

CONSTITUTION

of

Help Kids Like Nick Ltd

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Company Limited by Guarantee

CONSTITUTION

OF

HELP KIDS LIKE NICK LTD

Interpretation

1. In this Constitution:

“Act” means the Corporations Act 2001 as amended;

“Board” means the board of Directors of the Company;

“Company” means this company limited by guarantee called Help Kids Like Nick Ltd;

“Director” means a director of the Company;

“ITAA” means the Income Tax Assessment Act 1997 as amended;

“Member” means a member of the Company;

Objectives

2. a. The Company is established with the purpose of operating as a charitable institution which promotes the prevention or control of the disease Wolf-Hirschhorn Syndrome (“WHS”) in humans in Australia, and which provides direct relief of poverty, sickness, suffering, distress, misfortune, disability or helplessness, focusing on those sections of the community in Australia affected by poverty, sickness, suffering, distress, misfortune, disability or helplessness arising from the disease WHS.
- b. The Company will pursue these purposes primarily through:
- i. Providing relevant information and education to sufferers of WHS, health professionals, carers and the public;
 - ii. Providing relevant aids and equipment to sufferers of WHS, including to assist with mobility;
 - iii. Raising community awareness of WHS and other similar diseases; and

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- iv. Relieving the sickness, suffering, distress, disability and helplessness experienced by sufferers of WHS by providing them with therapy, care, educational, recreational and assisted employment opportunities and resources, particularly in situations such as transition from schooling to after school when there are less resources available to address their sickness, suffering, distress, disability and helplessness.
 - c. The Company will also assist other bodies whose objectives are similar to that of the Company.
 - d. The Company intends to apply, promptly after incorporation, for endorsement of the Company as a whole as a tax concession charity and a charitable services institution. The Company must, as required by the ITAA, maintain a gift fund and meet the requirements set out for a gift fund from time to time.
 3. The Company has the legal capacity and powers of an individual, and the powers of a body corporate, as described in s.124 of the Corporations Act. Those powers are to be exercised by the Company for the purpose of pursuing the objectives of the Company, and for associated purposes.

Membership of the Company

4.
 - a. Members of the Company are:
 - i. Initially, the subscribers to the Company, namely:

Mark McLennan;
Cameron Tilley;
Brad Coombs;
Alison Blacket;
Heather Smith;
Rosie Jones;
Tina Sprott;
Shane Blakeley;
Susie Duggin;
Heather Gall; and
Ross McLennan.
 - ii. From time to time, those people noted on the Register of Members maintained by the Secretary.
 - b. The Secretary must follow the directions of the Board in maintaining the Register of Members.
 - c. Unless a natural person is an initial subscriber to the Company, they may only become a Member upon approval by the Board, which must consider

the following principles:

- i. Whether the application of the proposed Member is consistent with any manner of application prescribed by the Board from time to time;
- ii. whether the gifts, skills and abilities of the proposed Member will, in the opinion of the Board, assist the Company in achieving its objectives as set out in this Constitution; and
- iii. any other issue which is considered material in the discretion of the Board.

The Board may wait until its next scheduled meeting after the receipt of any application for membership to determine whether to approve or reject the application. The Board must decide, at that next meeting if practical, whether to accept or reject the application. The Secretary of the Board must, as soon as practicable after the Board decides to accept or reject an application, give the applicant a written notice of the decision.

Criteria for Membership

5.
 - a. The Board may admit any person to membership or reject any person from membership, having regard to the matters set out in Clause 4.c.
 - b. There will be no fee for membership.

Provisions about Membership

6. No right or privilege of any Member is in any way transferable or transmissible. All rights and privileges of any Member cease upon the Member ceasing to be recorded as such in the Register of Members.
7. The number of Members in the Company must not be less than one and there is no upper limit.

End of Membership

8. A Member ceases to be a Member of the Company:
 - a. On their retirement or resignation from the Company;
 - b. On their death;
 - c. On being removed from the Register of Members pursuant to a valid resolution of the Board. The Board may make such a resolution at any time if they consider it appropriate having regard to the principles set out in clause 4 of this Constitution.

