

Eastern Melbourne Healthcare Network Limited

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Board Charter

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TABLE OF CONTENTS

1	Foundation	4
1.1	Background	4
1.2	Vision	4
1.3	Values	4
2.	Purpose of this Board Charter	4
3	Board of Directors	5
3.1	Appointment to the Board.....	5
3.2	Board composition	5
3.3	Role.....	5
3.4	Board responsibilities.....	5
3.5	Delegated authority.....	6
3.6	Director engagement, induction and education	6
3.7	Board assessment.....	7
3.8	Access to information and insurance	7
3.9	Independent advice	7
3.10	Indemnity.....	7
4.	Individual directors	8
4.1	Role	8
4.2	Key responsibilities	8
4.3	Directors' duties and obligations	8
4.4	Independent decision-making	8
4.5	Co-operation.....	9
4.6	Confidentiality	9
4.7	Director independence.....	9
4.8	Disclosure of interests	9
4.9	Other appointments	9
4.10	Ethical standards and conduct.....	9
4.11	Remuneration	9
4.12	Additional expenses.....	10
4.13	Training and development for directors.....	10
4.14	Resignation and removal of directors.....	10
5.	Board Chair	10
5.1	Appointment	10
5.2	Role	10
5.3	Key responsibilities	10
6.	Deputy Chair	11
6.1	Appointment	11
6.2	Role.....	11

6.3 Key responsibilities	11
7. CEO	11
7.1 Role	11
7.2 Key responsibilities	11
8. Members	12
8.1 Role	12
8.2 Key responsibilities	12
9. Board committees	12
9.1 Establishment	12
9.2 Board committee procedures	12
9.3 Board committee membership	12
10. Company Secretary	13
10.1 Appointment	13
10.2 Role	13
10.3 Key responsibilities	13
11. External Auditor	13
11.1 Role	13
11.2 Key responsibilities	13
12. Board administration and procedures	14
12.1 Meeting procedures	14
12.2 Special meetings of the Board	14
12.3 Attendance at Board meetings	14
12.4 Quorum	14
12.5 Decision making	14
12.6 In camera (non-executive) sessions	15
12.7 Agenda	15
12.8 Requirements for Board papers	15
12.9 Minutes	15
13. Stakeholder communication	15
14. Charter review	16
References	16

1 Foundation

1.1 Background

The Eastern Melbourne Healthcare Network Limited (EMHN Ltd), trading as Eastern Melbourne PHN (EMPHN), works to facilitate system improvement and redesign in Melbourne's East and North East. The organisation is registered with the Australian Securities and Investments Commission (ASIC) as an Australian public company limited by guarantee and therefore abides by the *Corporations Act 2001*; and as a charity with the Australian Charities and Not-for-Profits Commission (ACNC).

1.2 Vision

With our partners EMPHN facilitates health system improvement for people in eastern and north eastern Melbourne.

1.3 Values

- Integrity
- Working together
- Courage

2. Purpose of this Board Charter

EMPHN operates within a governance framework to assist the Board of Directors (the Board) to meet relevant best practice governance arrangements for Australian public companies, especially a company that is in receipt of public funds to acquit its purpose.

The key documents that comprise the EMPHN's governance framework are:

- The EMHN Ltd Constitution (Constitution)
- This Board Charter (Charter).

EMPHN's Board Charter sets out an overarching framework of principles for the EMPHN's accountability structures and processes which incorporate corporate governance, clinical governance, financial governance, information governance and research governance.

This Charter aims to guide EMPHN's directors and employees in their governance practice: setting and implementing EMPHN's strategic direction as required by the Deed for Funding, overseeing and controlling its operations; and ensuring compliance with legal and other obligations. This Charter also sets out, in high-level terms, the main functions and responsibilities of the Board, as well as some administrative and procedural matters applicable to the Board and the governance of EMPHN.

The Charter is based on the:

- a) EMHN Ltd Constitution
- b) *Corporations Act 2001* (Cth)
- c) ASX Corporate Governance Council *Corporate Governance Principles and Recommendations* (4th edition)
- d) ACNC Governance Standards (effective 1 July 2013)

The Charter is a guideline for governance practice and does not purport to set out an exhaustive list of all duties, functions and responsibilities of the Board, individual directors or employees. Nothing in this Charter limits any powers or responsibilities of the Board.

