

Board Governance Policy 12-2023

Board Charter

Version 2.0

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1. INTRODUCTION

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

As a public company limited by guarantee, MHV will 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.

MHV’s Constitution is the key governance document. This Charter is to be read with (and is subject to) the Constitution, and outlines MHV’s commitment to corporate governance principles. The Charter also outlines practical considerations that Directors should bear in mind in fulfilling their governance roles.

The Board is committed to working in a way which listens to, supports and creates safety for diverse communities, particularly:

- people with a lived experience of mental illness or psychological distress, their family carers and kin
- First Nations people and
- Specific cohorts that are often excluded from decision-making including LGBTQI+ communities or Culturally and Linguistically Diverse (**CALD**) communities

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, including the fundamental duty to ensure that they act in the overall best interests of MHV. 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 5: Duties of Responsible People](#)” 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 reasonable 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 act honestly and fairly in the best interests of the charity and for its charitable purpose.** Directors must make decisions that are in the best interest of the MHV and to further its charitable purpose, which is reflected in the Object and Purpose of the MHV Constitution (at cl 2).
- **Not to improperly use information or misuse their position.** Directors must only use MHV’s information for the benefit of MHV and not to further personal interests or the interests of a third party. Similarly, Directors must not misuse their positions to improperly gain an advantage for themselves or someone else, or cause detriment to MHV.
- **To disclose material conflicts of interest.** If the duty to act in the best interests of the Company conflicts with (or may conflict with) personal interests, these must be appropriately and transparently disclosed as soon as is reasonably practicable once the conflict is identified.
- **To ensure that financial affairs are managed responsibly.** Directors must ensure that there are systems and processes in place so that MHV resources are being effectively put towards MHV’s charitable purpose and are protected from misuse.
- **Not to allow MHV to operate while insolvent.** Directors must ensure that MHV can pay its debts as and when they fall due and that MHV does not continue to operate if it cannot pay its debts.

b) The role and responsibilities of the Board

The role and responsibilities of the Board is to provide collective leadership and strategic guidance for MHV in addition to effective oversight of management’s implementation of approved strategic initiatives. The Board is also required to assess and ensure appropriate mitigation of material risks to MHV’s performance.

The Board is committed to ensuring that it appropriately reflects the diversity of professional and personal experiences within the mental health sector. In particular, the Board will endeavor to appropriately apply guidelines that are produced from time-to-time from key stakeholder organisations, such as the National Mental Health Commission and the National Mental Health Consumer & Carer Forum, so as to ensure and live up to need to meaningfully include lived experience within the governance framework of MHV. Examples of such guidelines include:

- The [National Lived Experience Peer Workforce Development Guidelines](#), produced by the National Mental Health Commission
- The [Lived Experience Governance Framework](#), produced by the National Mental Health Consumer & Carer Forum.

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

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

- | | |
|-------------------------|---|
| • Legal | Monitor Constitution to ensure it remains fit-for-purpose; ensure compliance with Directors' responsibilities and applicable laws and regulatory requirements; monitor insurance requirements |
| • Accountability | Monitor and regularly interrogate financial information; ensure there is appropriate compliance through audit functions |

(ii) Performance (assist MHV to optimise its performance)

- | | |
|--------------------------------|--|
| • Strategy & Policy | Approve Vision/Mission Statement and ensure it is embedded into MHV's operations; develop and approve Strategic Plan; approve governance policies and position statements and monitor regularly.

Encourage and challenge management to develop initiatives consistent with the Strategic Plan and MHV's risk appetite |
| • Accountability | Overall performance of the organisation, including a high-level overview of the quality of services provided to Associates, Board evaluation, succession planning, report outcomes to stakeholders, appoint and monitor the performance of the Chief Executive Officer (CEO) |
| • Public Relations | Represent and participate, keep stakeholders informed, project a strong and positive voice, promote the vision, facilitate cohesion, protect the interests of MHV, speak coherently and consistently about Board decisions |
| • Risk Management | Ensure effective risk management strategy is in place; monitor critical risks; set risk appetite for MHV |
| • Resources | Make available to management the resources to enable implementation of the Strategic Plan; appointment of CEO |

3. SEPARATION BETWEEN THE BOARD AND MANAGEMENT

a) Board/Management Interface

The Board will ensure that there is an appropriate separation of its governing role from the operational / managerial role of the CEO. Such separation does not mean that the Board is unable to appropriately enquire and seek information about fundamental matters affecting the implementation of MHV's Strategic Plan and to ensure MHV is acting consistently with risk appetite.

The Board may meet from time-to-time without the presence of management (referred to as *in camera*):

- The primary interface between the Board and management/staff is through the Chair and the CEO
- Except for interaction with Directors at functions and other organised meetings, staff and management contact with the Board is through, or with the knowledge of the CEO. Correspondence between Board members and management should generally 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, being those matters concerned with the day-to-day running of MHV)
- Establish delegations of authority that permit the CEO to manage MHV
- 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 Secretary
- 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 MHV's annual report, and any other communications relating to the external auditors and MHV's financial statements
- 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 MHV, 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 Constitution for MHV details general processes for the composition and meetings of the Board, including Chair, Deputy Chair and Director appointments, terms and term limits, and related matters.

a) Structure of the Board

The Board comprises the Chair and up to ten further Directors appointed by the Board.

The Chair will, where possible, be independent. That is, the Chair will not hold any material personal interest, or serve on the Board or be employed by an organisation whose predominant business is the provision, oversight, funding, regulation or commissioning of mental health services. The specific framework for independence of the Chair is defined in cl 11.2 of the MHV Constitution.

b) Term of office

Directors are appointed for a three-year term, with terms of office commencing and concluding at the relevant Annual General Meeting.

