



CONSTITUTION

NATIONAL HEART FOUNDATION OF AUSTRALIA

ABN 98 008 419 761

1. General

1.1 Name

The name of the company is National Heart Foundation of Australia ABN 98 008 419 761.

1.2 Definitions

In this constitution:

- (a) **Board of Directors** means the Directors of the Company, collectively;
- (b) **Company** means National Heart Foundation of Australia ABN 98 008 419 761;
- (c) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (d) **Director** means any one of the individual directors of the Company, and **Directors** means any two or more of the individual directors;
- (e) **Financial Year** means any period of one year ending on 31 December;
- (f) **Members** mean the members of the Company, as described in clause 2.2, and **Member** means any one of those individual Members;
- (g) **Local Advisory Board** means the advisory body established in each Participating Division;
- (h) **Participating Division** means the geographic region consisting of South Australia, Northern Territory, Queensland, New South Wales, Australian Capital Territory, Victoria, Tasmania and Western Australia respectively.

1.3 Exclusion of replaceable rules

Subject to Part 2B.4 of the Corporations Act, the replaceable rules contained in that Act do not apply to the Company.

1.4 The Company - its nature, objects and powers

- (a) The Company:
 - (i) is a company limited by guarantee;
 - (ii) must pursue charitable purposes only;
 - (iii) subject to (ii) above, will operate for the promotion, development and attainment of its objects;
 - (iv) will apply its profits (if any) or other income in promoting its objects; and
 - (v) is not carried on for the purpose of profit or gain to its individual Members.
- (b) The registered office of the Company shall be at a location determined by the Board of Directors of the Company.
- (c) The principal activity of the Company is to promote the prevention and control of heart disease in Australians.
- (d) The objects of the Company are:
 - (i) to reduce premature death and suffering from heart, stroke and blood vessel and cardiovascular disease;
 - (ii) to save the lives and make a difference to the heart health of all Australians; and
 - (iii) to fund vital research, develop guidelines for health professionals, support patient care and help Australians, to live healthier lifestyles.
- (e) to assist in advancing its objects, the Company may:
 - (i) borrow and raise funds, seek financial and other assistance by all lawful means, including conducting fundraising campaigns and seeking public funds;
 - (ii) lend or invest such funds of the Company as may not be immediately needed to or in such institutions and on such conditions as the Board of Directors may determine;
 - (iii) having regard to the laws of trusts, undertake and execute any trusts (including accepting gifts, endowments, bequests or devises) made to the Company generally or for any specific purpose; and
 - (iv) generally, to do all such acts, matters and things and to enter into and make such agreements as are incidental or conducive to the attainment of any objects of the Company.

- (f) Solely for the purpose of carrying out the objects in this clause 1, but not otherwise, the Company shall have the legal capacity and all the powers of a natural person. The powers set forth in subsection 124(1) of the Corporations Act shall apply to the Company except insofar as they are inconsistent with the objects of the Company.

1.5 Application of income

- (a) The assets and income of the Company shall be applied solely in furtherance of the objects of the Company, as set forth in clause 1.4 of this constitution.
- (b) No part of the assets or income shall be distributed, whether directly or indirectly, by way of dividend, bonus or otherwise to any Member.
- (c) No remuneration or other benefit in money or money's worth shall be paid or given by the Company to any Member who holds any office of the Company.
- (d) Nothing contained in this clause prevents the payment in good faith to any Member for:
 - (i) any services rendered to the Company, whether or not as an employee;
 - (ii) goods supplied to the Company in the ordinary and usual course of operation;
 - (iv) interest on money borrowed from any Member;
 - (iv) rent for premises demised or let by any Member to the Company;
 - (v) any out-of-pocket expenses incurred by the Member on behalf of the Company;provided that the payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

1.6 Liability of Members

The liability of the Members is limited to the amount of the guarantee made under clause 1.7.

1.7 Members guarantee

Each Member of the Company undertakes to contribute an amount not exceeding twenty dollars (\$20) to the property of the Company in the event of it being wound up while still a Member or within one year thereafter for:

- (a) payment of the debts and liabilities of the Company contracted before the time the membership ceased;
- (b) the costs, charges and expenses of winding up; and
- (c) for an adjustment of the rights of contributories among themselves.