The Constitution takes precedence over this Charter in the event of inconsistency.

3 Board of Directors

3.1 Appointment to the Board

The Board must comprise a minimum of seven and maximum of nine directors.

The directors of the Board are all members of the Company ('director members') who have all been appointed in accordance with the Constitution.

3.2 Board composition

When advising the members on the appointment or re-appointment of directors, the Board will aim to ensure that:

- The Board has the requisite skills, experience and diversity to guide the business of EMPHN represented in its membership.
- It takes into account any special considerations relating to composition recognised in any funding agreement entered into by EMPHN.

The Board will regularly review its composition, having regard to the mix of skills, experience and diversity of individual directors and the duration of the terms already served. The Board will develop a matrix of skills, experience, diversity and personal attributes for this purpose which will be reviewed annually.

3.3 Role

The Board is the guardian of the purpose for which the EMPHN was established: its purpose and values.

In performing its role, the Board aspires to excellence in governance standards. This requires the Board to work as a team and meet on a regular basis. Each director must ensure they can devote sufficient time and commitment to properly perform their role and duties on behalf of EMPHN.

3.4 Board responsibilities

The Board is the governing body of EMPHN. The Board is required to:

- Be an effective steward of the objects for which EMPHN was established.
- Appoint a Chief Executive Officer (CEO) and determine his or her remuneration and the terms and conditions of appointment.
- Understand the organisation's culture; drive, support and model the desired culture; and monitor the management of culture.
- Develop statements of priorities and strategic plans for the operation of EMPHN and monitor performance and compliance with those statements and plans.
- Oversee the development of strategies, business plans and budgets to ensure the accountable and efficient provision of health services by EMPHN and the long- term financial viability of EMPHN.
- Oversee the establishment and maintenance of effective systems to ensure that the services provided meet the needs of the communities served by EMPHN and that the views of users and providers of the health services are taken into account.
- Monitor the performance of EMPHN to ensure that:
 - EMPHN operates within its budget.
 - Audit and accounting systems accurately reflect the financial position and viability of EMPHN.

- EMPHN adheres to its financial and business plans, strategic plans and statements of priorities.
- Effective and accountable risk management systems are in place.
- Effective and accountable systems are in place to monitor and improve the quality and effectiveness of the health services facilitated by EMPHN, and ensure they provide demonstrable value for money
- Any risks identified with the quality and effectiveness of the health services provided by contracted service providers are addressed in a timely manner.
- EMPHN continuously strives to foster innovation and improve the quality of the health services in the region.
- Committees established or appointed operate effectively.
- Regularly review the performance of the CEO.
- Develop arrangements with other relevant agencies and service providers to enable effective and efficient delivery of health services and continuity of care across the region.
- Establish committees as required to facilitate the work of the Board.
- Provide appropriate board induction and training for directors.

The Board has such powers as are necessary to enable it to carry out its functions subject to any provisions identified in the Deed between the EMPHN and the Commonwealth. In performing its functions and exercising its powers, the Board must consider:

- The needs and views of stakeholders and consumers in the catchment region.
- The need to ensure that EMPHN uses its resources in an effective and efficient manner.
- The need to ensure that resources of the State and Commonwealth are used effectively and efficiently.

3.5 Delegated authority

The Board must develop and approve an Instrument of Delegation Policy, which outlines the authority delegated by the Board to the CEO, and through the CEO to other senior managers, covering areas such as operating and capital expenditure, funding and strategic decision-making. The delegations must balance effective oversight with appropriate empowerment and accountability of management (including appropriate escalation and reporting to the Board).

Any matters or transactions outside the limitations imposed by the Instrument of Delegation Policy must be referred by the CEO to the Board for approval. This includes (but is not limited to) escalation of risks. In addition, the CEO must consult with the Board Chair on any matters which the CEO considers are of such a sensitive, extraordinary or strategic nature so as to warrant the attention of the Board, regardless of value.

The Board may, by resolution, change any delegated power by increasing, reducing, adding or removing specific powers and authorities (and the Instrument of Delegation Policy will be amended accordingly).