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9. Before the Board resolves to remove a Member from the Register of Members pursuant to clause 8.c., the Board must give the Member a full and fair opportunity to show why the proposed decision should not be made and in particular, must provide the Member with:
 - a. 14 days notice of the Board meeting at which the matter is to be considered; and
 - b. notice of the proposed resolution; and
 - c. notice of any evidence to be considered by the Board; and
 - d. an opportunity to make written submissions to the Board in relation to the resolution and any other matter.
 10. If, after considering all representations made by the Member, the Board does resolve to remove them from the Register, then the Secretary must give the Member a written notice setting out the resolution of the Board.
 11. Where the Member exercises a right of appeal to the Members of the Company in General Meeting against a resolution of the Board to remove them from the Register of Members, the effect of the Board's resolution is delayed until a general meeting of the Company considers the appeal as set out below.

Appeal Against Rejection or Termination Of Membership

12. A person whose application for membership has been rejected, or whose membership has been terminated, may give the Secretary written notice of the person's intention to appeal against the decision.
13. A notice of intention to appeal must be given to the Secretary within 1 month after the person receives written notice of the decision.
14. If the Secretary receives a notice of intention to appeal, the Secretary must, within 3 months after the day of receipt, call a general meeting to decide the appeal.
15. At a general meeting of the Company convened to consider an appeal -
 - a. There must be no business other than the question of the appeal, and similar appeals by other Members;
 - b. The Board may place before the meeting details of the grounds for the resolution and the reasons for the passing of the resolution;
 - c. The Member must be given a full and fair opportunity to be heard; and

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- d. The Members present must vote by secret ballot on the question whether the resolution of the Board should be confirmed or revoked, and the outcome of that vote (by simple majority) binds the Company and the Board.

Membership of the Board

16. a. The members of the Board are known as Directors.
- b. The Board consists initially of:
- Mark McLennan (who is also the Secretary);
Cameron Tilley; and
Brad Coombs.
- Those Directors are appointed for indefinite terms.
- c. The Members have the power to add or remove Directors in accordance with the principles set out in this Constitution.
- d. The Board has the power to add or remove Directors in accordance with the principles set out in this Constitution.
17. A person ceases to be a Director when that person:
- a. ceases to be a Director by virtue of the Act;
- b. becomes bankrupt or makes any arrangement or composition with their creditors;
- c. becomes prohibited from being a Director of a company by reason of any orders made under the Act;
- d. becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- e. is convicted of an indictable offence; or
- f. resigns their office by notice in writing to the Company.
18. The number of Directors will be not less than three, and not more than ten.

Appointment of Secretary

19. a. The Board must appoint a Secretary for the Company who has the powers and obligations identified in this Constitution and the Act.
- b. The Secretary is initially Mark McLennan.

- c. The Secretary may also be a Director but is not required to be.
- d. If the Secretary is a Director, then the minimum number of Directors is two plus the Secretary.

Appointment of other positions

20. The Board may create other positions such as those of President and Treasurer, may determine what qualifications are appropriate for those positions, and may allocate such duties and responsibilities to them as it considers appropriate. If such positions are created, then the Board will appoint Directors to fill those positions.

Powers of the Members in General Meeting

21. All Members may attend and speak at general meetings. Members must exercise their rights to attend and speak in accordance with any policy developed by the Board and may vote on any issues arising at general meetings.

The Members may, by following the procedures for general meetings set out in this Constitution, appoint by simple majority vote whatever number of Directors to the Board as they consider appropriate (but within the minimum and maximum restrictions set out in the Act and this Constitution).

The Members may only elect Members to the Board as Directors.

The Members may specify a term of appointment for any Director at the time of appointment, or at any later stage. If no term of appointment is specified, then the Director's term is taken to be indefinite.

22. The Members may remove any Director or Directors from the Board by simple majority vote, at any time.
23. The Members in general meeting may exercise all other powers available to them under the Act or this Constitution.

Powers of the Board

24. The Board of the Company may exercise all such powers and do all such acts and things as are within the scope of this Constitution in the management and control of the activities, business and affairs of the Company subject to:
 - a. Any act or thing that is required to be exercised or done by the Company in General Meeting either by this Constitution or the Act; or
 - b. Any regulation from time to time made by the Company in General Meeting.