1.8 Distribution of property on winding-up

- (a) If the Company is to be wound up, application for de-registration may be made if:
 - (i) all Members agree to de-register the Company;
 - (ii) the Company is no longer actively pursuing its objects;
 - (ii) the Company has paid all penalties and fees under the Corporations Act;
 - (iv) the Company has no outstanding debts; and
 - (v) the Company is not engaged in any legal proceedings;Otherwise, if the Company is wound up, it will be done in accordance with the Corporations Act.
- (b) Where any assets or property remains, after the winding-up or dissolution of the Company and satisfaction of all its debts and liabilities, it must not be distributed among Members.
- (c) Any surplus assets or property referred to in clause 1.8(b) must be given to another organisation or organisations:
 - (i) which is charitable at law and has objects similar to the objects of the Company;
 - (ii) whose constitution prohibits the distribution of its income and property among its members to an extent at least as great as imposed on the Company under this

- constitution;
 - (iii) to which gifts are deductible under Division 30 of the *Income Tax Assessment Act 1997*; and
 - (iii) with a taxation status similar, or more favourable, to that of the Company.
- (d) The organisation referred to in clause 1.8(c) is to be determined by the Directors at or before the time of winding-up or dissolution. If the Directors do not wish to decide, or do not decide, the Members by ordinary resolution must decide. If the Members do not decide, the decision must be referred to the Supreme Court of Victoria to determine the organisation or organisations to whom the transfers are to be made.

2. Members

2.1 Patron

The Board of Directors may from time to time appoint a patron of the Company and may terminate such appointment at their discretion.

2.2 Membership

- (a) The Members consist of persons who are persons admitted to membership in accordance with this constitution.
- (b) The maximum number of Members who may be admitted to the Company shall be thirty (30).
- (c) Subject to this constitution, the Members of the Company are:
 - (i) the Directors of the Company;
 - (ii) two persons nominated from a Local Advisory Board of each of the Participating Divisions; and
 - (iii) any other natural persons the Board of Directors admit to membership in accordance with this constitution.
- (d) Subject to 2.2(c)(i), any Members existing prior to the date of adopting this constitution, cease to be a Member upon the adoption of this constitution.

2.3 Member's contributions/fees

The cost of membership of the Company shall be determined from time to time by the Board of Directors.

2.4 Eligibility of Members

To be eligible for membership of the Company under clause 2.2(c)(ii) and (iii), applicants for membership must be eighteen (18) years or over and have a strong commitment to the Company's objects and values.

2.5 Application for membership

An application for membership under clause 2.2(c)(ii) and (iii) must meet the requirements approved by the Board of Directors as may be varied from time to time.

2.6 Determination of application by the Board of Directors

- (a) An application for membership under clause 2.2(c)(ii) and (iii) is to be considered by the Board of Directors at its next meeting following the receipt of the application and may be accepted or rejected by the Board of Directors (or its appointee).
- (b) If the Board of Directors (or its appointee) accepts or refuses a membership application under clause 2.2(c)(ii) and (iii), the Board of Directors shall advise the applicant within sixty (60) days of the Board of Directors' decision.

2.7 Register of Members

The register of Members shall be kept and shall be used solely for the objects of the Company except as required by law or where explicit permission is given to release personal information by the Member concerned.

2.8 Rights and duties of Members

- (a) Each Member has full voting rights at general meetings of Members and special meetings of Members, including all special resolutions.
- (b) Each Member must act in accordance with the cause, objects and values of the Company and consider himself or herself an ambassador of the Company.

2.9 Disciplining Members

The Board of Directors must give a Member written notice of its intention to discipline in accordance with any relevant by-laws or governance procedures.

2.10 Cessation of membership

- (a) A Member ceases to be a Member:
 - (i) if the Member is a natural person, on the death of the Member;
 - (ii) if the Member is a natural person, if the Member becomes of unsound mind;
 - (iv) if the Member is a natural person, if the Member becomes bankrupt or suspends payment or compounds with his or her creditors;
 - (v) If the Member ceases to be a member of the Local Advisory Board and is therefore no longer a nominated person of a Participating Division under 2.2(c)(ii);
 - (v) if the Member resigns in writing to the company secretary;
 - (vi) if a Member is a member solely by virtue of being a Director on the cessation of his or her directorship; or
 - (vii) if a Member is removed from the Company in accordance with clause 2.9.
- (b) The Board of Directors shall remove from the register of Members the name and particulars of any Member who ceases to be a Member and the Board shall maintain a register of ceased members for the period determined by the company secretary.
- (c) A person who has ceased to be a Member may be re-admitted to membership in accordance with the normal requirements for membership set out in this clause 2.