3.6 Director engagement, induction and education

A new director will be engaged through a letter of appointment signed by the Board Chair and provided with an induction program appropriate to their experience to familiarise themselves with EMPHN's business, strategy and any current issues before the Board.

Any new director will be invited to participate in an induction process that has been approved by the Board Chair and CEO. The induction will be facilitated by the Board Secretariat.

Current directors will be invited to participate. The induction process will include (but not be limited to):

- Provision of supporting documentation.
- Introduction to EMPHN including briefings by the Board Chair, the CEO and key staff.
- Introduction to the Victorian Health system, including the opportunity to meet with various health service providers within EMPHN's catchment area.
- A tour of EMPHN site(s), including the opportunity to meet with staff.

If required, directors will be given the opportunity to attend external training on corporate governance.

3.7 Board assessment

The performance of the Board will be reviewed.

Discussion of findings and recommendations arising from the assessment will inform continuous improvement and ongoing education and training.

The Board Chair may also include an item as part of the general business of the Board agenda to prompt self-assessment at different times through the year. This may also be an occasion to use directors' networks to identify and share opportunities for continuous improvement and ongoing education and training.

3.8 Access to information and insurance

EMPHN will enter into a deed of access with each director that:

- Gives the director access to all company documents while that director holds office and, if necessary for any legal proceeding, for a period of seven years after the appointment has ended, and;
- Requires EMPHN to maintain directors' and officers' insurance and pay the relevant premium for each director for the same period.

3.9 Independent advice

The Board collectively, and all directors individually, have the right to seek independent professional and/or legal advice, at EMPHN's expense, to help them carry out their responsibilities.

The Board has the right to obtain independent legal advice and engage legal representation as required.

Individual directors wishing to seek independent professional or legal advice must, in the first instance, seek approval from the Board Chair. Such approval is not to be unreasonably withheld. The director will then obtain from their preferred provider an outline of the advice being sought together with the cost of the advice for the Chair's authorisation. Where the Chair is seeking advice, authorisation will be from the Board.

3.10 Indemnity

Pursuant to the Constitution, EMPHN indemnifies each director and the Company Secretary and may, by deed, indemnify a person who is, or has been, an officer (as defined in the Corporations Act) of EMPHN, to the extent permitted by law, against liability incurred by that person to another person (other than EMPHN), provided that the liability does not arise out of conduct involving a lack of good faith. EMPHN will purchase appropriate Directors' and Officers' insurance to support Board Directors and staff to be able to undertake their duties.

4. Individual directors

4.1 Role

The role of individual directors is to promote good governance and safeguard the interests of the organisation and its members.

4.2 Key responsibilities

Individual directors have a number of fiduciary duties which are set out in the Board-approved Code of Conduct Policy and the ACNC Governance Standard 5. They include:

- Exercising the organisation's powers and discharging the directors' duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the organisation.
- Acting in good faith in the best interests of the organisation to further the purposes of EMPHN.
- Not misusing their position.
- Not misusing information obtained in the performance of their duties as a director.
- Disclosing perceived or actual material conflicts of interest.
- Ensuring the financial affairs of the organisation are managed in a responsible manner and not allowing EMPHN to operate while insolvent.

4.3 Directors' duties and obligations

Directors are expected to comply with their legal, statutory and equitable duties and obligations when discharging their responsibilities as directors in accordance with the Board-approved Code of Conduct Policy. Broadly, these align with the duties of directors as set out in the *Corporations Act* to:

Act in good faith in the best interests of EMPHN and for a proper purpose

- Exercise due care and diligence
- Avoid conflicts of interest
- Refrain from making improper use of information gained through or taking improper advantage of, their position as a director.

Directors also have a statutory duty to prevent insolvent trading. A contravention of this duty may result in personal or criminal liability of the director.

4.4 Independent decision-making

Directors should bring independent judgement to bear on Board decisions and request information or raise any issue, which is of concern to them, so as to fully canvas all aspects of any issue before the Board and to be reasonably satisfied as to the soundness of all decisions taken by the Board.

In order to satisfy this requirement, a director must:

- Make a reasonable effort to become and remain familiar with the affairs of EMPHN.
- Attend all Board meetings and functions unless there is a valid reason for non-attendance and an apology has been submitted to the Board Chair
- Commit the necessary time and energy to Board matters to ensure they are contributing their best endeavours in the performance of their duties and not placing undue reliance on other directors to fulfil those duties.