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25. The Board may at any time and from time to time make any rules and regulations in pursuance of its powers provided that:
- a. such rules and regulations must be consistent with this Constitution; and
 - b. any such rules or regulations may be altered or revoked by the Members in General Meeting.
26. At any time, the Board may fill any casual vacancy caused by a person ceasing to be a Director, by resolving by simple majority to appoint any Member as a replacement Director. Any Director appointed to fill a casual vacancy in this manner may only be appointed for a term which expires at the next Annual General Meeting of the Company.
27. Where the Board does not have at least the minimum number of Board members contemplated by Clause 18, it may not take any action until:
- a. it has appointed further Directors to fill casual vacancies; or
 - b. the Members appoint sufficient Directors; or
 - c. a combination of both;
- so that the Board does have at least the minimum number of Board members contemplated by Clause 18.

Proceedings of the Board

28. The Board must cause true and accurate minutes to be made -
- a. Of all appointments of officers;
 - b. Of names of people present at all meetings of the Company and of the Board;
 - c. Of all proceedings at all meetings of the Company and of the Board.
- Provided such minutes are true and accurate, such minutes must be signed by the chairperson of the next succeeding meeting of that type verifying their accuracy.
29. The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings, as it thinks fit. One-half of the Directors acting together (or one Director acting alone, if there is only one Director) may, at any time, summon a meeting of the Board, provided reasonable notice is given to every Director. The Board may pass a resolution without a directors meeting (a “circulating resolution”), in the circumstances set out in s.248A of the Act.

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30. Questions arising at any meeting of the Board must be decided by a majority of votes of Directors entitled to vote on the resolution. The chairperson of a meeting of the Board does not have a casting vote, and s.248G(2) of the Act, in relation to the chairperson's casting vote, does not apply.
 31. The quorum necessary for the transaction of the business of the Board is three Directors and the quorum must be present at all times during the meeting. Where there are less than three Directors of the Company in total (i.e. not just at a particular meeting, but rather considering all Directors), the Board may meet (if all of those Directors are present) to appoint additional Directors using their power under clause 26, but for no other purpose.
 32. A Director must not vote in respect of any contract or proposed contract with the Company in which that person is interested, and if that person does vote then their vote must not be counted.
 33. All acts done by any meeting of the Board or of a sub committee or by any person acting as a Director will - notwithstanding that it is afterwards discovered that there is some defect in the appointment of any such Director or person, acting as aforesaid, or any of them, were disqualified - be as valid as if every person had been duly appointed and was qualified to be a Director.

General Meetings

Annual General Meetings

34. The first Annual General Meeting must be held within twelve months of incorporation.
35. After the first Annual General Meeting, the Company must hold an Annual General Meeting at least once in each calendar year and within four months after the end of its financial year.
36. All general meetings other than the Annual General Meeting are called extraordinary general meetings.
37. At each Annual General Meeting the Board must provide the meeting with the financial statements and reports which the Company is required by the Act to prepare, and (if an auditor is appointed) a copy of the auditor's report, for the financial year that ended most recently before the Annual General Meeting.
38. The chairperson of the Annual General Meeting must allow a reasonable opportunity for the Members as a whole at the Meeting to ask questions about, or make comments on, the management of the Company.

Convening Meetings

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39. An extraordinary general meeting may be convened by one-half of Directors, acting together, whenever they consider it appropriate (or by one Director acting alone, if there is only one Director). Section 249C of the Act does not apply.
 40. The Secretary is responsible for advising all Members (and Directors) of general meetings.
 41. Notice of general meetings must be given to a Member or Director;
 - a. Personally; or
 - b. By posting to the address for the Member in the register of Members or to an alternative address (if any) nominated by the Member; or
 - c. By sending it to the fax number or electronic (for example, e-mail) address (if any) nominated by the Member; or
 - d. By any other method agreed by the Members in general meeting.
 42. Notice of general meetings must clearly state the nature of the business to be discussed at the meeting.

Right of Members to call extraordinary general meeting

43. The Directors must call and arrange to hold an extraordinary general meeting on the request of 25% of Members.
44. The request must:
 - a. Be in writing; and
 - b. State any resolution to be proposed at the meeting; and
 - c. Be signed by the Members making the request; and
 - d. Be given to the Secretary or any Director.
45. The Board must call the meeting within twenty-one (21) days after the request is given to the Secretary or Board. The meeting is to be held not later than two months after the request is given to the Secretary or any Director.

