

Board Governance Policy 01-2018

Board Charter

Version 1.0

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Contents

1. INTRODUCTION	3
2. DUTIES & RESPONSIBILITIES	3
a) Duties of Directors.....	3
b) Board responsibilities.....	4
3. SEPARATION BETWEEN THE BOARD AND MANAGEMENT	5
a) Board / Management Interface.....	5
b) Matters Reserved for the Board.....	5
c) Delegation to the CEO.....	6
4. BOARD STRUCTURE	6
a) Number of Directors.....	6
b) Term of office.....	6
c) Election of Directors.....	6
d) Appointment and Role of the Chair.....	7
e) Director Independence.....	7
f) Board Committees.....	8
5. GENERAL EXPECTATIONS OF BOARD MEMBERS	8
a) General expectations.....	8
b) Induction.....	9
c) Conflict of Interest.....	9
d) Financial literacy.....	10
e) Attendance and Leave of Absence.....	10
6. BOARD SECRETARIAT AND MEETINGS OF THE BOARD	10
a) Board Secretariat.....	10
b) Meetings of the Board.....	10
c) Meeting Planning.....	10
d) Minutes of Meetings.....	11
e) ‘In Camera’ Meetings.....	11
7. GENERAL MATTERS	11

a) Remuneration & Expenses	11
b) Directors' Insurance	12
c) Independent Advice	12
d) Company Policies	12
e) Confidentiality	12
f) Board Access to Information	12
g) Company ownership of documents	12
8. BOARD PERFORMANCE REVIEW	13
9. MEDIA RELATIONS	13
10. REVIEW OF THE BOARD CHARTER	13
Document Controls	0

1. INTRODUCTION

The Board of Directors (“the Board”) is responsible for ensuring that Mental Health Victoria Ltd (“the Company”) has an appropriate corporate governance structure with accountability and control systems in place. In carrying out its responsibilities, the Board will at all times recognise its overriding responsibility to act honestly, fairly, diligently and in accordance with the law serving the interests of the Company and its Members.

As a public company limited by guarantee, Mental Health Victoria will at all times comply with the *Corporations Act 2001* (Cth), the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) as well as all other applicable laws and statutes.

Mental Health Victoria’s Constitution is the key governance document. This charter is subordinate to the Constitution, explains Mental Health Victoria’s commitment to corporate governance, and should be read as an expression of principle.

2. DUTIES & RESPONSIBILITIES

a) Duties of Directors

As members of the Board of a company limited by guarantee and a charity registered with the Australian Charities and Not-for-profits Commission (ACNC), all Directors have legal duties and responsibilities.

Individual Directors have a fundamental duty to serve the interests of the Company. Individual Directors do not and must not seek to represent a third party or constituency.

The ACNC sets minimum governance standards that all charities must meet as a condition for ongoing registration as a charity. The ACNC’s *Governance Standard Five* requires that charities take reasonable steps to ensure that the members of their boards know, understand and carry out their legal duties.

The duties of Directors are:

- **To act with care and diligence.** Directors must exercise their powers and duties with the care and diligence that a reasonable person would if they were in their place.
- **To act in good faith in the best interests of the Company and for a proper purpose.** Directors must make decisions that are in the best interest of the Company and to further its charitable purpose.
- **Not to improperly use information or position.** Directors must only use Company information for the benefit of the Company and never to further personal interests or the interests of a third party. Similarly, Directors must not use their positions to improperly gain an advantage for themselves or someone else, or cause detriment to the Company.

- **To disclose conflicts of interest.** If the duty to act in the best interests of the Company is in conflict with (or may conflict with) personal interests, these must be disclosed immediately.
- **To ensure that financial affairs are managed responsibly.** Directors must ensure that there are systems and processes in place so that Company resources are being effectively put towards the Company’s charitable purpose and are protected from misuse.
- **Not to allow the Company to operate while insolvent.** Directors must ensure that the Company can pay its debts as and when they fall due and that the Company does not continue to operate if it cannot pay its debts.

b) Board role and responsibilities

The role of the Board is to provide leadership and strategic guidance for Mental Health Victoria in addition to overseeing management’s implementation of approved strategic initiatives.

The Board’s broad responsibilities are summarised in the table below:

(i) Compliance (ensure that the organisation conforms with legal requirements)

• Legal	Monitor Constitution, comply with Directors responsibilities and laws, monitor insurance requirements
• Accountability	Monitor financials, compliance Audits

(ii) Performance (assist the organisation to optimise its performance)

• Strategy & Policy	Approve Vision/Mission and ensure it is embedded into the organisation’s operations, develop and approve strategic plan, approve governance policies and position statements and monitor regularly.
• Accountability	Overall performance of the organisation, including a high level overview of the quality of services provided to members, Board evaluation, succession planning, report outcomes to stakeholders, appoint and monitor the performance of the Chief Executive.
• Public Relations	Represent and participate, keep members/stakeholders informed, project a strong and positive image, promote the vision, facilitate cohesion, protect the interests of members, speak with one voice regarding Board decisions.
• Risk Management	Ensure effective risk management strategy is in place, monitor critical risks.
• Resources	Make available to management the resources to enable implementation of the strategic plan, appointment of Chief Executive.

