

Constitution

**The New Zealand Primary Health
Organisation Limited**

Trading as “thePHO”

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1 Definitions and interpretation

1.1 Definitions

Act means the Companies Act 1993;

Board means the Directors who number not less than the required quorum acting together as a board of Directors, or, if the Company has only one Director, that Director;

Charitable Purposes means those purposes set out in clause 2.1;

Charities Act means the Charities Act 2005;

Company means The New Zealand Primary Health Organisation Limited;

Constitution means this constitution of the Company and all amendments made to it from time to time;

Director means a person appointed as a director of the Company in accordance with this Constitution;

Holding Company means NZPHO (Holding) Limited (company number 9380813);

PHO means a primary health organisation funded by a district health board to support the provision of essential primary health services through general practices to those people who are enrolled with the primary health organisation;

Redeemable Shares has the meaning given to it in clause 5.3a;

Shareholder means a shareholder in the Company; and

Working Day means any day other than a Saturday, a Sunday, or a public holiday (as defined in the Holidays Act 2003) in New Zealand.

1.2 Interpretation

- a **No definition:** Unless the context otherwise requires, any expression not defined in this Constitution but defined in the Act will bear the same meaning in this Constitution as in the Act (whether or not such expression is capitalised when used in this Constitution).
- b **Singular and plural:** In this Constitution, if not inconsistent with the context:
 - i words importing the singular include the plural and vice versa; and
 - ii words importing persons include firms, companies or other body corporate and firm includes partnership.
- c **Headings:** Headings will not affect the interpretation of this Constitution.
- d **Reference to statutes:** Unless the context otherwise requires, references to a statute include:
 - i amendments to that statute;
 - ii a statute passed in substitution for that statute; and
 - iii regulations passed under that statute (or any of that statute's amendments or under a statute passed in substitution for that statute).

1.3 Reference to share

A reference to a share means a share in the Company.

2 Charitable Purposes

2.1 Charitable Purposes

The Company has been established as a PHO and operates exclusively for the Charitable Purposes set out in this clause.

The Charitable Purposes shall be as follows:

- a to improve the health of the population of New Zealand and promote high-quality, sustainable, accessible and equitable patient care;
- b develop strategic relationships with national & regional health agencies (including but not limited to Health New Zealand Te Whatu Ora, professional bodies, other PHOs, local authorities, service providers and others) to:
 - i support the productivity and efficiency of the New Zealand health and disability system;
 - ii support the development and delivery of the New Zealand Health Plan;
 - iii facilitate coordination and integration between the primary healthcare sector, the rest of the health sector and other associated sectors including housing, education, employment and social welfare; and
 - iv influence and promote legislation, regulations and policy for the accomplishment of these objectives;
- c identify and fulfil specific areas of primary health care need;
- d commission high-quality, sustainable, accessible and equitable primary health services;
- e promote and support the sustainability, viability and innovation of service providers in order to ensure the continuity of locally accessible and high-quality, patient-centric care;
- f to carry out such other charitable purpose within New Zealand as the directors shall determine from time to time; and
- g to do anything necessary or desirable in pursuit of the above objects

2.2 Amendment

The Charitable Purposes may not be amended.

2.3 Charitable Purposes paramount

Notwithstanding anything contained in this Constitution, no power or reservation expressed or implied in this Constitution shall authorise the Board or the Company to authorise or permit any act which is contrary to the Charitable Purposes. The Company shall not undertake any activities that are not incidental to, or necessary for, promoting the Charitable Purposes.

2.4 Alteration to Constitution

Notwithstanding Section 32 or anything else to the contrary in this Constitution, neither the Company nor the shareholders may in any way alter, revoke, or replace this Constitution in a manner which would:

- a negate the intent or purpose of clause 2.1; or
- b result in the Company no longer being charitable according to the laws of New Zealand.

3 No pecuniary profit

3.1 No private pecuniary profit

No private pecuniary profit shall be made by any person involved in the Company through the Company, except that:

- a Shareholders shall be entitled to receive distributions from the Company where such distributions are authorised in accordance with this Constitution and the Act;
- b any Director or Shareholder may receive full reimbursement for all expenses properly incurred by that Director or Shareholder in connection with the affairs of the Company;
- c the Company may pay reasonable and proper remuneration to any officer or servant of the Company (whether a Director or not) in return for services actually rendered to the Company in accordance with Section 161, to the extent relevant;
- d the Company may, and is expressly permitted to, (i) indemnify a Director or employee of the Company and (ii) effect, pay for and maintain insurance for a Director or employee of the Company, in each case, to the extent permitted under Section 162;
- e any Director or Shareholder may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by the Director or Shareholder, or by any firm or entity of which that Director or Shareholder is a member, employee or associate in connection with the affairs of the Company; and
- f any Director or Shareholder may retain any remuneration properly payable to that Director or Shareholder by any company or undertaking with which the Company may be in any way concerned or involved for which that Director or Shareholder has acted in any capacity whatever, notwithstanding that the Director's or Shareholder's connection with that company or undertaking is in any way attributable to that Director's or Shareholder's connection with the Company.

