditor shall be paid such fees as approved by the Board.
- (e) The auditor shall have the power to call for the production of all books, papers and documents relating to the affairs of the Society.
- (f) The financial statements shall be audited by the auditor and, if correct, certified in writing before they are submitted to the AGM.

13. Indemnity and Insurance

13.1 Indemnity

- (a) The Society indemnifies its Officers, Members and employees for:
 - (i) liability for any act or omission in their capacity as an Officer, Member or employee of the Society; or
 - (ii) costs incurred by the Officer or Member in defending or settling any claim or proceeding relating to that liability,provided that this indemnity will not apply to any:
 - (iii) criminal liability; or
 - (iv) liability that arises out of a failure to act in good faith and in what the Officer, Member or employee believed to be in the best interests of the Society when acting in that capacity.
- (b) The Society also indemnifies its Officers, Members and employees of the Society for any costs incurred by them in defending or settling a proceeding that relates to liability of the kind referred to in clause 13.1(a)(i) if:
 - (i) judgment is given in their favour or if they are acquitted; or
 - (ii) the proceeding is discontinued.

13.2 Insurance

- (a) The Society may, with the prior approval of the Board, effect insurance for an Officer, Member, or employee of the Society in respect of:
 - (i) liability (other than criminal liability) for any act or omission in their capacity as an Officer, Member, or employee of the Society;
 - (ii) costs incurred by the Officer, Member, or employee in defending or settling any claim or proceeding relating to that liability; and
 - (iii) costs incurred by the Officer, Member, or employee in defending any criminal proceedings that have been brought against the Officer, Member, or employee in relation to any alleged act or omission in their capacity as an Officer, Member, or employee and in which they are acquitted.
- (b) The Officers who vote in favour of authorising the insurance under clause 13.2(a) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Society.
- (c) The Officer, Member, or employee who is insured is personally liable to the Society for the cost of effecting insurance if:
 - (i) the requirements of this Constitution have not been complied with; or
 - (ii) reasonable grounds did not exist for the opinion set out in the certificate given under clause 13.2(b),

unless the insurance was fair to the Society at the time the insurance was effected.

14. Rules and Regulations

14.1 Regulations

The Board may make and amend regulations, bylaws and policies for the conduct and control of the Society's activities, but these must not be inconsistent with this Constitution or the Act.

14.2 No Rule, Regulation, or Bylaw

If anything for which there is no applicable rule, regulation, bylaw, or policy arises the matter will be decided by the Board, whose decision will be final.

14.3 Alteration to the Constitution

- (a) This Constitution may be amended or replaced by an 80% majority of Category 1 and Category 2 Members present at a General Meeting.
- (b) Notwithstanding clause 14.3(a), no amendment may be made that is:
 - (i) inconsistent with the Purposes of the Society; or
 - (ii) prejudicial to the ability of the Society to be or remain registered as a charitable entity under the Charities Act 2005 or an incorporated society under the Act.
- (c) Despite clause 14.3(a), the Board may amend this Constitution if the amendment has no more than a minor effect or corrects errors or makes similar technical alterations, provided:
 - (i) The Board must give Notice of the amendment to every Category 1 and Category 2 Member stating the text of the amendment and the right of those Members to object to the amendment.
 - (ii) The amendment will take effect if the Board does not receive any objections from Category 1 and Category 2 Members within 20 Working Days after the date on which the Notice is sent, or any longer period of time that the Board decides.

14.4 Review of Governance Procedures

If the Society is a registered charity, the Board will conduct a review of its governance procedures at least every three years by considering whether they:

- (a) are fit for purpose; and
- (b) assist the Society to achieve its charitable purpose; and
- (c) assist the Society to comply with the Charities Act 2005.

15. Use of Name and Trade Marks

15.1 Use of Name and Trade Marks

- (a) The Society's Branches are permitted to use the name Heart Kids and the Society's trade marks in accordance with the directions of the Board set out in the Society's Policies.
- (b) If a Branch wishes to use the Society's name or trade marks in any way which is not provided for in the Society's Policies that use must be specifically authorised by the Board prior to the use commencing.
- (c) No Member shall use the Society's name or the Society's trade marks except:
 - (i) in accordance with the Society's Policies, in relation to activities related to the Branch that Member is associated with; or
 - (ii) with the express permission of the Board granted prior to that use commencing.

