

Constitution of Cancer Society of New Zealand Auckland Northland Division Inc

Preamble

The Society is a Division of the Cancer Society of New Zealand (“National Body”). It is the largest of the six Divisions which form the ownership structure of the National Body. As such the broad purposes of the Division and the National Body are intended to align. The Society and the National Body envisage that the detail of the operating relationship will be negotiated from time to time and expressed in a memorandum of understanding or service level agreement.

Name

1. The name of the Society shall be Cancer Society of New Zealand Auckland Northland Division Inc, which may be shortened to Cancer Society Auckland and Northland.

Role and Purpose

2. The primary role of the Society is to improve community well-being by reducing the incidence and impact of Cancer.
3. In order to achieve the primary role, the Society may:
 - 3.1 fund and coordinate various forms of research to reduce the incidence and impact of Cancer through biomedical, clinical, social, behavioural, educational and psychosocial research;
 - 3.2 foster and advocate health promotion, focusing upon preventable forms of Cancer and the early detection of treatable forms of Cancer;
 - 3.3 promote professional education in respect of Cancer and fund the training of health professionals dealing with Cancer;
 - 3.4 provide support and comfort to people suffering from Cancer and their families and Whānau;

- 3.5 assist, in such manner deemed appropriate by the Board from time to time, such other organisations whose role and purpose are, in the opinion of the Board related to and compatible with those of the Society;
- 3.6 receive and or raise by any means, and to expend, funds to further the Role and Purpose of the Society;
- 3.7 be, and to remain, at all times a charitable body established and operated in accordance with the Charities Act 2005 or any Act in substitution or amendment thereof; and
- 3.8 do all such lawful acts and activities as are incidental to or conducive with attaining the above objects, as the Board thinks fit from time to time provided however that nothing in this Constitution (whether express or implied) shall permit the activities of the Society to be carried out for private or financial gain of any individual(s) or entity(ies).

The Members

Ordinary Members

4. Subject to the provisions of this Constitution, any person:
 - 4.1 who applies to the Society to be a Member of the Society in any form required by the Board; and
 - 4.2 whose application has been accepted by the Boardshall be a Member.
5. Any person(s) so accepted as a Member of the Society shall pay such Subscription as the Board, from time to time, shall determine.

Life Members

6. On a recommendation from the Board the Society may, at any General Meeting of the Society, appoint a person a Life Member.
7. Such person must, in the opinion of the Board and the Society, have made an outstanding contribution to the Role and Purpose of the Society (irrespective of how that contribution may be made or assessed).
8. While holding Life Membership, such person(s) shall not be obliged to make payment of any Membership fee, Subscription or other payment in order to retain their Membership of the Society.

Other categories of Members

- 9.** The Board may, from time to time, create additional categories of Membership on such terms and conditions as it sees fit. All such additions shall be communicated to the Members as soon as practicable thereafter.

Termination

- 10.** The Board may terminate the Membership of any Member, including a Life Member, or refuse to accept an application for Membership, at such time and for such reasons as the Board shall determine appropriate.

Resignation

- 11.** Any Member may resign their Membership of the Society by giving notice (either in writing or by email) of such resignation to the Board.

The Register of Members

- 12.** The Chief Executive shall keep a register of Members (“the Register”), which shall contain such information about Members as the Board may from time to time require.
- 13.** If a Member’s contact details change, that Member shall give the new information to the Chief Executive.
- 14.** Members shall have reasonable access to the Register of Members.

Subscription

- 15.** The Board shall, subsequent to each AGM, determine the Subscription to be paid by Members of the Society to become or retain Membership for each Financial Year and the timing of such payment.

General Meetings of the Society

AGM

- 16.** An AGM will be held in each year as determined by the Board but, in any case, not earlier than May in each such year.
- 17.** The Chair shall ensure that no less than 14 clear days’ written notice of the calling of an AGM is sent to, or brought to the notice of, all Members and to the Board Members.

- 18.** Such a notice shall contain at least the following:
 - 18.1 the date and time of the relevant AGM;
 - 18.2 the place at which the relevant AGM will be held; and
 - 18.3 the business to be transacted at the AGM.
- 19.** Notice may be given using whatever medium the Board believes will maximise impact on Members and encourage the greatest attendance.
- 20.** At each AGM the Eligible Voters shall:
 - 20.1 consider and approve the annual report of the Society;
 - 20.2 appoint an auditor to audit the financial statements of the Society during the relevant Financial Year. The auditor shall be a member of Chartered Accountants Australia and New Zealand, and shall audit the financial statements for the Society;
 - 20.3 approve the annual maximum amount of remuneration (if any) for Board Members, as recommended by the Board governance subcommittee; and
 - 20.4 appoint the member of the BAP referred to in clause 51.3.
- 21.** The chair of the AGM must allow a reasonable opportunity for Members at the meeting to question, discuss, or comment on the management of the Society.

Special General Meeting

- 22.** The Chair shall convene a Special General Meeting either upon receipt, by the Chair, of a written request for such a meeting signed by no less than 15 Members or, following a request so to do by a majority of the Board, in each case specifying the business required to be conducted at that meeting.
- 23.** A Special General Meeting so called shall be convened and conducted as if it were an AGM EXCEPT in the event that the Board considers that such meeting should be convened as a matter of urgency. If the Board considers that the Special General Meeting should be called as a matter of urgency, then notice of such meeting shall be given, in the same manner as detailed in clauses 17 to 19 above, provided that only three clear days' notice of such meeting shall be required.
- 24.** All General Meetings shall be chaired by the Chair. In the event that the Chair is not available to chair such meeting, then the Deputy Chair shall chair the meeting. In the event that both the Chair and the Deputy Chair are unable to chair the meeting, then the meeting shall be chaired by the longest serving Board Member who is in attendance at the relevant meeting.

