

# CONSTITUTION AND RULES OF KIDNEY HEALTH NEW ZEALAND INCORPORATED

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## 1. Name and Background

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- 1.1. The name of the organisation is **KIDNEY HEALTH NEW ZEALAND INCORPORATED**, which was incorporated under the Charitable Trusts Act 1957 on 8 August 1979 (registration number 210795) and registered under the Charities Act 2005 on 14 October 2007 (registration number CC11348).
- 1.2. The organisation is commonly referred to as **Kidney Health NZ**.
- 1.3. In furtherance of the charitable Objects, the organisation was settled as a trust in 1979 by the settlor paying the sum of ten dollars to the trustees to hold upon the terms, and with and subject to the powers and discretions, set out in the trust deed.
- 1.4. The Board Members are the present trustees of Kidney Health NZ upon the terms, and with and subject to the powers and discretions, set out in this Constitution and Rules.
- 1.5. It is anticipated that further money, property and investments may from time to time be acquired by the Board Members for the purposes of Kidney Health NZ.

## 2. Registered Office

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- 2.1. The registered office of Kidney Health NZ shall be at such place as the Board determines.

## 3. Definitions and Interpretation

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- 3.1. **Act** means the Charitable Trusts Act 1957;
- 3.2. **Board** means the Board of Kidney Health NZ set up under this Constitution;
- 3.3. **Board Member** means a person elected under Rule 8;
- 3.4. **Chief Executive Officer** or **CEO** means the person employed as the most senior member of staff;
- 3.5. **Consumer Council** means as set out in Rule 7;
- 3.6. **Financial Year** means as set out in Rule 11.1;
- 3.7. **Life Member** means a person appointed under Rule 6.6;
- 3.8. **Member** means a Member of Kidney Health NZ under Rule 6;
- 3.9. **Objects** means the objects of Kidney Health NZ set out in Rule 4;
- 3.10. **Resolution** means a Resolution passed at an AGM or Special General Meeting as set out in Rule 9;
- 3.11. In this Constitution the following interpretations apply:
  - a. The plural includes the singular and vice versa;
  - b. Any reference to any Act, regulation, by-law, policy, deed, charter, procedure or document includes any amendment to it and any replacement passed in substitution for it;
  - c. Any reference to any approval, decision, requirement or action by Kidney Health NZ refers to an approval, decision, requirement or action of the Board (and/or as appropriate to such persons to whom the Board has delegated the authority to exercise such power)

#### 4. Objects

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##### 4.1. The Objects of Kidney Health NZ are:

- a. To co-ordinate and correlate the efforts of those interested in the causes and diagnosis, prevention and treatment of diseases of the kidneys and urinary tract.
- b. To arrange, develop and assist the study of and acquisition, dissemination and application to knowledge and information concerning the causes, diagnosis, prevention and treatment of diseases of the kidneys and urinary tract.
- c. To arrange, develop and assist the study of and acquisition, dissemination and application of knowledge and information concerning existing or new machinery plant and equipment which is or may now or in the future be used for the diagnosis or treatment of diseases of the kidneys and urinary tract or for the benefit of persons suffering from any such diseases.
- d. To provide or assist with the provision of reference books manuscripts machinery plant and equipment and all other practical items necessary or desirable in the treatment of diseases of the kidneys and urinary tract to be used by any persons engaged in the treatment of such diseases.
- e. To stimulate public interest in the rehabilitation of patients with disease of the kidneys or urinary tract.
- f. To support specific projects which will assist persons suffering from diseases of the kidneys or urinary tract, and their families, to lead a more normal life.
- g. To generally promote the welfare of persons suffering from diseases of the kidneys or urinary tract, and their families.
- h. To encourage the study of new techniques for treatment of persons with diseases of the kidneys and urinary tract.
- i. To publicise and encourage the role of organ transplantation.
- j. To promote discussion on the law relating to organ transplantation.
- k. To encourage, arrange for and assist medical practitioners, scientists, nurses, technicians, students and others from New Zealand and from abroad to undertake research into the diagnosis, prevention and treatment of diseases of the kidneys and urinary tract, and to train them in methods of research in related fields of medical science.
- l. To encourage, assist and arrange for medical practitioners, scientists, nurses, technicians, students and others to travel abroad and engage in research, study and training, and to gain experience in modern methods of diagnosis, prevention and treatment of diseases of the kidneys and urinary tract.
- m. To promote, obtain or achieve any of the Objects of Kidney Health NZ by or through any of the facilities available at any hospital, University, recognised medical, veterinary, scientific or research institute or other organisation, and to make grants of money, apparatus, equipment or otherwise as the Board may think fit.
- n. To arrange or provide monetary assistance for and establish scholarships and make grants or otherwise to medical practitioners, scientists, nurses, technicians and other persons for the purposes of research and study, or for the purposes of teaching and demonstrating their professional skill in, and knowledge of, methods of diagnosis prevention and treatment of diseases of the kidneys and urinary tract.

