



The Board of the Mental Health Council of Tasmania

TERMS OF REFERENCE

A document outlining the Roles, Responsibilities, Constitution and Operation of the Board of the Mental Health Council of Tasmania

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Part I - Preliminary

I Introduction

- 1.1 This document forms the Terms of Reference for operation of the Board of the Mental Health Council of Tasmania Incorporated (MHCT), referred to throughout as 'the Board'.
- 1.2 The Board is established in accordance with Part IV of the Constitution of the MHCT.
- 1.3 Where any conflict occurs between the two documents, the Constitution has precedence.

2 Definitions

- 2.1 In this document, unless a contrary intention appears:
 - 'Board' means the Board of the MHCT established under *Clause 8* of the Constitution.
 - 'Chairperson' means the person holding the office of Chairperson under these rules and includes an acting Chairperson and any person appointed by the Board to perform all or any of the duties of the Chairperson.
 - 'Consumer' means a consumer as defined in the Constitution.
 - 'Constitution' means the Constitution of the MHCT.
 - 'Executive Committee' means the Committee established under *Clause 11* of the Constitution.
 - 'Financial year' means the year ending on 30 June annually.
 - 'Member' means a member organisation, or an individual member, as defined in the Constitution.
 - 'Member organisation' means a member organisation as defined in the Constitution.
 - 'MHCT' means the Mental Health Council of Tasmania Incorporated (Inc).
 - 'Ordinary Board Member' means a member of the Board who is not an Office Bearer of the Board as referred to in *Sub-clause 11.3* of the Constitution.
 - 'Secretary' means the person holding the Office of Secretary as defined in the Constitution.
 - 'Treasurer' means the person holding the Office of Treasurer as defined in the Constitution.
 - the 'Act' means the *Associations Incorporation Act 1964 (Tas)*.
 - the 'Regulations' means the *Associations Incorporation Regulations 2017 (Tas)*.
- 2.2 In these rules, a reference to a function includes a reference to a power, authority and duty; and a reference to the exercise of a function includes, where the function is a power,

authority or duty, a reference to the exercise of the power or authority or the performance of the duty.

- 2.3 The provisions of the *Acts Interpretation Act 1931* apply to and in respect of these rules in the same manner as those provisions would so apply if these rules were an instrument made under the Act.

Part II – Structure, Roles and Responsibilities

3 Roles and Responsibilities of the Board

- 3.1 The Board, subject to the Act, the Regulations, these rules, and to any resolution passed by the MHCT in general meeting:
- shall control and manage the affairs of the MHCT
 - may exercise all such functions as may be exercised by the MHCT other than those functions that are required by these rules to be exercised by the MHCT in general meeting, and
 - has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the MHCT.

4 Constitution and Membership

- 4.1 The MHCT Board shall comprise up to nine members, including up to five Board members elected by the MHCT membership and up to four Board members appointed by the Board.
- 4.2 The Board may appoint up to four Board members in addition to the five elected Board members.
- Where the Board determines that the skills required are present amongst those Board members already elected or appointed, it need not fill any or all of the available vacancies.
 - Where the Board determines that the skills required are not present amongst those Board members already elected or appointed, it must fill one or more available vacancies with Board members possessing the skills identified as being absent from the Board.
- 4.3 No member organisation shall have delegates occupying more than one position on the Board.
- 4.4 Each member of the Board shall, subject to these rules:
- hold office until the conclusion of the third AGM following the date of the member's election or appointment
 - be eligible for re-election, subject to *Clause 4.5* below, and
 - may be terminated earlier per *Clause 7.1*.
- 4.5 Board members shall only be eligible to be on the Board for a maximum of three consecutive terms, following which they will be ineligible to serve on the Board for ten months before becoming eligible again for election or appointment to the Board.
- Where a Board member is elected to, or appointed to serve, part of a three year term, for the purposes of this clause the part-term to which they are appointed or elected shall be counted as being one full term.