Quorum

- 25.** The quorum for any General Meeting shall be 10 Eligible Voters.

Voting at General Meetings of the Society

- 26.** Every Eligible Voter shall be entitled to exercise one vote in respect of any matter put to a vote at a General Meeting.
- 27.** Where a Member is a firm, partnership, trust, corporate body or other non-individual, then such entity shall be entitled to exercise one vote only at a General Meeting, such vote to be exercised by a representative of such entity who attends that meeting.
- 28.** Any resolution put to a vote at a General Meeting shall first be moved by an Eligible Voter and seconded by another Eligible Voter and shall thereafter be determined by a majority verbal vote determined and announced by the chairperson of the meeting. In the event that the determination of the chairperson as to the result of such vote is questioned, then such matter shall be determined by a show of hands.
- 29.** At least five Eligible Voters at a meeting may require that a matter is determined by a poll, in which case the Chair shall determine the manner by which such poll shall be carried out.
- 30.** The Chair shall not have a deliberative or casting vote in respect of a verbal vote, a show of hands, or a poll.

The Board

Governance

- 31.** The governance of the affairs of the Society shall be controlled by the Board, which shall have full and unfettered rights and duties in respect thereof (subject only to the provisions of this Constitution, the Act and the Charities Act 2005).
- 32.** Subject to the terms set out in this Constitution, the role of the Board and each Board Member is to act in the best interests of the Society in relation to the advancement of the Role and Purpose.
- 33.** From time to time the Board shall by notice in writing designate a “contact officer” whom the Registrar of Societies can contact when needed.

Board make up

- 34.** The Board shall consist of not more than 9 Board Members, being comprised of:
 - 34.1** up to 3 Elected Board Members elected in accordance with this Constitution; and

- 34.2 up to 6 Appointed Board Members appointed in accordance with this Constitution.
- 35.** The Board shall include at least one Board Member who has knowledge of, and is able to communicate, the needs of the Northland community.
- 36.** Candidates for election or appointment (as the case may be) to the Board:
- 36.1 in the case of Elected Board Members are nominated and voted upon; and
- 36.2 in the case of the Appointed Board Members, apply for the position and are appointed each in accordance with the processes set out in clauses 49 to 75. However, the process for the election and appointment of the Board to take office from the New Board Appointment Date is set out in the transitional provisions in the Schedule.

Board duties

- 37.** The duties of each Board Member are to:
- 37.1 regularly attend Board meetings and General Meetings of the Society;
- 37.2 provide good governance for the Society;
- 37.3 exercise the powers of the Board for a proper purpose;
- 37.4 regularly monitor and review the performance of the Society;
- 37.5 act in good faith and in what the Board Member believes to be the best interests of the Society at all times;
- 37.6 act, and ensure the Society acts, in accordance with this Constitution and the Act;
- 37.7 formulate such bylaws, regulations policies and procedures as are appropriate for the Society, including in particular policies governing the management of conflicts of interest involving employees;
- 37.8 where appropriate engage in activities to promote, market, represent and fund raise for the Society;
- 37.9 disclose to the Board the nature and extent of any interest in a transaction or proposed transaction as soon as the Board Member becomes aware of the fact that he or she has such an interest in accordance with clauses 86 to 90;
- 37.10 take such other steps to comply with clauses 86 to 90 in respect of any such interest;
- (a) not disclose information that the Board Member would not otherwise have available other than in his or her capacity as a Board Member, to any person, or make use of or act on the information except:
- (b) as agreed by the Board, to achieve the Role and Purpose of the Society; or

(c) as required by law;

- 37.11 not agree to the Society incurring an obligation unless the Board Member believes at that time, on reasonable grounds, that the Society will be able to perform the obligation when it is required to do so;
- 37.12 not agree to the activities of the Society being carried on in a manner likely to create a substantial risk of serious loss to the Society's creditors or cause or allow the activities of the Society to be carried on in a manner likely to create a substantial risk of serious loss to the Society's creditors.
- 37.13 when exercising powers or performing duties as a Board Member, exercise the care diligence and skill that a reasonable Board Member would exercise in the same circumstances taking into account, but without limitation, the nature of the Society, the nature of the decision and the position of the Board Member and the nature of the responsibilities undertaken by him or her;
- 37.14 when exercising powers or performing duties as an officer, rely on reports, statements and other information prepared or supplied, and on professional or expert advice given, by any of the following persons: an employee of the Society whom the Board Member believes on reasonable grounds to be reliable and competent in relation to the matters concerned, a professional advisor or expert in relation to matters that the Board Member believes on reasonable grounds to be within the person's professional or expert competence and any other officer or subcommittee of officers upon which the Board Member did not serve in relation to matters within the officer's or subcommittee's designated authority; provided however that the Board Member may only place such reliance if he or she acts in good faith and makes proper enquiry where the need for enquiries is indicated by the circumstances and has no knowledge that the reliance is unwarranted; and
- 37.15 do such other things within this Constitution as the Board agrees to promote the Role and Purpose of the Society.