16. Method of Contracting

16.1 Deeds

A deed which is to be entered into by the Society may be signed on behalf of the Society:

- (a) by two or more Officers;
- (b) by one Officer whose signature must be witnessed; or
- (c) by one or more attorneys appointed by the Society.

16.2 Other Written Contracts

An obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Society in writing by an Officer or any other person acting under the Board's express or implied authority.

17. Contact Person

17.1 Appointment

17.2 Unless an alternative contact person is appointed by the Board, the Society's contact person for the purposes of the Act will be the:

- (a) Chairperson at boardsecretary@heartkids.org.nz; or
- (b) Chief Executive at chiefexecutive@heartkids.org.nz.

18. Registered Office

18.1 Location

The registered office of the Society will be at such place as the Board from time to time determines.

19. Notices

19.1 Notices

- (a) Unless specified otherwise in this Constitution, all Notices must be in writing.
- (b) A Notice may be served by email to:
 - (i) Members, at their contact email address.
 - (ii) The Society, at boardsecretary@heartkids.org.nz.
- (c) The Society may change its email address for the purposes of clause 19.1(b)(ii) by giving Notice to all Members.
- (d) A Notice is deemed served at the time evidenced by the sender's sent email history.

20. Dispute Resolution

20.1 Complaint to the Board

If any dispute arises between:

- (a) two or more Members;
 - (b) one or more Members and the Society;
 - (c) one or more Members and one or more Officers;
 - (d) two or more Officers;
 - (e) one or more Officers and the Society; or
 - (f) one or more Members or Officers and the Society; and
- the dispute relates to an allegation that:

- (g) a Member or an Officer has engaged in misconduct; or
- (h) a Member has failed to comply with the Society's Policies; or
- (i) a Member or an Officer has breached, or is likely to breach, a duty under this Constitution or the Act; or
- (j) the Society has breached, or is likely to breach, a duty under this Constitution or the Act; or
- (k) a Member's rights or interests as a Member have been damaged or Members' rights or interests generally have been damaged,

then any party involved with the dispute may make a complaint to the Board and the procedures contained in clauses 2 to 8 (inclusive) of Schedule 2 of the Act shall be deemed to be included in this Constitution and shall apply to the resolution of the dispute.

20.2 Decision on the Complaint

- (a) The Board shall be the decision maker responsible for resolving the dispute provided that:
 - (i) if the complaint relates to one or more Officers, that Officer or those Officers must be excluded from the Board's management of the dispute resolution process and decision making;
 - (ii) if the complaint is made by one or more Officers, that Officer or those Officers must be excluded from the Board's management of the dispute resolution process and decision making; and
 - (iii) if the Board is unable to proceed because it will not have a Quorum for Board Meetings to enable it to conduct the dispute resolution process as a consequence of clause 20.2(a)(i) or clause 20.2(a)(ii), the Board must appoint an individual who is not a Member to manage the dispute resolution process and make a decision about the complaint.
- (b) After completing the dispute resolution processes provided for in clause 20.1, the Board or the independent person appointed pursuant to clause 20.2(a)(iii) (**Decision Maker**) may:
 - (i) make a finding considered by the Decision Maker to be fair and consistent with the evidence provided by the dispute resolution process;
 - (ii) in the case of a complaint against a Member, suspend the Member's membership for a defined period or end the Member's membership; or
 - (iii) in the case of a complaint against an Officer, remove the Officer from their role as an Officer (and, if the Officer is also a Member, the penalties in clause 20.2(b)(ii) could also be applied).
- (c) Clause 20 does not limit a power to apply for a court order, or take any other enforcement action, under the Act.

21. Winding Up

21.1 Dissolution

- (a) The Society may only be put into liquidation:
 - (i) if the Members pass a Special Resolution at a SGM called to consider the dissolution of the Society; or
 - (ii) as provided for in the Act.
- (b) The Board must call a SGM to consider the dissolution of the Society on application in writing to it by a Category 1 Member or a Category 2 Member (who on the date of

the application is a Voting Member).

21.2 **Surplus Assets**

- (a) In the event of the Society being liquidated, the Society's surplus assets (after the discharge and payment of all of the Society's debts, costs and liabilities) will be paid to a not-for-profit entity or entities having Purposes similar to those of the Society and chosen by the Members at the SGM.
- (b) Surplus assets may not be directly or indirectly distributed to the Members.

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