- Prior terms, including part-terms, for Board members holding office at the time of adoption of these Terms of Reference, shall be counted as though these Terms were in force since their initial election or appointment to the Board.
- 4.6 In the event of a casual vacancy in the membership of the Board:
- The Board may appoint a person to fill the vacancy.
 - A person so appointed shall hold office, subject to these rules, until the conclusion of the term to which they were appointed as though it were held continuously by one person.
 - The Board shall ensure that any such appointment maintains or enhances the appropriate balance of skills required on the Board as identified by the Board and publicised to members from time to time.
- 4.7 No employee of a government agency whose principal function is the provision of mental health services, the funding of non-government mental health organisations or the development of government policy on mental health issues shall be eligible to nominate for election to the MHCT Board, and any Board member appointed to such government position subsequent to election shall cease to hold office.
- 4.8 All members of the Board must abstain from voting or representing on issues where there is a clear conflict of interest between their role as a Board member and any other roles they might have.

5 Election of Board members

- 5.1 The Board shall ensure that an election for two director positions is held annually, in time to announce results at the AGM and in accordance with the election procedures outlined in these rules.
- 5.2 The election methodology and procedures shall be determined by the Board and advised to membership no later than the day nominations are called for. The election methodology and procedures must ensure that all members' (except Associate Members) votes have equal value and that all members may vote in relation to all candidates.
- 5.3 The Board shall determine the skills required to meet the governance needs of MHCT from time to time and must advise members of the skills required at the time of calling for nominations.
- 5.4 To be eligible to stand, candidates must possess one or more of the skills identified by the Board and must nominate these, in a form determined by the Board, at the time of nominating to stand for election.
- 5.5 The Board shall review all candidate nominations and either endorse or not endorse each candidate as having one or more of the identified skills required to stand for election.
- Only those candidates so endorsed shall be eligible for election to the MHCT Board.
 - Candidates not endorsed must be notified of this decision no later than 14 days prior to the opening of polling.

- Candidates not so endorsed may lodge an appeal against this ruling, provided written notification outlining the basis on which the decision is being appealed, is received by the Returning Officer no later than seven days prior to the opening of polling.
 - Where such an appeal is lodged, the Board shall establish an Appeals Committee, including at least one member independent of the Board, to hear the appeal prior to the distribution of ballot papers.
 - The Appeals Committee decision in relation to all such appeals will be final.
- 5.6 The Board shall appoint the Chief Electoral Officer for the State of Tasmania, or some other person or organisation independent of MHCT or its members, as Returning Officer to conduct an election in accordance with these Rules.
- 5.7 The Chief Electoral Officer may appoint another person as Returning Officer to conduct the election on their behalf.
- 5.8 The Returning Officer is to issue and forward to the MHCT Public Officer a certificate of the result of the election.

6 Vacancies

- 6.1 For the purpose of these Rules, a vacancy in the office of a member of the Board occurs if the Board member:
- resigns from their appointment to the Board
 - is removed from office pursuant to *Clause 8*
 - becomes an insolvent under administration within the meaning of the Corporations Law
 - is disqualified from the office under the *Associations Incorporation Act 1964*
 - is absent without the consent of the Board from all meetings of the Board held during a period of six months or three meetings, whichever is the least
 - commences employment with a government agency as specified in *Clause 4.7*, or
 - dies.

7 Removal of Board Members

- 7.1 The MHCT, in any General Meeting may, by resolution and subject to the Act, remove any member of the Board from the office of member of the Board before the expiration of the member's term of office.