Board Powers

- 38.** In order to advance the Role and Purpose of the Society, in addition to all other powers conferred by law but subject to the restrictions contained in this Constitution (and any applicable law) the Board has:
- 38.1 full capacity to carry on and undertake any business activity, do any act, or enter into any transaction; and
- 38.2 full rights powers and privileges for the purposes of clause 38.1.
- 39.** The Board shall have the power to:

- 39.1 appoint the Chief Executive and employ such persons as the Board considers to be in the best interests of the Society;
- 39.2 define delegations of authority from the Board to the Chief Executive;
- 39.3 in partnership with management, adopt and review the strategy for the Society;
- 39.4 adopt and review the annual plan and budget for the Society;
- 39.5 determine applications from persons wishing to be Members;
- 39.6 hold meetings and forums for the Members, including General Meetings;
- 39.7 establish committees, commissions, or other groups to carry out any work of the Board by its delegated authority;
- 39.8 subject to this Constitution, fill vacancies on any committees or other groups which are established by it;
- 39.9 control expenditure and raise funds to fulfil the Role and Purpose;
- 39.10 open and operate in the name of the Society such bank accounts as deemed necessary;
- 39.11 make, repeal or amend any regulations, policies and procedures as it thinks appropriate, provided that such policies and procedures are not inconsistent with this Constitution;
- 39.12 engage, contract or otherwise agree to obtain the assistance or advice of any person or organisation for the Board;
- 39.13 establish such other entities to carry on and conduct all or any part of the affairs of the Society;
- 39.14 resolve and determine any disputes or matters not provided for in this Constitution;
- 39.15 invest monies of the Society that are not required for current use or for imminent expenses and any such investments may from time to time be sold, realised or liquidated at the decision of the Board;
- 39.16 exercise all of the powers of the Society to acquire or dispose of any interest in any real or personal property, to borrow money, to lend money, to mortgage or charge its undertaking property and assets or any part thereof, and to issue securities for any debt liability or obligation of the Society;
- 39.17 co-opt one (1) person to the Board from time to time ("Co-opted Person"). The Board shall determine the period, up to a maximum of one (1) year, for which that Co-opted Person shall serve, and the terms and conditions of that service;
- 39.18 subject to the maximum annual amount determined by the Members at the AGM (if any), authorise the payment of remuneration by the Society to a Board Member for services as a Board Member and Board Members may also be reimbursed for reasonable travelling, accommodation and other expenses incurred in the course of

performing duties or exercising powers in that person's capacity as a Board Member, with the approval of the Board; and

39.19 do all other acts and things that are within the powers of the Society and that the Board considers are appropriate to meet the Role and Purpose.

40. If any situation arises that, in the opinion of the Board, is not provided for in the Constitution, any regulations, or the policies or procedures of the Society, the matter will be determined by the Board but consistent with the Act.
41. The Board's powers will not be limited or restricted by any principle of construction or clause of law or statutory power or provision, except to the extent that it is obligatory.
42. The Board must exercise its powers and discretions in a prudent manner, exercising the care diligence and skill that a prudent person of business would exercise in managing the affairs of others.
43. Other than as expressly provided in this Constitution, the activities and operations of the Board shall be conducted as determined by a majority of the Board, from time to time.
44. To the fullest extent permitted by law, the Board may delegate any of its powers and discretions in writing, and subject to such terms and or directions as the Board thinks fit, to any subcommittee or sub committees of the Board, or any officer, employee, manager, agent, attorney or other person or body nominated or appointed by the Board, provided that:

44.1 the Board shall establish

- (a) an audit and risk subcommittee;
- (b) a governance subcommittee (with responsibilities to include succession, developing and recommending to the Board for approval a skills and competencies matrix referred to in clauses 71 and 72, recommending the maximum amount of remuneration for Board Members for consideration by the AGM, monitoring the performance of the Board and each Board Member in accordance with the provisions set out in clause 75 and policy review); and
- (c) the Chief Executive review subcommittee,

in each case with appropriate written terms of reference;

- 44.2 any delegated power or discretion must be exercised in accordance with the terms of this Constitution and any terms set or directions given by the Board;
- 44.3 the Board may wholly or partly revoke or modify any such delegation at any time; and
- 44.4 no such delegation will release the Board from its responsibilities in relation to the Society under the terms of this Constitution.

Board eligibility and term

- 45.** Except in the case of the Initial Board Members, for an individual to be eligible for appointment, or to continue to hold office, as a Board Member the BAP must be satisfied that the person is able to act Independently as a Board Member, in the best interests of the Society in relation to the advancement of its Role and Purpose.
- 46.** An individual is not eligible to be elected, appointed, or to continue to hold office, as a Board Member if the person is:
- 46.1 a person who is an undischarged bankrupt or who is a discharged bankrupt but is prohibited by court order from engaging in any form of business activity;
 - 46.2 a person who has been:
 - (a) convicted of any crime involving dishonesty, within the meaning of section 2 (1) of the Crimes Act 1961, and sentenced for that crime within the last seven years; or
 - (b) convicted of any offence punishable by a term of imprisonment of two or more years, or sentenced to imprisonment for any offence, unless that person has obtained a pardon;
 - (c) a person who is prohibited from being a director or promoter of, or from being concerned or taking part in the management of, a company under any of the Companies Act 1993, the Securities Act 1978, the Securities Market Act 1988 or the Takeover Act 1993;
 - 46.3 a person:
 - (a) who is subject to a property order made under the Protection of Personal and Property Rights Act 1988;
 - (b) whose property is managed by a trustee corporation under section 32 of the Protection of Personal and Property Rights Act 1988; or
 - (c) who is mentally incapable in relation to property or personal care and welfare, as defined in respect of a donor of an enduring power of attorney under section 94 of the Protection of Personal and Property Rights Act 1988; or
 - (d) for so long as the Society is registered as a charitable entity under the Charities Act 2005, a person who is disqualified from being an officer of a charitable entity under section 16 of that Act.
- 47.** The following provisions apply to an individual's term of office as a Board Member.
- 47.1 Subject to clause 48, each of the Initial Board Members will cease to hold office as a Board Member at the start of the New Board Appointment Date, but may be appointed by the BAP, or elected, to hold office as a Board Member on and from that date.