3. Board of Directors

3.1 Composition of the Board of Directors

- (a) The Company must have at least three (3) and no more than fifteen (15) Directors.
- (b) The Board of Directors will seek to achieve a balanced geographic representation ensuring that there are no more than three Directors at any time from any one State or Territory (excluding the position of the Chair).
- (c) The Board of Directors may approve any person to act as company secretary who holds office on terms and conditions determined by the Board of Directors.
- (d) The Board of Directors shall elect, at its discretion and by a simple majority, a Director to act as Chair.
- (e) No person who is an employee of the Company is eligible for nomination or appointment as a Director of the Company.

3.2 Powers and duties of the Board of Directors

- (a) The business of the Company is to be managed by or under the direction of the Board of Directors.
- (b) The Board of Directors may exercise all the powers of the Company except any powers that the Corporations Act or this constitution requires the Company to exercise in a general meeting.
- (c) The Board of Directors has power to make by-laws, policies, rules and regulations not inconsistent with this constitution to facilitate the proper management, control and administration of the Company.
- (d) A rule made or resolution passed by the Company in a general meeting does not invalidate any prior act of the Board of Directors that would have been valid if that rule or resolution had not been made or passed.
- (e) It shall be the duty of the Board of Directors to:
 - (i) perform any and all duties imposed on them collectively or individually by law or as set out in this constitution;
 - (ii) appoint and remove, employ and discharge and, except as otherwise provided in this constitution, prescribe the duties and fix the compensation, if any, of all officers, agents and employees of the Company;
 - (iii) supervise all officers, agents and employees of the Company to ensure that their duties are performed properly;
 - (iv) develop and maintain an up-to-date purpose and strategic plan of the Company; and
 - (v) meet at such times and places as required by this constitution.
- (f) The Board of Directors may make any reasonable enquiries, directions or investigations as appropriate to ensure compliance of the constitution, by-laws, policies or rules of the Company.
- (g) The Board of Directors may delegate any of their powers and functions to a committee, a Director (or number of Directors), an employee of the Company or any other person, as they consider appropriate.
- (h) The Board of Directors shall adopt a set of equitable funding principles, recognising the need to focus on communities disproportionately impacted by heart disease and must ensure that all Participating Divisions are adequately resourced, with consideration being given for a physical presence and adequate staff resourcing, to deliver on the approved purpose and strategic plan of the Company.

3.3 Execution of Documents

The Company may execute a document without using a common seal if the document is signed:

- (a) by two Directors of the Company;
- (b) by a Director and the company secretary; or
- (c) pursuant to any delegation duly authorised by the Board of Directors.

3.4 Compensation

- (a) Directors shall serve without compensation, except that they shall be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their duties, provided that all such expenses are approved by the Board of Directors.
- (b) The Company must not provide any financial benefit to a Director, other than in accordance

with this clause.

3.5 Appointment of Directors

- (a) Subject to clauses 3.5(b) and 3.5(f), a Director is appointed in accordance with the procedures set out in clause 3.5(d).
- (b) Subject to this constitution, when the Board of Directors determines that a new Director is needed, either as a replacement for an existing Director or as an additional director, the Board of Directors may nominate a person to act as that Director ("Casual Director").
- (c) In the event of a vacancy in the office of a Director, the remaining Directors may act, but if the number of remaining Directors is less than the number required to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or convening a general meeting of the Company.
- (d) If the nominee accepts that nomination, the nominee will stand for election at the next annual general meeting or at a special meeting of Members and must be elected by ordinary resolution of the Members. A period served by a Casual Director, immediately before their first election by the Members, is excluded for the purposes of clause 3.5(f).
- (e) Each Director shall hold office until retirement under clause 3.6 or vacancy under clause 3.7.
- (f) A Director may serve a maximum period of nine years and will not be eligible to stand for re-election on retirement after this maximum period of time.
- (g) Subject to clause 3.1(a) and notwithstanding clause 3.5(e), a Director of the Company may be appointed, as a Director for a period of up to three (3) years at the discretion of the Board of Directors.

3.6 Term of Directors

- (a) At each annual general meeting:
 - (i) any Director appointed by the Directors as a Casual Director since the previous annual general meeting must retire, and
 - (ii) at least one-third of the remaining Directors must retire.
- (b) The Directors who must retire at each annual general meeting under clause 3.6(a)(ii) will be the Directors who have served the maximum period under clause 3.5(f) and then the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless they agree otherwise.
- (c) Other than a Director appointed under clause 3.5(b), a Director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- (d) Each Director must retire at least once every three years.
- (e) A Director who retires under clause 3.6(a) may nominate for election or re-election, subject to clause 3.5(f).
- (f) A Director appointed in accordance with clause 3.5(g) is not required to retire from office and is excluded from the operation of clause 3.6(a) and (b) for the period of time the Director is appointed by the Board of Directors under clause 3.5(g).