Part III – Executive Committee and Office Bearers

8 The Executive Committee

- 8.1 The Executive Committee shall be responsible for the administration of the affairs of the MHCT subject to the direction of the Board.
- 8.2 The Executive Committee of the MHCT shall comprise the Office Bearers of the MHCT.
- 8.3 The Office Bearers of the MHCT shall be appointed from the Board and are as follows:
 - Chairperson
 - Deputy Chairperson
 - Secretary, and
 - Treasurer.
- 8.4 The method of nomination and election of office bearers shall be determined by the Board at its first meeting following the AGM.
- 8.5 The Executive Committee shall hold office until the conclusion of the AGM following the date of the member's election to the Executive Committee.
- 8.6 A minimum of any three members of the Executive Committee constitutes a quorum for the transaction of the business of a meeting of the Executive Committee. Should an even number of members attend an Executive Committee meeting, the Chairperson, or in the absence of the Chairperson, a member of the Executive who has been chosen to preside over the meeting, shall have the casting vote. Decisions of the Executive need to be ratified by the Board at their next meeting.
- 8.7 Members of the Executive Committee who are not available to attend meetings are entitled to send an alternative Board delegate in their place.

9 Duties of Chairperson and Deputy

- 9.1 The Chairperson chairs the AGM, General Meetings, meetings of the Executive Committee of the Board and exercises such other powers as conferred by the Board.
- 9.2 The Deputy Chairperson shall carry out the duties of the Chairperson in his or her absence.

10 Secretary and Treasurer

- 10.1 The Secretary of the MHCT shall, as soon as practicable after being appointed as Secretary, notify the Board of his or her address.
- 10.2 The Secretary shall ensure that Minutes and other appropriate records shall be kept of:
 - all elections and appointments of Office Bearers and ordinary Board members

- the names of members of the Board present at a Board meeting or a general meeting
 - all proceedings at Board meetings and general meetings, and
 - the Secretary shall ensure that all correspondence is dealt with in a timely and appropriate manner.
- 10.3 Minutes of proceedings at a meeting shall be signed by the person presiding at the meeting or by the person presiding at the next succeeding meeting.
- 10.4 The Treasurer of the MHCT shall be responsible for:
- ensuring that all monies due to the MHCT are appropriately collected and received and that all payments authorised by the MHCT are made in a timely manner
 - ensuring that correct accounts and books are kept showing the financial affairs of the MHCT with full details of all receipts and expenditure connected with the activities of the MHCT, and
 - ensuring that accurate financial reports are regularly available to the Board.

11 Auditor

- 11.1 At each AGM of the MHCT, the members present are to appoint a person as the Auditor of the MHCT.
- 11.2 The Auditor is to hold office until the AGM next after that at which they are appointed, and is eligible for re-appointment.
- 11.3 The first Auditor may be appointed by the Board before the first AGM, and holds office until the first AGM, unless earlier removed by a resolution of the members at a general meeting, when that meeting may appoint an Auditor to act until the first AGM.
- 11.4 If an appointment is not made at an AGM, the Board is to appoint an Auditor for the current financial year of the MHCT.
- 11.5 Except as provided in *Clause 11.3*, the Auditor may only be removed from office by special resolution.
- 11.6 If a casual vacancy occurs in the office of Auditor during the course of a financial year of the MHCT, the Board may appoint a person as the Auditor to hold office until the next succeeding AGM.
- 11.7 The Auditor is to examine the accounts of the MHCT at least once in each financial year of the MHCT.
- 11.8 The Auditor is to:
- certify as to the correctness of the accounts of the MHCT, and
 - report to the members present at the AGM.
- 11.9 In the report and in certifying to the accounts, the Auditor is to state if:
- they have obtained the required information

- in their opinion, the accounts are properly drawn up so as to exhibit a true and correct view of the financial position of the MHCT:
 - according to the information at their disposal and the explanations given, and
 - as shown by the books of the MHCT, and
 - the rules relating to the administration of the funds of the MHCT have been observed.
- 11.10 The Public Officer of the MHCT is to cause to be delivered to the Auditor a list of all the accounts, books and records of the MHCT.
- 11.11 The Auditor may:
- have access to the accounts, books, records, vouchers and documents of the MHCT
 - require from the servants of the MHCT any information and explanations they consider necessary for the performance of the duties as Auditor
 - employ persons to assist in investigating the accounts of the MHCT, and
 - in relation to the accounts of the MHCT, examine any member of the Board or any servant of the MHCT.