- 47.2 Subject to clause 47.3, an individual, elected or appointed to hold office as a Board Member (including an individual reappointed as a Board Member) holds such office for a period of three years from the effective date of the election or appointment, or for any period of less than three years from the effective date of the appointment if so determined by the BAP, whether on account of the requirement to maintain continuity on the Board under clause 73.2 or for any other reason.
- 47.3 No person shall hold office as a Board Member for more than three terms unless the Board determines by a two thirds majority that, due to exceptional circumstances, the person may remain in office for a further one (1) year.
- 48.** An individual holding office as a Board Member will cease to hold such office, notwithstanding that the person's term of office has not expired, if the individual:
- 48.1 resigns by giving 28 days' written notice to the Board;
 - 48.2 is ineligible, or becomes ineligible, to hold office as a Board Member under clause 46;
 - 48.3 fails to attend any three or more consecutive meetings of the Board without leave granted by the Board;
 - 48.4 dies while holding office as a Board Member; or
 - 48.5 is removed from holding office as a Board Member by the Board under clause 77.3.

Appointment/removal/recommendation and monitoring of Board Members

- 49.** The Initial Board Members will hold office until replaced either in accordance with the transitional provisions set out in the Schedule or on the New Board Appointment Date. Thereafter, the Board will consist of those individuals either appointed to hold office as Appointed Board Members by a Board appointments panel ("the BAP") or elected by the Members as Elected Board Members.
- 50.** The BAP is responsible for:
- 50.1 considering nominations and recommending candidates for the offices of the Elected Board Members; and
 - 50.2 appointing the Appointed Board Members.
- 51.** The BAP will comprise the following members:
- 51.1 the Chair, provided that in relation to the BAP's consideration of the reappointment of the person holding the office of chair, the Chair must be replaced by another Board Member appointed by the Board;

- 51.2 a Board Member, provided that in relation to the BAP's consideration of the reappointment of that particular Board Member, that Board Member must be replaced by another Board Member appointed by the Board;
 - 51.3 one individual appointed by the Members to represent the Members; and
 - 51.4 one individual appointed by the Board who is an Independent expert in governance and/or senior recruitment.
- 52.** Without derogating from the general role under clause 32, the specific roles of the Board Members are to do all things necessary or expedient:
- 52.1 to ensure that the BAP is convened and recommends and/or appoints Board Members to take office; and
 - 52.2 to otherwise enable the BAP to carry out its role in accordance with clauses 50 to 74.
- 53.** For the avoidance of doubt, in the period prior to the New Board Appointment Date, references to the chair are references to the Initial Board Member holding that position, any reference to the Board is to the Board made up of the Initial Board Members and any reference to a Board Member is to an Initial Board Member.
- 54.** The Chair will also act as the chair of the BAP.
- 55.** Any decision of the BAP must be approved by a number of BAP members that exceeds 50% of the total number of BAP members for the time being, provided that if there is an even number of BAP members for the time being of whom 50% approve any decision, the person acting as chair of the BAP for the time being will have a casting vote in relation to that decision.
- 56.** Subject to clauses 45 to 48 and the transitional provisions referred to in clause 49, the BAP has the power, at any time:
- 56.1 to recommend any individual be elected to hold office as an Elected Board Member, for a term of appointment of up to 3 years from the effective date of the appointment; and
 - 56.2 to appoint (and to reappoint) any individual to hold office as an Appointed Board Member, for a term of appointment of up to 3 years from the effective date of the appointment; and
- and any such recommendations, or appointment, must be notified in writing by the BAP to the Board.
- 57.** Nominations for candidates for election as Elected Board Members must be:
- 57.1 received by the Board secretary (or such other person nominated by the Board) ("the Convenor") not less than seven weeks before the date of the General Meeting at which the election of the Elected Board Members is to be held; and
 - 57.2 accompanied by the written consent signed by or on behalf of the nominee.

- 58.** A person who wishes to apply to be appointed as an Appointed Board Member must apply in writing to the Convenor and his or her application must have been received by the Convenor prior to the closing date for applications nominated by the Convenor. The applicant must:
- 58.1 set out their relevant experience and qualifications;
 - 58.2 confirm that he or she is, or will immediately be on appointment, Independent;
 - 58.3 confirm that he or she will be able to and will continue to act and think Independently of any particular stakeholder and in the best interests of the Society; and
 - 58.4 confirm that, if appointed, he or she will in immediately notify the Board if he or she ceases to be Independent for any reason.
- 59.** The Convenor will, immediately following the relevant closing date refer all nominations received and all applications received, to the BAP.
- 60.** The BAP will consider the nominations for the Elected Board Members received from the Convenor and, taking into account the matters set out in clause 71, give written notice to the Convenor not less than four weeks prior to the date of the General Meeting at which the election of the Elected Board Members is to be held setting out:
- 60.1 its recommended candidate for each Elected Board Member vacancy being the nominee that it considers is the most suitable candidate to fill each Elected Board Member vacancy (the “Recommended Candidates”); and
 - 60.2 the names of the persons it has appointed as Appointed Board Members (with effect from the end of the AGM), being the applicants that it considers are the most suitable candidates to fill the Appointed Board Member vacancies.
- 61.** As soon as practicable after receiving notification of the BAP’s Recommended Candidates and its appointments to the Appointed Board Member positions, the Convenor will:
- 61.1 notify each nominee for election as an Elected Board Member whether or not he or she is a Recommended Candidate; and
 - 61.2 notify each applicant for appointment as an Appointed Board Member whether or not he or she has been successful in being appointed.
- 62.** Only Recommended Candidates may continue to seek election as an Elected Board Member at the AGM.
- 63.** Decisions of the BAP with regard to:
- 63.1 the Recommended Candidate for each Elected Board Member vacancy; and
 - 63.2 the appointees for each Appointed Board Member vacancy:
- are final, subject only to any appeal or review rights arising under the rules of natural justice.