3.7 Vacancies

A person automatically ceases to be a Director of the Company if the person:

- (a) dies;
- (b) is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a Director;

- (c) becomes disqualified from managing corporations under Part 2D.6 of the Corporations Act and is not given permission or leave to manage the Company under section 206F or 206G of the Corporations Act;
- (d) becomes of unsound mind or physically or mentally incapable of performing the functions of a Director;
- (e) is absent for three (3) consecutive Board Meetings without the approval of the Chair;
- (f) resigns by notice in writing to the Company; or
- (g) ceases to hold a pre-requisite appointment in accordance with this constitution.

3.8 Board of Directors meeting procedures

The Board of Directors shall meet (by whatever means suit the Board of Directors) on at least four occasions each Financial Year to discuss issues relating to strategy, direction and performance of the Company.

4. Proceedings of Board of Directors meetings

4.1 Regular meetings

Subject to clause 3.8, regular meetings of the Board of Directors shall be held as determined by the Board of Directors.

4.2 Special meetings

Special meetings of the Board of Directors may be called by any two Directors.

4.3 Notice of meetings

At least five business days prior notice of a meeting of the Board of Directors shall be given by the company secretary of the Company, or by persons designated by the Chair, to each Director of the Board. Such notice must be written and state the place, date and time of the meeting and the agenda of the meeting and may be delivered by post or electronically.

4.4 Quorum for meetings

- (a) A quorum shall consist of a simple majority of the Board of Directors.
- (b) Directors may participate in meetings in person or by electronic means and their presence and vote will be counted as valid.
- (c) Except as otherwise provided under this constitution, no business shall be considered by the Board of Directors at any meeting at which the required quorum is not present, and the only motion which the Chair shall entertain at such meeting is a motion to adjourn.

4.5 Majority action as Board action

- (a) Every act or decision done or made by a majority of the Board of Directors present at a meeting duly held at which a quorum is present is the act of the Board of Directors.
- (b) If a Director cannot attend a regular or special meeting of the Board of Directors, that Director can give his or her proxy by written request to another Director to vote on certain or all matters that may come before the Directors at a meeting.
- (c) Each Director has one (1) vote each. In the circumstance of a matter, decision or resolution resulting in a tied vote, the Chair will have the deciding vote.

4.6 Conduct of meetings

- (a) The Chair shall preside at all meetings of the Board of Directors. In the Chair's absence, an acting chair shall be chosen by a majority of the Directors present at the meeting and shall fulfil the duties of the Chair.

- (b) The company secretary shall act as secretary of all meetings of the Board of Directors, provided that, in his or her absence, the presiding officer shall appoint another person to act as secretary of the meeting.
- (c) The company secretary shall cause to be kept and recorded minutes of all meetings of the Board of Directors.

4.7 Restrictions on voting

- (a) A Director must disclose the nature and extent of any actual, perceived or potential material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):
 - (i) to the other Directors, or
 - (ii) if all of the Directors have the same conflict of interest, to the Members at the next general meeting, or at an earlier time if reasonable to do so.
- (b) The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- (b) Each Director who has a material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) must not:
 - (i) be present at the meeting while the matter is being discussed (unless agreed by all Directors present at the meeting), or
 - (ii) vote on the matter.

4.8 Circulating resolutions of the Board

- (a) The Board of Directors may pass a resolution without a meeting of the Board of Directors being held if all the Directors entitled to vote on the resolution (except a Director absent from Australia and who is not reasonably contactable) sign a document containing a statement that he or she is in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last eligible Director signs.
- (d) The Company may send a circular resolution by electronic means to a Director and the Director may agree to the resolution by sending a reply via electronic means to that effect and, for the purpose of this clause, that electronic communication must be treated as a document in writing signed by that Director.