12 Public Officer

- 12.1 The Board, in accordance with the Act, must appoint a Public Officer. The Public Officer will be the most senior staff member of the MHCT, unless otherwise decided by the Board.
- 12.2 If the position of Public Officer becomes vacant, the Board must appoint another member or employee in his or her place.
- 12.3 The Public Officer must notify the Tasmanian Commissioner for Corporate Affairs of their appointment and residential address within 28 days of that appointment, in the approved form.

Part IV – Meetings

13 Board Meetings and Quorum

- 13.1 The Board shall meet at least four times in each calendar year, either by teleconference or in situ, at such place and time as the Board may determine.
- 13.2 Meetings of the Board may be convened by any two members of the Board.
- 13.3 Oral or written notice of a meeting of the Board shall be given to each member of the Board at least five days (or such other period as may be unanimously agreed upon by the members of the Board) before the time appointed for the holding of the meeting.
- 13.4 Notice of a meeting given under *Sub-clause 13.3* shall specify the general nature of the business to be transacted at the meeting.
- 13.5 Whichever is the greater of:
- one half of the occupied seats of the Board, plus half, or
 - four board members,
- constitutes a quorum for the transaction of business of a meeting of the Board.
- 13.6 No business shall be transacted by the Board unless a quorum is present and if within half an hour after the time appointed for the meeting a quorum is not present the meeting stands adjourned to a time to be determined by the Board.
- 13.7 If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting shall be dissolved.
- 13.8 Where the total number of board members appointed or elected to the board falls below four, the board may only meet for the purpose of filling casual vacancies to the board and may transact no other business until such time as the number of board members rises to or above four.
- 13.9 At meetings of the Board:
- the Chairperson or, in the absence of the Chairperson, the Deputy Chairperson shall preside, or
 - if the Chairperson and the Deputy Chairperson are absent, one of the remaining members of the Board may be chosen by the members present to preside.

14 Advisory Committees

- 14.1 The Board may establish one or more Advisory Committees and ensure that these elicit input from consumers, carers and member organisations.
- 14.2 Said Advisory Committees may take any form and be called by any name as the board determines from time to time.

15 Delegation by Board to sub-committee

- 15.1 The Board may delegate to one or more sub-committees (consisting of such Board members or other individuals as the Board thinks fit) the exercise of such of the functions of the Board as are specified in the instrument, other than:
- this power of delegation, and
 - a function which is a function imposed on the Board by the Act, by any other law of the State, or by resolution of the MHCT in general meeting.
- 15.2 A function, the exercise of which has been delegated to a sub-committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- 15.3 A delegation under this clause may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.
- 15.4 Notwithstanding any delegation under this clause, the Board may continue to exercise any function delegated.
- 15.5 Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the Board.
- 15.6 The Board may, by instrument in writing, revoke wholly or in part any delegation under this clause.
- 15.7 A sub-committee shall meet and adjourn as it thinks proper given adequate notice.
- 15.8 The Board may in its instrument of appointment authorise a sub-committee to seek external advice from competent persons where it will assist the work of the sub-committee. These individuals may be invited to attend meetings of the sub-committee and Board.
- 15.9 The Chair of the Board may attend any sub-committee meeting.

16 Voting and decisions

- 16.1 Questions arising at a meeting of the Board or of any sub-committee appointed by the Board shall be determined by a majority of the votes of members of the Board or sub-committee present at the meeting.
- 16.2 Each Board member present at a meeting of the Board or of any sub-committee appointed by the Board (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- 16.3 Subject to *Sub-clauses 13.5 and 13.8*, the Board may act notwithstanding any vacancy on the Board.
- 16.4 Any act or thing done or suffered, or purporting to have been done or suffered, by the Board or by a sub-committee appointed by the Board, is valid and effectual notwithstanding any

defect that may afterwards be discovered in the appointment or qualifications of any member organisation of the Board or sub-committee.

This version approved by
the Board of the MHCT
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