- 64.** No less than three weeks prior to the date of the General Meeting at which the election of the Elected Board Members will take place, the Convenor will give written notice to all Members specifying one Recommended Candidates for each vacancy as an Elected Board Member and the names of all the persons appointed to fill vacancies as Appointed Board Members. At the same time, the BAP will provide to all Members the following in regard to each Recommended Candidate and the appointees to the Appointed Board Member positions:
- 64.1 biographical information and work history using a template form populated by each Recommended Candidate and by the appointees to the Appointed Board Member positions;
 - 64.2 a curriculum vitae prepared by each Recommended Candidate and the appointees to the Appointed Board Member positions; and
 - 64.3 a brief assessment of each Recommended Candidate and the appointees to the Appointed Board Member positions prepared by the BAP having regard to the skills and competencies matrix referred to in clause 71.
- 65.** At the General Meeting the Members will elect or reject the Recommended Candidate as an Elected Board Member for each Elected Board Member office that is vacant. To be successful, a Recommended Candidate must receive a simple majority of the votes cast.
- 66.** Subject to the terms of this Constitution, retiring Board Members or Board Members whose term expires, may stand for re-election and reappointment.
- 67.** Not more than two weeks after the date of the General Meeting at which the election of the Elected Board Members is held at which one or more Recommended Candidates do not secure sufficient votes from the Members to be elected or, in the case of a casual vacancy of an Appointed Board Member, within such time period as the BAP determines, the BAP will appoint an Appointed Board Member (but not the Recommended Candidate(s) who was not elected) to fill any such vacancies on the Board so created for a term of up to one year until the next AGM. In such event the BAP will otherwise have the sole and unfettered discretion to determine which person or persons are the most suitable candidates to fill vacancies. The remaining Board Members constituting the Board will be entitled to act until the number of Board Members is increased.
- 68.** A person may be both an applicant for an Appointed Board Member position and a nominee for an Elected Board Member position.
- 69.** Subject to the terms of this Constitution, Board Members are elected and/or appointed:
- 69.1 for a term commencing on the date of his or her election or appointment and ending on the conclusion of the AGM held on the third calendar year after his or her election or appointment; and
 - 69.2 for a maximum of three consecutive terms.
- 70.** The BAP's power to appoint Board Members under this Part is to be exercised at the discretion of the BAP, provided that:

- 70.1 the BAP, in conjunction with the Board, must develop and adopt from time to time appropriate processes for publicly advertising for nominations, calling for nominations from related or relevant organisations or bodies, and generally identifying candidates for appointment;
- 70.2 the BAP must exercise its power to appoint Board Members principally based on its assessment of:
- (a) the skills and competencies of each candidate, including the candidate's passion and ability to advance the interests of the Society in relation to the advancement of its Role and Purpose; and
 - (b) the overall mix of skills and competencies offered by the continuing Board Members and candidates for appointment.
- 71.** In order to ensure that the Board has the skills and competencies required to meet the current strategic needs of the Society for the purposes of undertaking such assessments referred to above the Board, with input from the BAP, must develop and adopt a skills and competencies matrix, which must include a requirement that Board Members must have both the passion and the ability to advance the interests of the Society in relation to the advancement of its Role and Purpose and must otherwise reflect the current strategic needs of the Society.
- 72.** The skills and competencies matrix adopted by the Board must be reviewed and updated by the Board, with input from the BAP, from time to time and in any event at least once every Financial Year.
- 73.** When exercising its power to recommend Board Members, appoint Board Members and determine any Board Member's term of appointment:
- 73.1 subject to the overriding requirement to ensure that the Board has the skills and competencies required to meet the current strategic needs of the Society, the BAP must also have regard to the desirability of the Board being able to represent, and being seen to represent, the people of Auckland and Northland and its communities as a whole (with reference to gender, ethnicity, geographical representation, the interests of Mana whenua and any other relevant factors); and
 - 73.2 the BAP must endeavour to maintain an appropriate level of continuity on the Board, as determined by the BAP, and for this purpose the BAP must ensure that, at any time, the terms of appointment of all or a substantial number of the Board Members are not scheduled to expire on or about the same date for example by staggering the appointment of Board Members and/or by ensuring that the Board Members terms of appointment are staggered.
- 74.** Subject to the terms of this Constitution the proceedings of the BAP will otherwise be regulated by the BAP, as the BAP thinks fit, and for this purpose the BAP may develop and adopt from time to time any rules and/or regulations relating to its proceedings.