3.2 Entrenchment

Notwithstanding any other provision in this Constitution or the Act, the effect of this clause 3 shall not be removed from this Constitution and shall be deemed to be included and implied, and the Shareholders shall take such steps as are necessary to include the effect of this clause 3, into any document replacing or amending this Constitution.

4 Gifts for Specific Purposes

- a If the Company accepts a gift on condition that it is used for a specific purpose within the Charitable Purposes of the Company, the Company must:

- i keep that gift and any income arising from it separate from the other assets of the Company; and
 - ii use that gift and any income arising from it only for the specific purpose for which it has been given and to meet any expenses which the Company considers relate (directly or indirectly) to the administration of that specific purpose.
- b The Board must exercise its functions to be consistent with its obligations and powers under clause 4a.

5 Shares

5.1 Issue of Shares

- a Subject to authorisation in writing by the Holding Company, the Company may issue Shares at any time, to any person, and in any number it determines.
- b Shares may be issued (including different classes of Shares), which whether as to voting rights or otherwise:
 - i rank equally with, or in priority to, existing Shares; and/or
 - ii have deferred, preferred or other special rights or restrictions.
- c The provisions of section 45 of the Act shall not apply to any shares issued or proposed to be issued by the Company.
- d Any reissue of Shares or transfer of Shares held by the Company in itself pursuant to section 67C of the Act must be authorised in writing by the Holding Company in accordance with clause 5.1a.
- e A share is issued when the name of the Shareholder is entered on the Share Register.

5.2 No distributions

The Company is not carried on for the private pecuniary profit of any individual. Shares will not attract dividends or other distributions of any kind.

5.3 Redeemable Shares

- a The Company may issue Shares that are redeemable within the meaning of section 68 of the Act ("**Redeemable Shares**") and in accordance with clause 5.1a.
- b Subject to authorisation from the Holding Company, the Company may redeem any Redeemable Share, pursuant to its terms of issue and in accordance with the Act.
- c Redeemable Shares that are redeemed by the Company are deemed to be cancelled immediately on redemption.

5.4 Acquisition of own shares

The Company may purchase or otherwise acquire its own shares in accordance with the Act including by making an offer to all Shareholders or to one or more Shareholders to acquire shares.

5.5 Treasury stock

The Company may hold its own shares in accordance with the Act.

6 Board of Directors

6.1 Composition of the Board

The Board will consist of no more than 11 and no less than 7 Directors.

6.2 Wholly owned subsidiary

If the Company is a wholly owned subsidiary, a Director may, when exercising powers or performing duties as a Director, act in a manner which he or she believes is in the best interests of the Company's holding company even though it may not be in the best interests of the Company.

6.3 Appointment of Directors

The Directors of the Company may be appointed or reappointed from time to time either by ordinary resolution or by notice in writing to the Company signed by the Holding Company.

6.4 Removal of Directors

Each Director will hold office subject to the provisions of this Constitution and may at any time be removed from office by an ordinary resolution of the Holding Company or by notice in writing to the Company signed by the Holding Company, provided that the total number of Directors does not at any time fall below the minimum number or above the maximum number fixed by clause 6.1.

6.5 Appointment of Directors need not be voted on individually

Notwithstanding Section 155(1) (which relates to the requirements of a resolution to appoint a Director), the Shareholders may vote on a resolution to appoint a Director if the resolution is a single resolution for the appointment of two or more persons as Directors and it shall not be necessary for a separate resolution that it be so voted on to have first been passed without a vote being cast against it.

6.6 Term of office

Subject to clause 6.4, unless an earlier date is specified in a notice given by the Holding Company under clause 6.3, Directors appointed or reappointed under clause 6.3 will retire from office on the third anniversary of their appointment or reappointment but will be eligible for re-appointment by the Holding Company in accordance with clause 6.3.

6.7 Director ceasing to hold office

The office of Director is vacated if the person holding that office:

- a resigns in accordance with clause 6.8;
- b is removed from office in accordance with the Act or clause 6.4 of this Constitution;
- c becomes disqualified from being a Director pursuant to Section 151 (which relates to qualifications of Directors); or
- d retires in accordance with clause 6.6.

6.8 Resignation procedure

A Director may resign office by signing a written notice of resignation and delivering it:

- a to the address for service of the Company, which notice is effective when it is received at that address or at a later time specified in the notice;
- b by email to any other Director or officer of the Company at the usual email address at which such person is routinely contactable, which notice is effective when the email transmission is deemed to have been dispatched in accordance with Part 4 of the Contract and Commercial Law Act 2017 or at a later time specified in the notice.

6.9 Meetings of the Board

Schedule 1 of this Constitution applies at meetings of the Board.

6.10 Special advisors

The Board may at any time appoint any number of non-voting special advisors, for a maximum renewable term of 3 years, to engage with all, or part of Board proceedings as required. Such special advisors may include those with specific professional expertise or an appropriate representation mandate.

7 Remuneration of Directors

The Board may only exercise the power conferred by section 161(1) of the Act to authorise any payment or other benefit of the kind referred to in that section with the approval of the Holding Company.