As from 1 January 2019, Directors may serve up to three three-year terms or nine years, whether consecutive or in total. Directors who have served a maximum of nine years are ineligible for re-appointment.

The Chair and Deputy Chair are eligible for re-election to that office with no limit on consecutive terms, up to the maximum nine-year term applicable to all Directors. There is, however, a non-binding preference that no Director serves as Chair for more than six consecutive years (see cl 14.18).

c) Casual vacancies

Where a casual vacancy arises, the Board may appoint a person with the requisite skills, competencies and experience to a Director position who will hold office in line with the terms of appointment detailed in the Constitution.

Directors may not appoint an alternate to act in their place at any time.

d) Nomination and Appointment of Directors

The Nominations & Remuneration Committee (**the Committee**) assists the Board in the identification, evaluation and nomination of prospective candidates for appointment as Directors (cll 14.8-14.32).

The Committee may, in its absolute discretion, determine which nominations will be approved candidates and hence submitted to the Board for consideration for appointment.

The Committee will determine the preferred means by which prospective candidates are identified, guided by the following matters:

- An assessment of the requisite skills, experience, diversity, independence and knowledge of current and prospective Directors to enable the Board to discharge its duties;
- An optimal balance of the skills and expertise of current and prospective Board members as reflected in the MHV Ltd Board Skills Matrix; and
- Consultation as appropriate with the Associates of MHV.

The Committee may, in its discretion and with regard to available resources, determine the most effective search process for candidates for appointment to the Board. This Committee, for example, may call for suggestions from Associates, engage an external recruitment agency, publicly advertise vacancies, or target particular candidates with specialist skills, expertise or experience to assist the Board in undertaking its role.

e) 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 the role as Chair

The Nominations & Remuneration Committee is to use its best endeavours to determine the independent status of a Director based on consideration of whether the Director or potential Director (see cl 11.2 of the MHV Constitution):

- is a Director, officer, employee or volunteer of, or otherwise associated directly with, a service or company that predominantly provides, commissions, funds, governs or regulates mental health services;
- is employed, or has previously been employed in an executive capacity by MHV or an Associate, and there has not been a period of at least three 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 MHV, or an employee materially associated with the service provided;

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

The Deputy Chair is responsible for undertaking the role of Chair during any period of absence (for example, at Board meetings), to assist the Chair as they request including in the general management of the business of the Board, and to manage the handling of any complaint or conflict of interest involving the Chair.

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 agenda 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 of the Committee
- 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 agenda, 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

g) Reporting

The Board will publish from time-to-time, and via the means it deems most appropriate, information about Directors' skills, competencies and experience, the work of the Board in fulfilling its responsibilities, and/or for the purposes of attracting and appointing future Directors.

This may include:

- Publishing information about Directors' experience and skill-sets on the MHV website
- Profiling Directors in MHV's professional communications (such as email, social media or other media) to stakeholders
- Enabling Directors to meet with and engage with Associates in professional fora, such as meetings and conferences and networking events
- Appropriately recognising and giving credit to Directors for any significantly material contribution to specific projects in which their skillsets have been deployed for and on behalf of MHV

h) Remuneration

The Constitution provides for remuneration of Directors as determined by the Board, with the Nominations & Remuneration Committee making recommendation with regard to an appropriate fee structure. Generally, Directors are not to be reimbursed for their participation in Board or Committee meetings.

Each Director may be reimbursed for out-of-pocket expenses incurred in connection with MHV business, or MHV shall pay these costs on the Director's behalf.

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
- 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 Directors are required to complete a comprehensive induction program at the MHV office.

c) Conflict of Interest

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

- a Director, or their immediate family or business interests, stands to gain financially from any business dealings, programs or services provided to the Company even where those dealings are of benefit to the Company
- a Director offers a professional service to the Company for remuneration
- 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 and irreconcilable 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 MHV, 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. This includes by Directors regularly updating the Register in the online platform used by the Board from time-to-time.

All material 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 material 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.

The duties of Directors still apply even when a leave of absence has been granted.

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 s 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

Generally, Directors are unpaid for acting as a Director of the Board of MHV. The Constitution allows for the payment of fees, subject to the approval of members (Directors as a whole) at an AGM.

Directors will be reimbursed for all approved expenses incurred in undertaking the role as a Director.

b) Directors' Insurance

MHV 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

At all times, Directors are required to act in accordance with the Constitution and comply with MHV policies and procedures.

e) Confidentiality

Directors will be in possession of confidential information about MHV 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. This includes through making such information accessible via an online platform for the effective management and retention of key documents of the Board.

Directors may, through the Chair, request that Management provide any information relevant to the role of Director of MHV, subject to the interests of MHV and there being no countervailing reason to provide such information (for example, if such a request not breaching the privacy of any individual).

For an illustrative example as to how conflicts of interest may arise between Directors and a company in relation to accessing information of the company, see the Federal Court case [Hammond v Quayeyeware Pty Ltd](#) [2021] FCA 293.

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 regularly (no less than every third year), and an internally coordinated survey is to be undertaken in intervening years.

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.

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

Version

Document status:	APPROVED
Version No:	2.0
Date:	12 December 2023
Distribution:	This document may be publicly released

Revision History

<i>Version</i>	<i>Date of Issue</i>	<i>Approved</i>	<i>Summary of changes</i>
1.0	18 MAY 2018	CR-04/2018	
2.0	12 December 2023	Board Dec23	Review of Charter further to changes to MHV Ltd Constitution (27 June 2023)

Owner

<i>Title</i>	<i>Name</i>
Company Secretary	Marcelle Mogg