- o. Generally to do all such acts, matters and things and to enter into and make such arrangements as are incidental or conducive to the attainment of any of the objects of Kidney Health NZ.
- 4.2. If any of the Objects in Rule 4.1 are not charitable such Objects are secondary and are only undertaken to pursue those that are charitable. Kidney Health NZ shall not do anything that prejudices in any way the charitable nature of the Objects or the requirement that the primary application of the funds of Kidney Health NZ must be within New Zealand.

## 5. Powers

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- 5.1. Kidney Health NZ has full powers, jurisdiction and authority and (except as restricted by this Constitution) may do all and any things to carry out its Objects. By way of example of some specific powers, but not by limitation, Kidney Health NZ has power to:
- a. Acquire, obtain or in any way receive the benefit of any property and to deal with property in any way;
  - b. Establish, acquire or have interests in incorporated entities, trusts or other entities and to utilise the assets of Kidney Health NZ in, through or with them;
  - c. Control, receive and raise money and other property, including to borrow, invest, loan or advance monies and secure any obligations and the payment of money by way of security obtained over the property of others and give or receive the benefit of guarantees;
  - d. Determine, raise and receive money by subscriptions, donations, fees, levies, grants, bequests, entry or user charges, sponsorship, government funding, community funding or otherwise;
  - e. Produce, develop, create, licence and otherwise exploit, use and protect intellectual property;
  - f. Determine who are its Members and others involved in Kidney Health NZ and their entitlements, and withdraw, suspend, terminate or otherwise restrict membership and other benefits on any terms;
  - g. Determine the methods and structures to deliver national, regional and local benefits and to obtain national, regional and local coverage;
  - h. Make, alter, rescind and enforce by-laws, regulations, policies, charters and procedures of every type and subject matter for the governance, management and operation of the affairs of Kidney Health NZ and those involved (or seeking to be involved) in it;
  - i. Determine, implement and enforce disciplinary, disputes and appeal procedures, including to make decisions and conduct hearings and impose sanctions and penalties;
  - j. Engage and dismiss employees and contractors and put in place agreements with them, including with the CEO;
  - k. Delegate powers of Kidney Health NZ to any person, committee or sub-committees (the composition of which is not limited to Members) and for that purpose to establish, fund and set the terms of reference and structure;
  - l. Contract, engage or otherwise make any arrangements with any person to fulfil the Objects of Kidney Health NZ;

- m. Be a member of or affiliate to and/or be associated in any way with any person which has objects which are similar in whole or in part to the Objects in New Zealand and/or internationally;
  - n. Produce, publish and distribute any communications, newsletters or publications.
- 5.2. The powers of Kidney Health NZ must never be exercised in a manner which is contrary to the Kidney Health NZ Constitution or the laws of New Zealand.

## **6. Membership**

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- 6.1. Membership is open to everyone – including individuals and their whanau/family, and stakeholder organisations – with an interest in and commitment to the Objects of Kidney Health NZ.
- 6.2. Kidney Health NZ shall keep and maintain a register of Members including the full name, address and date of entry of each Member.
- 6.3. New Members shall be admitted to membership upon either verbal or written request, and upon the payment of any annual membership subscription that the Board may determine.
- 6.4. Applications for membership shall be approved by the CEO unless there is good reason not to do so, in which cases the reasons must be reported to the Board.
- 6.5. Membership shall cease upon a member's death or upon request in writing for removal from the Membership Register.
- 6.6. Kidney Health NZ may elect to Life Membership any person who has rendered extraordinary service to Kidney Health NZ and who has been recommended for Life Membership by resolution of the Board.

## **7. Consumer Council**

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- 7.1. The purpose of the Consumer Council is to provide a forum within which kidney health consumers can meet to discuss matters of common concern, with any recommendations from Consumer Council meetings referred to the Kidney Health NZ Board for their consideration.
- 7.2. Kidney health support groups and societies will each be invited to nominate from their membership one representative to the Consumer Council. Those nominated should be current kidney health consumers – either a kidney donor, kidney transplant recipient, on dialysis or on the waiting list for a kidney transplant.
- 7.3. Kidney Health NZ reserves the right to co-opt other members to the Consumer Council.
- 7.4. The Consumer Council will meet at least annually, with the cost of such meetings borne by Kidney Health NZ.