5. Meetings of Members

5.1 Annual General Meetings

- (a) An annual general meeting ("AGM") shall be called by the company secretary at the end of each Financial Year, to be held on a date nominated by the Board of Directors. Each Member is invited to participate in the AGM and each Member has the right to vote on any issues raised and voted upon at the AGM.
- (b) Each Member who is unable to attend the AGM is entitled to a proxy vote. The Member may nominate a Director to vote on his or her behalf by sending a proxy form (in the form determined by the Board of Directors) to the company secretary to be received at least three days before the AGM.
- (c) The Board of Directors shall determine the location, the agenda and the procedures of the AGM.
- (d) The Chair shall preside as chair of the AGM except in relation to any election for which the Chair is a nominee, or where a conflict of interest exists. If the Chair is not present, or is

unwilling or unable to preside, any Director present may preside at that meeting only.

5.2 Special meetings

- (a) The Board of Directors or the company secretary, when instructed to do so by the Chair, may call for special meetings of Members.
- (b) If Members with at least 20% of the votes that may be cast at a general meeting, submit a signed written request for a special meeting (which sets out the proposed resolution/s), the Board of Directors must hold a special meeting within two (2) months of the Members' request.
- (c) At least 21 days' notice of the special meeting must be given to all Members of the Company. Every Member is invited to participate in the special meeting and each Member has the right to vote on any issues raised and voted upon at the special meeting.
- (d) The procedures stipulated at sub-clauses 5.1(b), 5.1(c) and 5.1(d) apply also to special meetings.

5.3 Quorum for meetings of Members

- (a) The quorum for a general meeting of the Company's Members is one quarter of the total numbers of Members of the Company. Proxies will not be counted when determining whether a quorum is present.
- (b) If a quorum is not present within 30 minutes after the time for which a meeting of Members is called:
 - (i) if called as a result of a request of Members under section 249D of the Corporations Act, the meeting is dissolved; and
 - (ii) in any other case:
 - (A) the meeting is adjourned to the day, time and place that the Board of Directors decides and notifies to Members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
 - (B) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

5.4 Voting procedure

- (a) At any general or special meeting of Members, each Member has one (1) vote on a show of hands and on a poll.
- (b) Votes may be exercised in person, by proxy, or attorney.
- (c) A poll may be demanded by:
 - (i) at least three (3) Members entitled to vote on the resolution; or
 - (ii) the Chair.

5.5 Entitlement to vote and Decisions

- (a) All Members shall be entitled to vote at meetings of Members.
- (b) Except where a proposed resolution requires a special resolution, questions arising or proposed resolutions at a general meeting must be decided by a majority of votes cast by the Members entitled to vote on the resolution.
- (c) Decisions requiring a special resolution must be passed by at least 75% of the votes cast by Members present and entitled to vote on the resolution.

5.6 Circulating resolutions by Members

The Company may pass a resolution (other than a resolution under section 329 of the Corporations Act to remove an auditor) without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

5.7 Inadvertent omissions

If some formality required by this constitution is inadvertently omitted or is not carried out, the omission does not invalidate anything, including any resolution or appointment, which but for the omission would have been valid unless it is proved to the satisfaction of the Directors that the omission has directly prejudiced any Member financially. The decision of the Directors is final and binding on all Members.

5.8 Altering the constitution

- (a) Subject to 5.8(b), this constitution shall not be altered except by special resolution in accordance with the Corporations Act.
- (b) The Members must not pass a special resolution that amends this constitution if passing it causes the Company to no longer be a charity or negatively impacts upon the Company's tax status.

6. Committees of Directors

- (a) The Board of Directors may form any committee it deems appropriate and delegate any of its powers and functions to a committee.
- (b) The committee must exercise the delegated powers and functions in accordance with any directions of the Board of Directors.

7. Advisory Groups

- (a) The Board of Directors may establish advisory groups to advise on specialist knowledge areas.
- (b) The functions of the advisory group will be decided by the Board of Directors.
- (c) The Board of Directors will establish a Local Advisory Board in each Participating Division to advise on local region matters and to ensure a strong local presence.
- (d) The Board of Directors may specify:
 - (i) the manner in which proceedings of an advisory group are conducted;
 - (ii) the matters which the advisory group must consider in carrying out its functions; and
 - (iii) any other matters concerning the advisory group or its functions that the Board of Directors decide.

8. By-Laws

- (a) The Board of Directors may pass a resolution to make such by-laws for the proper advancement and management of the Company and the advancement of the objects.
- (b) Members and Directors must comply with by-laws as if they were part of this constitution.

9. General

- (a) Each Member submits to the non-exclusive jurisdiction of the Supreme Court of Victoria, the Federal Court of Australia and the courts which may hear appeals from those courts.
- (b) Any part of this constitution which is prohibited or unenforceable in any place is, in that place, ineffective only to the extent of that prohibition or unenforceability.