8 Indemnity and Insurance

The Company may effect all or any of such indemnities and insurances as are referred to in subsections 162(3), (4) and (5) of the Act to the full extent referred to in those subsections.

9 Authority to bind Company

9.1 Execution of documents

The Company may enter into contracts or other enforceable undertakings in accordance with Section 180.

9.2 Execution of deeds

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

- a two or more Directors; or
- b if there is only one Director, by that Director whose signature must be witnessed; or
- c a Director, and any person authorised by the Board, whose signatures must be witnessed; or
- d one or more attorneys appointed by the Company.

10 Liquidation

10.1 Surplus Assets

If upon the winding up, liquidation or dissolution of the Company any property remains after the satisfaction of all its debts and liabilities, that property must be given or transferred to another registered charitable organisation that:

- a has charitable purposes similar to the Charitable Purposes; or
- b has charitable purposes, as defined in the Charities Act.

11 Notices

11.1 Writing

Each notice given under this Constitution (each a notice) shall be in writing and delivered personally or sent by post or email.

11.2 Addresses

Each notice shall be delivered to the address of the relevant party which is from time to time designated for that purpose by at least 5 Working Days' prior notice to the Company.

11.3 Receipt

A notice under this Agreement is deemed to be received if:

- a Delivered personally, when delivered;
- b If posted, 3 Working Days after the date of posting;
- c If e-mailed, one hour after the time on the Working Day it actually comes to the recipient's attention in readable form,

provided that any notice deemed received after 5 pm on a Working Day or on a non-Working Day shall be deemed to have been received on the next Working Day.

Schedule 1 Proceedings of the Board

1 Chairperson

- 1.1 The Holding Company will appoint a Director as chairperson of the Board.
- 1.2 The Director appointed as chairperson will hold that office until he or she dies or resigns or the Holding Company appoints a chairperson in his or her place.
- 1.3 If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within 15 minutes after a quorum is present, the Directors present may choose one of their number to be chairperson of the meeting.

2 Notice of meeting

- 2.1 A Director or if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board.
- 2.2 Not less than 3 days' notice of a meeting of the Board must be given to every Director who is in New Zealand. The notice must include the date, time, and place of the meeting. The notice need not be in writing.
- 2.3 An irregularity in the notice of a meeting is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 2.4 A meeting of the Board in respect of which less than 3 days' notice has been given may be held if all Directors who are in New Zealand have agreed to the meeting being held at short notice.

3 Methods of holding meeting

- 3.1 A meeting of the Board may be held by a number of the Directors who constitute a quorum, either:
 - a being assembled together at the place, date, and time appointed for the meeting; or
 - b by means of audio, or audio and visual, communication by which all directors participating can simultaneously hear each other throughout the meeting.

4 Quorum

- 4.1 A quorum for a meeting of the Board is a majority of the Directors (50% + 1).
- 4.2 No business may be transacted at a meeting of Directors if a quorum is not present.
- 4.3 If notice of a meeting of the Board has been properly given under paragraph 2 of this Schedule and a quorum is not present within 30 minutes after the time appointed for the meeting any Director may by not less than 2 days' notice to every Director who is in New Zealand convene a further meeting of the Board. If at that further meeting a quorum is not present within 30 minutes after the time appointed for the meeting any Director present shall constitute a quorum for that meeting.

5 Voting

- 5.1 Every Director has one vote.
- 5.2 The chairperson does not have a casting vote.
- 5.3 A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it.
- 5.4 Any Director who abstains from voting shall not be deemed to have voted for or against the proposal or issue being voted on, and accordingly shall not be required to execute any director's certificates required under the Act.

6 Minutes

- 6.1 The Board must ensure that minutes are kept of all proceedings at meetings of the Board.
- 6.2 Minutes that have been signed correct by the chairperson of the meeting, or by the chairperson of the next meeting, are prima facie evidence of the proceedings.
- 6.3 A copy of any written resolution under paragraph 7.1 of this Schedule shall be entered in the minute book of board proceedings.

7 Unanimous resolution

- 7.1 A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 7.2 Subject to paragraph 7.3 of this Schedule, a resolution in writing, signed or assented to by a majority of the Directors then entitled to receive notice of a Board meeting is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 7.3 If a written resolution is signed or assented to under paragraph 7.2 of this Schedule the chairperson shall certify on the resolution that all of the Directors entitled to receive notice of a Board meeting were given written notice of the proposed resolution no later than the Working Day prior to the date the resolution was signed or assented to by the majority of Directors.
- 7.4 A resolution in writing for the purposes of paragraphs 7.1 or 7.2 of this Schedule may be executed in any number of counterparts (including by scanned PDF counterpart or other like electronic copy), each of which shall be deemed an original, but all of which together shall constitute the same instrument.

8 Committee

- 8.1 The proceedings of committees of Directors shall be governed by this Schedule with all necessary modifications.

9 Other proceedings

- 9.1 Except as provided in this Schedule, the Board may regulate its own procedure.