## **8. Board**

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- 8.1. The Board is responsible for the governance of Kidney Health NZ and the exercise of all powers of Kidney Health NZ (except those that are restricted by this Constitution).
- 8.2. The Board shall consist of up to seven elected Board members nominated and elected by the Board and approved at an Annual General Meeting of the Board.
- 8.3. The role and responsibilities of the Board shall be to provide good governance to Kidney Health NZ, including:
  - a. Establishing a strategic plan for Kidney Health NZ;

- b. Monitoring and reviewing the performance of Kidney Health NZ against the strategic plan;
  - c. Receiving, reviewing and approving the annual business plan and financial budget;
  - d. Monitoring Kidney Health NZ performance against the annual business plan and financial budget;
  - e. Approving annual financial statements;
  - f. Addressing the ongoing viability and sustainability of Kidney Health NZ;
  - g. Establishing, reviewing, and monitoring such policies as may be required for the good governance and guidance of Kidney Health NZ;
  - h. Fostering interaction and communication across the Kidney Health NZ family and others involved with Kidney Health NZ;
  - i. Appointing, monitoring and reviewing the CEO and setting performance and remuneration policy for Kidney Health NZ employees;
  - j. Recognising and supporting the role of the Consumer Council;
  - k. Adopting and communicating a continual best practice performance culture and supporting programmes across Kidney Health NZ nationally;
  - l. Having full insight and understanding of all significant transactions across Kidney Health NZ; and
  - m. Being accountable for its performance to the Members.
- 8.4. The following sets out the rules for the term of appointment for Board Members:
- a. Each term of appointment to the Board is for a maximum period of four years, commencing from the date of appointment;
  - b. At each AGM no less than two Board Members shall retire from the Board. The persons to retire shall be those who have been longest on the Board from the date of their most recent appointment to the Board.
  - c. A retiring Board member is eligible for re-appointment and must not serve more than two consecutive terms of four years as a Board Member.
  - d. No less than three months before the intended date of the Annual General Meeting appropriate notification will be made by Kidney Health NZ (e.g. via its Newsletter and social media) inviting people to seek nomination to the Board. Nominations close six weeks following the opening of nominations. Nominations for Board membership (including retiring Board members seeking re-appointment) will be considered by a Nominating Committee comprising two continuing Board Members and two members of the Consumer Council.
  - e. The Nominating Committee will determine each applicant's suitability as member of the Board, taking into account the roles and responsibilities of Board membership outlined in Rule 8.3, and in particular whether they qualify as an Officer under section 4(1)(b) of the Charities Act 2005.
  - f. The Nominating Committee will recommend to the Board prior to the Annual General Meeting at least the number of nominees required to fill the number of vacancies arising on the Board. If the Nominating Committee recommends more nominees than there are vacancies on the Board, then an election by the Board will be held.
  - g. Where an elected member of the Board vacates their position before their due date for retirement by rotation, then the vacancy may be filled by the Board at its next meeting or any time thereafter. Any person appointed to the Board under this

provision shall hold office as a Board member for the balance of the term of office of the Board member whose vacation of office caused the vacancy. They shall then be eligible for re-election according to the wider provisions of this Rule.

- 8.5. At the Board's first meeting after its election it shall appoint from its membership:
  - a. A Chairperson, who may not be a current employee of Kidney Health NZ; and
  - b. A Treasurer, who may not be a current employee of Kidney Health NZ;
- 8.6. At the Board's first meeting after its election it shall also appoint a Secretary, who may be a Board member or, at the discretion of the Board, be a current employee of Kidney Health NZ.
- 8.7. The Board will hold at least four meetings per annum. All meetings will be convened by the Secretary at the request of the Chairperson, or by four members of the Board.
- 8.8. The quorum for meetings of the Board is four members of the Board.
- 8.9. Board meetings may be held in person or by teleconference or by other means by which those participating may hear each other simultaneously.
- 8.10. Decisions are by consensus (unless otherwise required by this Constitution) or, if requested by the Chairperson, by show of hands and, if requested by any Board member, by secret ballot.
- 8.11. Where voting is required or requested, each Board member has one vote and the Chairperson has an additional casting vote in the event of a tied vote.
- 8.12. The Board shall keep minutes of all Board meetings.
- 8.13. The role and expectations that Kidney Health NZ has of a Board member and any additional criteria for eligibility to be a Board member may be set out in a Board policy.
- 8.14. The Board may from time to time appoint such committees or sub-committees as it may deem necessary or expedient and may depute or refer to them such powers or duties of the Board as the Board may determine. Such committees and sub-committees shall periodically report their proceedings to the Board and shall conduct their business in accordance with the directions of the Board.
- 8.15. The CEO and Medical Advisor may be in attendance at Board meetings, but without voting rights.