3. SEPARATION BETWEEN THE BOARD AND MANAGEMENT

a) Board / Management Interface

The Board will ensure that there is an appropriate separation between its governing role and the operational role of the CEO.

The Board may meet from time to time without the presence of management.

- The primary interface between the Board and management / staff is through the Chair and the CEO.
- With the exception of interaction with Directors at functions and other organized meetings, staff and management contact with the Board is through, or with the knowledge of the CEO. Correspondence between Board members and management should be copied to the CEO.

b) Matters Reserved for the Board

The following matters are reserved for the Board:

- Appointment of a Chair, Deputy Chair, and Committee Chairs.
- Appointment and removal of the CEO.
- Governance policy (but not including operational policy - those matters concerned with the day-to-day running of the Company).
- Establish delegations of authority that permit the CEO to manage the Company.
- Considering and deciding on any matters outside the delegations of the CEO.
- Appointment of the Company's external auditor if an auditor has not been appointed by the Company at a general meeting.
- Approval of strategic plans, company business plans and annual budgets.
- Appointment and removal of Company Secretaries.
- Establishment of Board committees, membership, chairs and delegated authorities and approval of committee charters.
- Consideration of and decisions on major capital projects and related expenditure, acquisitions, divestments, and monitoring of capital investment management in excess of authority levels delegated to the CEO.
- Approval of the company's annual report, and any other communications to members relating to the external auditors and the company's financial statements.
- Calling of meetings of Members (other than when requested by the requisite number of members in accordance with the *Corporations Act 2001* (Cth) and the Constitution).
- Board composition recommendations, succession planning, Director nomination and appointment practices and criteria.
- Any specific matters nominated by the Board from time to time.

Subject to law and the Board's ultimate responsibility for oversight of the Company, the Board may delegate to its committees, a Director, or any other person, authority to perform any of its functions and exercise any of its powers.

c) Delegation to the CEO

The Board has delegated certain powers and functions to the CEO, as detailed in the *Delegation to the Chief Executive Officer Policy*.

4. BOARD STRUCTURE

The process for appointment and retirement of Directors is set out in detail in Clause 11 of the Constitution. To summarise:

a) Number of Directors

There must be no less than three (3) and no more than eleven (11) Directors.

- Up to seven (7) Directors will be elected by the Members; and
- Up to four (4) Directors will be appointed by the Board.

b) Term of office

Directors retire at the close of the third AGM after their appointment or election.

Directors may have a maximum of three terms or nine (9) years.

c) Election of Directors

The Board may determine in its absolute discretion whether the election of Directors will be conducted by ballot or by voting at the AGM.

Nominations must be submitted to and received by the Nominations Committee (or equivalent) by no later than 40 business days prior to the polling date (if the election is to be conducted by ballot) or no later than 40 business days prior to the date of the AGM (if the election is to be conducted at the AGM).

The Nominations Committee may, in its absolute discretion, determine which nominations will be Approved Candidates and hence submitted to the Members.

The Board must provide notice of Approved Candidates to all Members no less than 20 business days prior to the polling date or 20 business days prior to the AGM as appropriate.

Where there are insufficient Approved Candidates to fill vacant positions, the Board may appoint a person to be a Director to fill the vacancy.

d) Appointment and Role of the Chair

The Chair is responsible for:

- Leadership of the Board.
- Overseeing the Board in the effective discharge of its governance and supervisory role.
- Providing leadership and support for the CEO and acting as the prime point of contact between the CEO and the Board.
- The Board working as a team, particularly ensuring the effective contribution of all Directors.
- Ensuring a constructive and respectful relationship between the Board and Management.
- The efficient organisation and conduct of the Board's function and meetings.
- Committing the time necessary to discharge effectively his/her role as Chair.

e) Director Independence

Within the constraints created by the Board ballot process and the need for a smooth transition from the previous board structure to the new Company structure, the Board has committed to ensuring that as many Board members as possible are independent Directors. At a minimum, the following will apply:

- A majority of Directors appointed by the Board are to be independent Directors;
- The Chair of the Board is to be an independent Director;
- The Chair of the Finance, Audit & Risk Management (FARM) Committee is to be an independent Director, who is not Chair of the Board;
- The FARM Committee is to consist of a majority of independent Directors;
- The Chair of the Governance Committee (or equivalent) is to be an independent Director; and
- The Governance Committee is to consist of a majority of independent Directors.