4.5 Co-operation

Outside of the boardroom, directors must observe solidarity with the decisions of the Board and must co-operate in their implementation.

4.6 Confidentiality

Directors (and all other Board meeting attendees) will keep confidential all Board discussions, deliberations and decisions that are not publically known. Confidential information received by directors in the course of the exercise of their duties (or by other Board meeting attendees) remains the property of EMPHN and must not be disclosed by Directors unless that disclosure has been properly authorised or is required by law.

4.7 Director independence

Directors are considered independent if they are independent of management and free from any business or other relationship that could materially interfere with, or reasonably be perceived to materially interfere with, the exercise of their unfettered judgement. Materiality is assessed on a case-by-case basis by reference to each Director's individual circumstances, rather than by applying general materiality thresholds.

The Board assesses independence of Directors upon appointment and annually through an attestation by each Director.

4.8 Disclosure of interests

Directors must declare all significant pecuniary interests and relevant non-pecuniary interests of themselves, their partner and/or their dependents in accordance with the Board-approved Disclosure of Interests Policy:

- About which they have knowledge, and;
- That they consider may have a bearing, or may be perceived to have a bearing, on their ability to properly and impartially discharge the duties of their office.

When disclosing interests, sufficient detail must be provided to enable an adequately informed decision to be made about the identification of any conflict of interest (actual, apparent or potential) in accordance with the Board-approved Conflict of Interest Policy.

A register of standing notices of interest will be developed in accordance with Section 192 of the *Corporations Act*.

4.9 Other appointments

Directors are expected to advise the Board Chair of any proposed board or executive appointment to another organisation as soon as practicable.

4.10 Ethical standards and conduct

The Board supports and encourages policies within EMPHN that require directors and employees to observe high standards of personal integrity and display honesty in their dealings. Directors are expected to observe the highest standards of ethical behaviour and must not engage in conduct that is likely to harm or discredit EMPHN.

These requirements are documented in a Board-approved Code of Conduct Policy. Any breach of the Code by a director will be investigated and resolved by the Board Chair and any breach by an employee will be investigated and resolved by the CEO with guidance from the Board Chair as required. The organisation also maintains Board-approved Whistleblower and Fraud and Corruption Control policies.

4.11 Remuneration

A Nomination and Remuneration Committee has been established to oversee matters relating to director appointment and remuneration. The membership of this committee comprises half director members and half independent members. Directors are remunerated as approved by

the Board. Board remuneration is reviewed annually and is bench-marked against industry standards.

4.12 Additional expenses

Directors will be reimbursed for expenses incurred in carrying out Board business on the production of receipts.

4.13 Training and development for directors

Provision is made in the budget for director training and development as determined by the Board.

4.14 Resignation and removal of directors

A director may resign through a written resignation signed by that director and delivered to the Board Chair.

A director may be removed from office if he or she:

- Is physically or mentally unable to fulfil the role of a director of the Board;
- Has been convicted or found guilty of an offence which, in the opinion of the Board, makes the director unsuitable to be a director of the Board;
- Has been absent, without leave of the Board, from all meetings of the Board held during a period of six months, or;
- Is insolvent under administration.

5. Board Chair

5.1 Appointment

In accordance with the Constitution, the Board will appoint one of the Directors to be the Chair of the Board.

5.2 Role

The role of the Board Chair is to facilitate the effective contribution of all directors and promote constructive and respectful relations between directors and between the Board and management. The Chair has the same decision making rights as all other directors. In the event of an equality of votes on a motion to the Board, the Chair shall have the casting vote.

5.3 Key responsibilities

The key responsibilities of the Board Chair are:

- Providing leadership to the Board enabling the integrity of the Board's governance arrangements and the efficient organisation and conduct of the Board's processes.
- Representing the Board to the members and outside parties as required and, where appropriate, communicating the Board's position on relevant matters.
- Advocating and promoting the interests of EMPHN as a whole in relations with members, other stakeholders and the general public.
- Maintaining an effective working relationship with the CEO.
- Acting as the primary point of communication between the Board and the CEO.
- Overseeing the Board agenda in conjunction with the CEO and Board Secretariat.
- Ensuring the provision to directors of timely and relevant information to assist them to be effective and fully participate in Board activities.