- 75.** The Board governance subcommittee will be responsible for monitoring the performance of the Board and the Board Members and in particular:
- 75.1 each Board Member will be subject to a triennial performance appraisal;
 - 75.2 the Board will be subject to a triennial performance appraisal, it being the intention that Board Member appraisals occur in different years from the Board appraisals; and
 - 75.3 the whole of Board appraisal and (with prior consent of the individual) individual Board Member appraisals will be made available to the BAP for assessment on a confidential basis.

Board appointment of chair and other officers and power of removal

- 76.** Within three months of the AGM, the Board must appoint, for a term of appointment of one year from the effective date of the appointment, one Board Member to hold office as the Chair of the Society and one Board Member to hold office as the Deputy Chair of the Society, provided that any person appointed to hold such office will only hold that office while they remain a Board Member.
- 77.** The Board may:
- 77.1 appoint from time to time either one of the Board Members or some other person to hold any other office or to fulfil any role, as determined by the Board;
 - 77.2 remove and replace any Board Member or other person appointed to hold any such office at any time, provided that any such appointees must not be ineligible and will cease to hold such office if they become ineligible, to hold office as a Board Member under clause 46; and
 - 77.3 by a majority supported by at least two thirds of the Board, remove any person from holding office as a Board Member, notwithstanding that the person's term of office has not yet expired.

Board Meetings

- 78.** Meetings of the Board shall be convened from time to time as determined by the Chair or otherwise as requested (in writing) by no less than 51% of the Board Members. Notwithstanding any of the foregoing, the Board shall meet on no less than six occasions per calendar year.
- 79.** A quorum for any meeting of the Board shall be no less than 51% of the Board Members.
- 80.** The Chair shall chair any meeting of the Board. In the event that the Chair is unavailable to do so, then the Deputy Chair shall chair such meetings. In the event of the unavailability of both the Chair and the Deputy Chair, then those Board Members attending the meeting shall appoint a chairperson to chair that meeting.

- 81.** Any matter put to a vote at a meeting of the Board shall be determined by a simple majority. Each Board Member shall be entitled to cast one vote only in respect of any matter to be considered by the Board. The chairman of any meeting of the Board shall not have a casting or deliberate vote in addition to the vote which they are entitled to cast as a Board Member.
- 82.** A contemporaneous linking together by telephone or other audio or visual means of communication, of a number of Board Members not less than the quorum (whether or not any one or more of the Board Members are out of New Zealand) shall be deemed to constitute a meeting of the Board and all the provisions of this Constitution in respect of such meetings shall apply so long as the following conditions are met.
- 82.1 All Board Members for the time being entitled to receive notice of a meeting of the Board shall be entitled to notice of meeting by telephone or other audio or visual means of communication, and to be linked by telephone or other audio or visual means for the purposes of such meeting, and shall have first received two business days prior notice of such meeting.
- 82.2 Each Board Member taking part in a meeting by telephone or other audio or visual means of communication must throughout the meeting be able to hear each of the other Board Members taking part in the meeting.
- 82.3 At the commencement of the meeting each Board Member must acknowledge their own presence for the purpose of such meeting to all other Board Members taking part.
- 83.** A resolution of the Board in writing signed or assented to by letter, email, facsimile or other written manner by all Board Members (for the time being) shall be as valid and effective as if it had been passed at a meeting of the Board. Any such resolution may consist of several documents in like form either signed or despatched by any one or more of the Board Members.

Board Member Protections

- 84.** The Society indemnifies each Board Member, officer, Member and employee of the Society (whether past or present) in respect of liability to any person other than the Society for any act or omission in his or her capacity as a Board Member, officer, Member or an employee (not being a liability specified in the next sentence) or costs incurred by the Board Member, Member, officer or employee in defending or settling any claim or proceeding relating to that liability. The indemnity does not cover criminal liability or a liability that arises out of a failure to act in good faith and in the best interests of the Society when acting in the capacity as a Board Member, officer, Member or employee. The Society will also indemnify each Board Member, officer, Member and employee of the Society (whether past or present) for any costs incurred by him or her in defending or settling a proceeding if judgement is given in his or her favour or if he or she is acquitted, or the proceeding is discontinued.
- 85.** The Board may arrange for the Society to obtain insurance for the benefit of Board Members and officers and employees of the Society in respect of liabilities or costs covered by the indemnity in clause 84 or otherwise referred to in the Act as being capable of insurance.

Interested Board Members / Conflicts of Interest

- 86.** If any Board Member or officer is interested (as set out in clause 90) in any transaction entered into, or to be entered into, by the Board, the following provisions will apply.
- 87.** The Board Member or officer, as soon as practicable after becoming aware that he or she is interested in the transaction, must disclose to the Board:
 - 87.1 his or her interest in the transaction; and
 - 87.2 the nature of their interest and either the monetary value of their interest, if the monetary value of the interest is able to be quantified, or, if the monetary value of the interest is not able to be quantified, the extent of their interest.
- 88.** The Board must keep a written record of the interest of the Board Member or officer in relation to the transaction.
- 89.** The Board Member or officer must not:
 - 89.1 vote on any matter relating to the transaction;
 - 89.2 without the consent of the Board, be in attendance for the portion of any meeting of the Board at which any matter relating to the transaction arises but may be counted among the attendees at the meeting for the purposes of establishing a quorum for that portion of the meeting;
 - 89.3 sign any document relating to that transaction on behalf of the Society; and
 - 89.4 do any other thing in his or her capacity as a Board Member or officer in relation to that transaction.
- 90.** For the purpose of clause 86, a Board Member or officer will be interested in a transaction if the Board Member or officer:
 - 90.1 is a party to, or will or may derive a material financial benefit from, the transaction; or
 - 90.2 has a material financial interest in another party to the transaction; or
 - 90.3 is a director, officer, or trustee of another party to the transaction, or person who will or may derive a material financial benefit from the transaction (unless the party or person is wholly owned or wholly controlled by the Board); or
 - 90.4 is the parent, child, spouse, civil union partner, or de facto partner of another party to, or a person who will or may derive a material financial benefit from, the transaction; or
 - 90.5 is otherwise directly or indirectly materially interested in the transaction.