## **9. General Meetings**

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- 9.1. A General Meeting of Kidney Health NZ shall be either the Annual General Meeting or a Special General Meeting. All Members are eligible to attend a General Meeting which shall be held at such location, date and time as determined by the Board.
- 9.2. The Annual General Meeting shall be held once every year and within six months of the end of the Kidney Health NZ Financial Year.
- 9.3. The AGM shall consider the following business:
  - a. The Board's Annual Report (including the Chairperson's and CEO's Annual Reports, and a report on the activity of the Consumer Council);
  - b. The audited Financial Report and Statement of Accounts;
  - c. The appointment of Board members;
  - d. The appointment of the auditor; and
  - e. Any other business that is properly notified by not less than 45 days' notice by the Board to the CEO as an item of business for the AGM.

- 9.4. Special General Meetings may be called by the Board. The Board must call a Special General Meeting within 60 days of the CEO receiving a written request from the Board setting out the reasons for the Special General Meeting. The Special General Meeting can only consider the items of business for which the meeting has been called.
- 9.5. The quorum for a General Meeting is the lesser of 10 members or 10% of the membership, provided that if a quorum is not achieved within half an hour the General Meeting shall be adjourned to another day, time and place and shall be notified to all persons who are to be given notice under Rule 10.1. If no quorum is present at the start of the re-convened General Meeting then the Members attending are deemed to constitute a valid quorum for the Annual General Meeting but not for a Special General Meeting. If the Board decides there are special circumstances it may permit attendance at the General Meeting by phone.
- 9.6. A Member may exercise to vote at a General Meeting by proxy, such vote(s) to be in writing or by email, and in the hands of the CEO by no later than two hours before the scheduled start of the General Meeting.
- 9.7. A Member wishing to exercise a proxy vote must nominate a Board Member or the Chairperson to exercise the vote(s) and specify the way any vote is to be exercised on a particular agenda item.
- 9.8. Any proxy vote(s) shall only be valid for the General Meeting originally specified by the Member.
- 9.9. A Member will have the right at any time to change or withdraw the Member's proxy vote by notice orally or in writing to the Chairperson.
- 9.10. Minutes must be kept of each General Meeting.
- 9.11. Any irregularity, error or omission in notices, agendas and relevant papers for the General Meeting or the omission to give notices within the timeframe or the omission to give notice to all Members entitled to receive notice, and any other error in the organisation of the General Meeting shall not invalidate the meeting nor prevent the General Meeting from considering the business of the meeting provided that:
  - a. The chairperson in his or her discretion determines that it is still appropriate for the General Meeting to proceed despite the irregularity, error or omission; and
  - b. A motion to proceed is passed at the meeting.

## **10. Notices for General Meetings**

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- 10.1. The Chairperson (or, in their absence or inability, the Board) shall decide on the date, time and place for each Annual or other General Meeting. Twenty clear days before the Annual General Meeting and seven clear days before any other General Meeting a notice thereof shall be sent to every Member at their last known address, and to such other persons or organisations as determined by the Board.
- 10.2. Any notice referred to in Rule 9 to be given by Kidney Health NZ in relation to a General Meeting may be given by such means as (but not limited to) post, email, notification on a website or by any other means as determined by the Board.
- 10.3. In the case of the Annual General Meeting, copies of the Annual Report and the Financial Statements shall be available at the Annual General Meeting and afterwards to Members on request.
- 10.4. A Special General Meeting shall be called and notified as set out in Rule 9.4.