Proceedings at General Meetings

46. No business may be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
47. The quorum for a general meeting is equal to:

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- if there are 12 Members or less in total, then the quorum is three Members, who must be present at all times during the meeting (unless there are less than three Members, in which case all Members must be present to form a quorum);
 - if there are more than 12 Members in total, then the quorum is equal to the number of Directors currently appointed, multiplied by 2, plus 1, who must be present at all times during the meeting.

The provisions of s249T(1) of the Act in relation to quorum do not apply.

48. On a show of hands every person present who is a Member has one vote and on a poll every Member present in person has one vote.

Proxies

49. A Member of a Company may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.
50. A proxy appointed to attend and vote for a Member has the same rights as the Member:
- a. To speak at the meeting; and
 - b. To vote (but only to the extent allowed by the appointment); and
 - c. To join in the demand for a poll.
51. An appointment of proxy is valid if it is signed by the Member making the appointment and contains the following information:
- a. The Member's name and address;
 - b. The Company's name;
 - c. The proxy's name or the name of the office held by the proxy; and
 - d. The meetings at which the appointment may be used.
52. For an appointment of a proxy for a general meeting to be effective, the following documents must be received by the Company at least 48 hours before the meeting:
- a. The proxy's appointment;
 - b. If the appointment is signed by the appointor's attorney - the authority under which the appointment was signed or a certified copy of the authority.

Accounts

53. The end of financial year for the Company is 30 June. The Board must cause proper accounting and other records to be kept as required by the Act.

The Company or Directors may authorise a Member to examine the books of the Company as contemplated by s.247D of the Act.

54. All cheques and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by any two Directors, or in such other manner as the Board from time to time determines.
55. The Company must report to the Members for a financial year by making available copies of the financial statements and reports which the Company is required by the Act to prepare, and (if an auditor is appointed) a copy of the auditor's report.

Audit

56. If required by the Act, having regard to the revenue of the Company and other relevant factors, (or, if the Board resolves to appoint an auditor) a properly qualified, independent auditor or auditors must be appointed and his or their remuneration fixed and duties regulated in accordance with the Act.

If an auditor is appointed then the auditor must be given notice of any general meeting of the Company and any related communication, as contemplated by s.249K of the Act.

If an auditor is appointed then, at least once in every year, the accounts of the Company must be examined and the correctness of the financial statements must be ascertained by that auditor.

Application of income and assets

57. The income and assets of the Company, from whatever source they may be derived, must be used and applied solely to further the objectives of the Company as set out in this Constitution, and no portion of that income and those assets may be distributed directly or indirectly to Members or Directors of the Company, except as good faith compensation for services actually rendered to the Company or for expenses actually incurred on behalf of the Company.
58. Every Director, Secretary and other officers for the time being of the Company will be indemnified out of the assets of the Company against any liability arising out of the execution of the duties of his or her office, except for any liability in respect of which indemnity is not allowed having regard to s.199A, 199B and 199C of the Act.

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59. Every Member of the Company undertakes to contribute to the assets of the Company, in the event of its being wound up during the time he or she is a Member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time when he or she ceased to be a Member and of the costs, charges and expenses of such winding up and for the adjustment of the rights of the contributors amongst themselves, such amounts as may be required, not exceeding ten dollars (\$10.00).
60. If the Company is wound up or if (after being obtained) the endorsement of the Company as a deductible gift recipient is revoked (whichever occurs first), then the following assets (remaining after the payment of the Company's liabilities) must be transferred to a fund, authority or institution, gifts to which can be deducted under Division 30 of ITAA:
- a. any surplus assets of any gift fund maintained by the Company;
 - b. gifts of money or property for the principal purpose of the Company;
 - c. contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
 - d. money received by the Company because of such gifts and contributions.
61. If the Company is wound up, then any surplus assets (if any) remaining after the payment of the Company's liabilities (and after the application of clause 60) must be transferred to another organisation in Australia with similar objects to which income tax deductible gifts can be made.
62. The Constitution of the Company must not be altered unless a special resolution is approved in writing by the Board and then passed by the Members in general meeting.
63. Where any alteration to the Constitution occurs, the Board must notify the Australian Taxation Office, if they consider the alteration is likely to impact on the Company's entitlement to any relevant endorsement.
64. The liability of the Members is limited by guarantee as contemplated by clause 59.