Reporting and accountability requirements

- 91.** The Board must maintain an up to date strategy for the Society, a statement of priorities for the Society for the current Financial Year, a Board work plan (i.e. key focus areas for that year) and a summary of findings from the Board performance appraisal referred to in clause 75.2 together with proposed actions. Within one month of the commencement of each new Financial Year, the Board must post a copy of all such documents, together with the annual plan referred to in clause 39.4 and a summary budget, on the Society website and provide a copy for information to those stakeholders determined by the Board.
- 92.** The Board must ensure that:
- 92.1 financial statements of the Society are prepared as soon as practicable after the end of each Financial Year, presentation and approval at the AGM, which must give a true and fair view of the financial position of the Society for that Financial Year and must include:
 - (a) a statement of financial position;
 - (b) a statement of financial performance;
 - (c) notes to those accounts; and
 - 92.2 the financial statements of the Society prepared for each Financial Year are audited as soon as practicable after the end of the relevant Financial Year, by the auditor appointed by the Members pursuant to clause 20.2.
- 93.** As soon as practicable after the end of each Financial Year, for presentation and approval at the AGM, the Board must prepare an annual report that includes a report on the Society's activities during the relevant Financial Year and a copy of the audited financial statements for that Financial Year. Once the annual report is finalised and approved at the AGM, the Board must post a copy on the Society website and provide a copy for information to those stakeholders determined by the Board.

Seal and Method of Contracting

- 94.** The seal of the Society shall be kept at such location as the Board shall, from time to time, determine appropriate. The Board shall determine, from time to time, which persons shall be authorised to witness the affixation of the seal of the Society. The persons so authorised shall keep and maintain a register of the occasions upon which, and the purposes for which, the seal is affixed to any documentation, and shall make such register available to the Board at all times. For the avoidance of doubt, to the extent that the Society is permitted to do so under the act or any other law, documents may be executed by and on behalf of the Society without affixing the common seal.

- 95.** The Board shall from time to time, determine and record in writing the persons authorised to sign cheques on behalf of the Society and/or to effect electronic payments for and on behalf of the Society. At all times it shall be required that no less than two persons act jointly to either sign cheques of the Society, or to effect electronic payments on behalf of the Society.

Subdivisions

- 96.** The Board may, from time to time, arrange for subdivisions of the Society to be formed, to represent the interests of the Society in a particular geographical area. The authority and activities of such subcommittee(s) shall be determined, from time to time, by the Board.

Bylaws

- 97.** The Board may from time-to-time make, alter or rescind bylaws for the general management of the Society, so long as these are not inconsistent with this Constitution or to the provisions of law. All such bylaws shall be binding on Members of the Society. A copy of the bylaws for the time being, shall be available for inspection by any Member on request to the Chief Executive.

Alteration to Clauses

- 98.** This Constitution may be added to, altered or repealed by a resolution approved by no less than 75% of the Eligible Voters attending any General Meeting PROVIDED THAT no addition, alteration or repeal shall be made which could prejudice the charitable nature of the Society. Where the proposed addition alteration or repeal is not proposed by the Board, any such proposed addition, alteration or repeal of this Constitution shall be provided to the Board, in writing, no less than 30 days prior to the date upon which the Board is obliged to give notice to call a General Meeting, pursuant to clause 17 hereof. Such notice shall be signed by one Member, as mover of the notice, and seconded by another Member. The notice of any General Meeting, given pursuant to clause 17, shall include notice of any such proposed alteration, addition or repeal for consideration at the relevant General Meeting.

Winding Up

- 99.** In the event that the Society is wound up its assets, after payment of all debts and liabilities, shall be disposed of by way of grant to one or more charitable organisations pursuing charitable purposes that are the same as, or fall within, or are similar to the Role and Purpose (as determined by the Board).

Disputes and matters not provided for

- 100.** If any dispute arises between Members or in respect of the interpretation of this Constitution, or any matter arises which is not provided for in this Constitution, such dispute or matter will be referred in writing to the Board, whose decision shall be final and binding.
- 101.** If the dispute or matter is between the Board and a Member (the parties), the dispute or matter will be resolved by the following process:
- 101.1 the parties to the dispute will actively and in good faith negotiate the dispute with a view to a speedy resolution of such dispute or difference and:
 - 101.2 if within 15 Business Days from the commencement of negotiations the matter has not been resolved, then either party may require that the matter be referred to a mediator by giving the other notice in writing requiring the mediation. If the other party agrees and a mutually agreed mediator is appointed the parties will then agree the rules for any mediation in full consultation with the agreed appointed mediator before they commence the mediation. Participation in mediation will not prejudice any other right or entitlement either of them may have.
- 102.** If within 20 Business Days of the matter in clause 102 being referred to a mediator or if the parties cannot agree to refer any unresolved dispute to mediation, then either party may refer the dispute or matter to arbitration under the Arbitration Act 1996.