- Managing the business of the Board by presiding over meetings, resolving differences between directors and seeing that decisions are reached promptly.
- Recommending the membership, chair and functions of any Board committee to the Board for consideration and approval.
- Monitoring compliance with Board policies and procedures.
- Guiding and prompting on-going effectiveness and development of the Board and individual directors.
- Overseeing Board succession planning and monitoring of the Board's performance.

6. Deputy Chair

6.1 Appointment

The Chair will appoint a director(s) to be the Deputy Chair at the first meeting of the Board after the Annual General Meeting.

6.2 Role

The role of the Deputy Chair is, in the absence of the Board Chair, to act in his or her place.

6.3 Key responsibilities

The key responsibilities of the Deputy Chair are as for the Chair and outlined in section 5.3 of this Charter.

7. CEO

7.1 Role

The CEO is responsible for the development of the strategic and operational objectives for EMPHN and the achievement of measurable results (including budgets and other key performance indicators).

7.2 Key responsibilities

The CEO will:

- Manage EMPHN in accordance with the financial and business plans, strategies and budgets developed by the Board and the instructions of the Board, including the Board-approved Financial Management Policy.
- Lead the culture of EMPHN, including reporting to the Board on the alignment of systems and processes to support the core cultural elements and against agreed indicators of cultural health; reporting on areas where behaviours and activities are not aligned with these elements, and plans to address.
- Prepare material for consideration by the Board including statements of priorities, strategic plans, business plans, strategies and budgets.
- Ensure that the Board and Board committees are assisted and provided with relevant information to enable them to perform their functions effectively and efficiently.
- Ensure that the Board's decisions are implemented effectively and efficiently throughout EMPHN.
- Inform the Board in a timely manner of any issues of public concern or risks that affect or may affect EMPHN.
- Meet other legislative and regulatory requirements and appropriate directions of the Minister for Health and/or the Secretary of the Department.

The Board recognises that the CEO is responsible for managing all operational matters and, to that end, the Board delegates executive authority for operational matters to the CEO. The CEO is authorised to make all decisions and actions within his or her delegated authority and which, in his or her judgement, are reasonable having regard to this authority.

The Board acknowledges that the CEO has an independent obligation to inform the Board, the Secretary of the Department of Health and the Minister for Health of any significant issues of public concern or significant risks affecting EMPHN.

The Board accepts that:

- As a fundamental principle, the CEO reports to the Board as a whole.
- The responsibility for the overall assessment of the CEO belongs to the Board as a whole, notwithstanding that certain aspects of the task may be delegated to one of the Committees of the Board as appropriate.

8. Members

8.1 Role

[Refer also Section 3]

The Constitution provides that each person appointed as a Director shall immediately upon such appointment taking effect and for the duration of their tenure as a Director, be a Member of the Company. The Constitution sets out the rights and responsibilities of Members.

8.2 Key responsibilities

The key responsibilities of the members are:

- Approving the appointment and re-appointment of directors.
- Ratifying the appointment or approving the removal of the External Auditor.
- Receiving and considering the annual financial report and other accounts and reports.
- Approving any changes to the Constitution.

9. Board committees

9.1 Establishment

The Board must establish a Clinical Council and Community Advisory Committee (to be named as determined by the Board).

The Board may establish other committees of the Board or expert working groups to assist it in the discharge of its responsibilities and may delegate the exercise of its powers to those committees or expert working groups.

The Board remains accountable for the decisions of the Board committees.

9.2 Board committee procedures

Each Board committee must operate in accordance with the Constitution and a Board-approved charter or terms of reference. Terms of reference for Board committees will be approved annually by the Board. A copy of all Board committee minutes should be provided to the Board.

9.3 Board committee membership

Board committee membership may comprise directors, employees and/or persons outside the organisation with appropriate skill, knowledge and experience relevant to the purpose of the particular Board committee.

The Board has sole responsibility for the appointment of independent members to Board committees. The Board may, at any time, remove a member of a committee from office.

The Board is responsible for ensuring that committee members receive an appropriate induction, ongoing training and resources to appropriately discharge their duties.