The Nominations Committee is to follow a formal process is to be used for determining the independent status of a Director based on consideration of whether the Director or potential Director:

- is a Director, officer, employee or volunteer of, or otherwise associated directly with, a Member of the Company;
- is employed, or has previously been employed in an executive capacity by the Company or a Member, and there has not been a period of at least 3 years between ceasing such employment and serving on the Board;
- has within the past three years been a material professional adviser or a material consultant to the Company, or an employee materially associated with the service provided;

- is a material supplier of the Company, or an officer of or otherwise associated with a material supplier; or
- has a material contractual relationship with the Company other than as a Director.

f) Board Committees

The general principles concerning Board Committees are that:

- The Board will appoint the Chair of each Committee.
- The Chair of the Committee shall determine the frequency and method of Committee meetings.
- The Chair of the Committee shall determine the meeting agendas and the business for the Committee, in consultation with Committee members.
- The Chair of the Committee shall be responsible for the effective conduct of Committee meetings.
- The Board shall appoint a maximum of four Board Members to each Committee, based on individual skills, insights and expertise.
- The Committee may nominate non-Directors to be co-opted as additional Committee members with suitable expertise to assist it in its work. The Board shall grant approval for the appointment of co-opted members.
- A quorum for Committee meetings shall be one half of membership.
- The Committee is to provide a report for each Board meeting detailing Committee activities and any advice or recommendations for the Board's endorsement or approval.
- All Committee papers, including agendas, minutes, and reports are to be made available to any Director to review upon request.
- Committee members are to declare any interest they may have with any matter before the Committee. The Committee Chair, in consultation with other Committee members, will determine how conflicts of interest issues will be addressed. The Committee Chair should consult the Board Chair if appropriate regarding conflicts of interest issues.

5. GENERAL EXPECTATIONS OF BOARD MEMBERS

a) General expectations

Directors are required to participate as active members of the Board through:

- attendance at Board meetings (these are scheduled 12 months in advance);
- membership of Committees as agreed;
- attendance at General Meetings;
- attendance at public events;
- advocating publicly on behalf of the Company;
- participation in strategic planning sessions; and
- attendance at Director professional development activities.

Directors are required to commit a reasonable amount of time per month to fulfil their Directorial duties, including adequately preparing for meetings, attendance and undertaking follow-up tasks, as well as being available for ad hoc discussions from time-to-time.

b) Induction

On appointment, all Board members are required to complete a comprehensive induction program at the Company's offices in Elsternwick, Victoria.

c) Conflict of Interest

The Board places great importance on making clear any existing or potential conflicts of interest for Board members. Conflicts of interest may occur:

- When a Director, or his/her immediate family or business interests, stands to gain financially from any business dealings, programmes or services provided to the Company even where those dealings are of benefit to the Company.
- When a Director offers a professional service to the Company for remuneration.
- When a Director stands to gain personally or professionally from any insider knowledge if that knowledge is used for personal or professional advantage.
- Where a competing duty is also owed to a third person or organisation.

Any business or personal matter which could lead directly or indirectly to a conflict of interest of a material nature involving a Director and the Director's role and relationship with the Company, must be promptly and fully disclosed and declared at a Board meeting and registered in the Register of Interest.

All such entries in the Register shall be presented to the Board and minuted at the first Board meeting following entry in the records.

All conflicts of interest must be declared by the Director concerned at the earliest time after the conflict is identified.

The Board shall determine whether or not the conflict is of a material nature and shall advise the individual accordingly.

Where a conflict of interest is identified and/or registered, and the Board has declared that it is of material benefit to the individual or material significance to the organisation, the Director concerned shall not vote on any resolution relating to that conflict or issue.

The Director shall remain in the Board room during any related discussion only through resolution of the Board.

The Board will determine by resolution what records and other documentation relating to the matter will be available to the Director.

d) Financial literacy

Because the Board must monitor financial performance, Directors must maintain financial literacy.

At a minimum, Directors must be able to read and understand financial statements and understand the use of financial ratios and other metrics used for evaluating the Company's performance.

Directors are duty-bound to speak up if they do not understand the financial statements and to seek appropriate training.

e) Attendance and Leave of Absence

Board members are required to attend all Board and Committee Meetings. Members must seek leave of absence from the Board Chair or Committee Chair prior to the meeting if they are unable to attend a meeting.

As detailed in the Constitution, the office of Director immediately becomes vacant if a Director is absent from three consecutive Board meetings, or at least four Board meetings over a consecutive period of 12 months, without the prior written consent of the Board.