## **11. Finances**

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- 11.1. The financial year of Kidney Health NZ shall unless otherwise determined by the Board commence on the first day of April and end on the thirty-first day of March.
- 11.2. The Board may require Members (but not Life Members) to pay an annual membership subscription determined by the Board.
- 11.3. The Board must keep proper records of Kidney Health NZ's financial transactions and must prepare and have audited the annual financial statements.
- 11.4. The Board must adopt and implement appropriate policies as determined by it for management of Kidney Health NZ finances including those for delegation and authorisation.
- 11.5. The Board must prepare financial budgets for Kidney Health NZ activities.
- 11.6. Kidney Health NZ's funds are invested in such manner as determined by the Board.
- 11.7. At each AGM an independent and suitably qualified member of Chartered Accountants Australia and New Zealand must be appointed as auditor.

## **12. Common Seal**

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- 12.1. Kidney Health NZ must have a common seal which is to be kept in the custody of the CEO or such other person as appointed by the Board. The common seal shall only be used as directed by the Board.
- 12.2. Every deed requiring execution on behalf of Kidney Health NZ must be signed by affixing the common seal in the presence of the Chairperson and the CEO or, if either is not available, then by the remaining person and another Board member, in each case whose signatures need not otherwise be witnessed.
- 12.3. The use of the common seal will be sufficient evidence of the right to affix the common seal to a document, and no person dealing with Kidney Health NZ will be bound to inquire as to the authority under which a document is sealed and in whose presence.
- 12.4. The CEO will ensure that a register is kept in which is recorded details of the use of the common seal, such register to be available at all reasonable times for inspection by any Board member.

## **13. Alteration to Rules**

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- 13.1. This Constitution shall not be changed except by Resolution at a General Meeting.
- 13.2. Notice of any proposed change of Rules must be given by the Board, notified in writing to the CEO at least 45 days before the General Meeting at which it is intended to propose such change.
- 13.3. No change to the charitable Objects (Rule 4), prohibition of personal benefit (Rule 15) or the winding up or dissolution Rules (Rule 14) shall be approved if it would have the effect of causing Kidney Health NZ to cease to retain charitable status according to New Zealand law.

## **14. Winding Up or Dissolution**

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- 14.1. Kidney Health NZ must be wound up or dissolved if, at a General Meeting a Resolution is passed requiring Kidney Health NZ to be wound up or dissolved and the resolution is confirmed by a further Resolution passed at a subsequent General Meeting called for that purpose and held not earlier than 60 days and not later than 90 days after the date on which the original resolution was passed.



14.2. If, upon the winding up or dissolution of Kidney Health NZ, there remains after the satisfaction of all Kidney Health NZ debts and liabilities any property whatsoever, the property shall not be paid to or distributed among the Members but shall be given or transferred to one or more organisations (as decided by Members) having charitable objects similar to the Objects, as defined in section 5(1) of the Charities Act 2005.

#### **15. Prohibition of Personal Benefit**

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15.1. All income, benefit or advantage shall be applied to the Objects of Kidney Health NZ.

15.2. No Member or any person associated with a Member shall participate in or materially influence any decision made by Kidney Health NZ in respect of the payment to or on behalf of that Member or associated person of any income, benefit or advantage whatsoever.

15.3. Any payments made must be for goods or services that advance the Charitable Objects and must be reasonable and relative to payments that would be made between unrelated parties.

#### **16. Limitation of Liability and Indemnity**

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16.1. No current or former member of the Board shall have any liability of any nature whatsoever to Kidney Health NZ or the Members for any act or omission in their capacity as a Board member, except in the case of their own fraud, dishonesty, breach of fiduciary duty or the commission of any act known by them to be a breach of duties owed by them at law.

16.2. Each current or former member of the Board is hereby indemnified by and out of the assets of Kidney Health NZ against:

- a. Any liability of any nature whatsoever arising out of any act or omission in their capacity as a member of the Board, excluding criminal liability arising out of their fraud, dishonesty, breach of fiduciary duty or the commission of any act known by them to be a breach of duties owed by them at law; and
- b. Costs incurred by them in any proceeding relating to such liability.

#### **17. Replacement of Constitution and Rules**

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17.1. This Constitution and Rules restates, replaces and supersedes the Constitution and Rules currently registered with Charities Services and the Companies Office, and the currently registered Constitution and Rules will be of no further effect on and from registration of this Constitution and Rules by Charities Services and the Registrar of Incorporated Societies respectively.

#### **18. Jurisdiction**

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18.1. Kidney Health NZ will be governed by and construed in accordance with the laws of New Zealand, and is subject to the exclusive jurisdiction of the courts of New Zealand.

#### **19. Matters Not Provided For**

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19.1. If any matter arises in relation to Kidney Health NZ that is not provided for in this Constitution and Rules, the matter shall be dealt with as required by the Board.