Notices

- 103.** Any notice to be given to any person may be given by any of the following means:
- 103.1 by posting such notice to the intended recipients;
 - 103.2 in the case of a General Meeting only, by placing an advertisement to that effect in a daily newspaper(s) published in Auckland and Whangarei, such an advertisement to be advertised no less than twice and no less than 14 clear days prior to the date of the relevant General Meeting;
 - 103.3 in the case of a General Meeting only, by posting such notice on the website of the Society;
 - 103.4 by emailing such notice to the last known email address of the intended recipients; and
 - 103.5 by delivery to the intended recipient directly or to an address given by the recipient to the sender for such purpose.
- 104.** A notice given by sender to a recipient is deemed to be given:

104.1 in the case of delivery, when the notice is handed to the recipient or delivered to the address of the recipient;

104.2 in the case of posting, two days after it is posted; and

104.3 in the case of email, at the time of transmission.

Definitions and Interpretations

Definitions

The following terms shall, throughout this Constitution, have the following definitions and interpretations:

Act means the Incorporated Societies Act 1908 or any act in substitution or amendment thereof;

AGM means an Annual General Meeting of the Society, to be conducted in accordance with clauses 16 to 21 of this Constitution;

Appointed Board Member means a Board Member appointed by the BAP;

BAP means the Board appointments panel constituted under clause 51;

Board means the Board of the Society;

Board Member means a natural person who has been elected or appointed (as the case may be) as a member of the Board from time to time;

Business Day means any day excluding Saturdays, Sundays and statutory public holidays in Auckland and excluding any day in the period beginning on 25 December in any year and ending on 5 January in the following year;

Cancer means a disorder of growth leading to uncontrolled proliferation of tissue and any reference to "Cancer" includes such growth disorders and any related disorders;

Elected Board Member means a Board Member elected by the Members;

Eligible Voter means a Life Member or a Member who is in a voting class of Members (as determined by the Board), and in each case, who attends a General Meeting;

Financial Year means the period 1 April in any year to 31 March in the following year;

General Meeting means a General Meeting of the Society, whether it be an AGM or a Special General Meeting, called and conducted in accordance with this Constitution;

Independent means a person who is not employed by the Society and who is otherwise, in the opinion of the BAP, able to consider matters and make decisions as a Board Member in the best interests of the Society;

Initial Board Members means all the Board Members of the Society on the date this Constitution is adopted by the Members;

Life Member means a person appointed to be a Life Member of the Society pursuant to this Constitution;

Member means a Member of the Society, as defined in clause 4 of this Constitution;

New Board Appointment Date means the date of the General Meeting immediately following the date of the Special General Meeting at which this Constitution is adopted by the Members;

Role and Purpose means the role and purpose of the Society as described in clauses 2 and 3;

Special General Meeting means a Special General Meeting of the Society called and conducted in accordance this Constitution;

Subscription means any Subscription or other levy payable by a Member to be a Member of the Society determined in accordance with clause 5 of this Constitution;

The Chair means the person appointed as the Chair pursuant to clause 76 hereof;

The Deputy Chair means the person appointed as the Deputy Chair pursuant to clause 76 hereof;

The Society means the Cancer Society of New Zealand Auckland Northland Division Incorporated, sometimes known as the Cancer Society Auckland Northland and also sometimes known as the Auckland Cancer Society; and

Whānau means extended family – whether or not they have kinship ties to the patient – as determined by the patient in any particular case.

Interpretation

In this Constitution, unless the context otherwise requires:

- a. reference to the opinion, determination or other decision of the Board means an opinion, determination or decision reached by the Board in its sole and absolute discretion;
- b. expressions defined in the main body of this Constitution have the defined meaning in the whole of this Constitution;
- c. clause and other headings are for ease of reference only and do not affect the interpretation of this Constitution;
- d. an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- e. words importing the singular number include the plural and vice versa;
- f. references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, associations, governmental or other

regulatory bodies or authorities or other entities, in each case whether or not having separate legal personality;

- g. references to one gender includes each other gender;
- h. any reference to a party includes that party's successors and permitted assignees (as the case may be); and
- i. references to any statutory provision includes any statutory provision that amends or replaces it, and any subordinate legislation made under it.

TRANSITIONAL PROVISIONS SCHEDULE

Introduction: In order to ensure the governance change process provided for in this Constitution maintains momentum some flexibility up to the time of the next scheduled AGM is required. For example, a portion of the Board will be appointed during that period and the balance will be elected at a subsequent General Meeting. These transitional provisions allow for such flexibility.

1. The Initial Board Members may adopt, provided they do so unanimously, such processes for the election and/or appointment of the first Board Members, as the Board considers most appropriate, having regard to:
 - 1.1. the processes set out in clauses 50 to 75 (excluding clause 69);
 - 1.2. the need to commence the reforms proposed by this Constitution as soon as practicable; and
 - 1.3. the limited time likely to be available between the SGM adopting this Constitution, any subsequent SGM called to elect Board Members and the first AGM to follow (**Next AGM**).
2. The Initial Board Members may appoint (or reappoint) the Chair and Deputy Chair to hold office until the Next AGM.
3. The powers of the Initial Board Members in clauses 1 and 2 above shall exist notwithstanding anything else in this Constitution, but are subject to:
 - 3.1. clauses 34, 35, 46, 48, 49 and 69;
 - 3.2. ensuring that each Board member to take office from their appointment is able to act Independently as a Board Member, in the best interests of the Society in relation to the advancement of its Role and Purpose; and
 - 3.3. ensuring compliance with the principles in clause 73.