6. BOARD SECRETARIAT AND MEETINGS OF THE BOARD

a) Board Secretariat

The Company Secretary will provide the Board and its Committees with secretariat services and governance advice.

The Company Secretary will be responsible for all matters relating to logistics for Board and Committee meetings, the preparation of the agenda and papers, minuting the meeting and follow-up of action items arising from each Board meeting.

b) Meetings of the Board

The Board will meet no fewer than six times each year, and may at the discretion of the Chair, meet more frequently in order to fulfil its duties.

c) Meeting Planning

All Board and committee meetings are to be scheduled no less than two (2) weeks prior to each Board meeting.

- Agendas are to be prepared in consultation with the Chair, Committee Chairs, and CEO.
- Agendas of meetings are to be approved by the Committee Chair prior to circulation
- The minutes of Board and committee meetings are to be reviewed by the Chair or Committee Chair within one (1) week post meeting.

- Board and committee papers are to be distributed no later than one week prior to the Board meeting.
- Draft minutes are to be distributed no later than one (1) week after the meeting.
- Inclusion of additional items outside of these timeframes may only occur with the permission of the Board Chair or Committee Chairs and will only be granted in exceptional circumstances.

d) Minutes of Meetings

Minutes of Board and Committee meetings are the legal record of the proceedings and resolutions of Directors' meetings. As per section 251A (1) of the *Corporations Act 2001 (Cth)*, companies are required to keep minute books in which it must record within one month:

- The proceedings and resolutions of Directors' meetings (including Board Committee meetings) and
- Resolutions passed by Directors without a meeting.

Following a meeting, it is the Company Secretary's duty to compile and circulate the minutes to the Board. Once the minutes have been verified by all attendees, the chair of the meeting has to sign the same within 'a reasonable time' after the meeting (usually at the next meeting). Once the minutes are signed by the meeting's chair, the minutes become a legal document. The company is responsible for maintaining the minute books and keeping such documents safe. It is a requirement that the minutes be kept at the Company's registered office or principal place of business.

e) 'In Camera' Meetings.

The proceedings and resolutions of 'in camera' Directors' meeting must be minuted.

Until such time as an independent Company Secretary is appointed, at the start of each in camera meeting, the Chair of the meeting must appoint a person to be responsible for recording the minutes of the meeting. Subsequently, the chair must ensure that minutes are provided to the Company Secretary for inclusion in the minute books as is required under the *Corporations Act 2001 (Cth)*.

7. GENERAL MATTERS

a) Remuneration & Expenses

At present, Directors are unpaid. The Constitution allows for the payment of fees, subject to the approval of members at an AGM.

You will be reimbursed for all approved expenses incurred in your role as a Director.

b) Directors' Insurance

The Company will maintain Directors & Officers Insurance for Board members and will meet all premiums. A Certificate of Currency may be obtained from the Company Secretary on request.

c) Independent Advice

With the approval of the Chair, Directors may seek independent professional advice at the Company's expense on any matter connected with the discharge of their responsibilities as a Director. Copies of this advice must be made available to, and for the benefit of, all Board members.

d) Company Policies

Directors are required to act at all times in accordance with the Constitution and comply with Company policies and procedures.

e) Confidentiality

Directors will be in possession of confidential information about the Company and its affairs. Directors may only use this information in the proper performance of their duties or as required by law.

f) Board Access to Information

Management will supply the Board and Committees with information in a form, timeframe and quality that enables them to effectively discharge their duties.

Individual Directors may, through the Chair, request that Management provide any information relevant to the role of Director of the Company, subject to such a request not breaching the privacy of any individual.

g) Company ownership of documents

All documents, files, minutes, briefings, reports and other material remains the property of the Company. Directors are required to return all documents when they complete their tenure or to make declaration that all Company documents have been appropriately destroyed.

Directors must not retain 'personal files' of Company documents.

8. BOARD PERFORMANCE REVIEW

The Board will assess its own effectiveness in fulfilling this charter and other Board responsibilities, including the effectiveness of individual Directors. To achieve this, an independent external review is to be undertaken every second year, and an internally coordinated survey is to be undertaken in every other year.

9. MEDIA RELATIONS

The Chair and CEO are the authorised spokespeople for the organisation. By convention, the Chair will address Board and governance matters, and the CEO operational matters.

Individual Directors may, from time to time, be asked by the Chair to assist with media relations where their specific areas of expertise is necessary or beneficial in addressing a matter in the media.

If approached by a member of the media regarding any matter relating to the Company, Directors should refer the matter to the Chair or CEO, or to the Mental Health Victoria Communications Manager.

10. REVIEW OF THE BOARD CHARTER

The Board will review this charter annually to determine its adequacy for current circumstances and make any changes considered necessary.

Document Controls

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Owner

<i>Title</i>	<i>Name</i>
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