The membership and Chairing requirements of committees are set out in the Terms of Reference of each committee, which are reviewed annually by the Board.

Board Secretariat will provide secretarial and administrative support to Board committees. The role of the Company Secretary is further detailed in clause 10.

10. Company Secretary

10.1 Appointment

In accordance with the Constitution, the Board will appoint a person or persons to act as Company Secretary of EMPHN (Company Secretary).

10.2 Role

The role of the Company Secretary is to support the effectiveness of the Board on all governance matters.

10.3 Key responsibilities

The key responsibilities of the Company Secretary are:

- Supporting the effectiveness of the Board by monitoring compliance with Board policy and procedures.
- Coordinating timely collation and dispatch of Board agendas and briefing papers.
- Ensuring timely completion of minutes of all Board meetings within 10 business days of the meeting.
- Ensuring compliance with all ASIC and ACNC obligations.
- Representing EMPHN as its Public Officer to ensure all obligations to the Australian Taxation Office are fulfilled.

11. External Auditor

11.1 Role

The role of the External Auditor is to express an opinion on whether management has fairly and accurately presented the information in the financial statement.

11.2 Key responsibilities

The External Auditor will be invited to attend each Annual General Meeting (AGM) of EMPHN and must be available to answer questions from the Members about:

- The conduct of the audit;
- The preparation and content of the audit report;
- The accounting policies adopted by EMPHN in relation to the preparation of the financial statements, and;
- The independence of the External Auditor in relation to the conduct of the audit.

12. Board administration and procedures

12.1 Meeting procedures

The Board will hold scheduled meetings to discharge all of the duties set out in this Charter and the Constitution.

Board meetings are to be held at such regularity as the Board sees fit, on dates determined annually in advance by the Board.

An annual schedule of key matters for consideration by the Board will be developed and distributed to all Board directors and to the Executive Team.

Board Committee work plans are developed annually using Board-approved templates.

12.2 Special meetings of the Board

The Board Chair may at any time call a special meeting of the Board.

The Board Chair must call a special meeting of the Board if requested by at least 25% of directors.

A special meeting must not be held unless at least two days' notice has been given to each Director. Notice of a special meeting must:

- Specify the purpose, time, and place of the meeting;
- Be in writing, and;
- Be provided to all directors, by post, or in person, or by email.

A special meeting must deal only with business stated in the notice.

12.3 Attendance at Board meetings

Directors are expected to attend at least 75% of all Board meetings. Employees and professional advisors may attend Board meetings by invitation.

12.4 Quorum

The Constitution requires at least half of the directors to be present at each Board meeting as a quorum. If the number of half is not a multiple of two then the odd number nearest to and greater than half of the Directors is a quorum. Other individuals invited to attend Board meetings may participate in discussion (at the discretion of the Board Chair), but do not form part of the quorum.

12.5 Decision making

Decisions of the Board are made by consensus of the directors present at a duly convened meeting. These decisions will be recorded in the minutes and, where necessary, any dissenting views that a Director has specifically stipulated will be recorded. If a vote is required, each director present is entitled to one vote. In the event of a tied vote, the Board Chair has a right to a second vote as a casting vote.

Any action required, or decision permitted, to be taken at a meeting of the Board may be taken without a meeting, if a resolution in writing is signed by all directors entitled to receive a notice of a meeting. A resolution in writing may consist of one or several documents in identical terms each signed by one or more directors. All such documents must be filed with the minutes.

The use of circulating briefings by email requiring a Board decision/resolution will be restricted to matters of extreme urgency that cannot be delayed until the next meeting and, on an exception basis, day-to-day matters that require Board approval but do not require face-to-face discussion. The Board decision/resolution will be ratified at the next Board meeting and the Board Chair will ensure that the ratification of the resolution is minuted (noting the date of the resolution and the method of communication of the resolution).

12.6 In camera (non-executive) sessions

The Board Chair may, as required, arrange for an opportunity for the non-executive directors to meet without any EMPHN employee present. Any resolutions or actions arising from this session that require minuting are communicated to the Board Secretariat for that purpose.

12.7 Agenda

The Board agenda will adhere to an agreed format.

The agenda, together with supporting documentation, must be made available to directors and other Board meeting attendees at least five working days prior to each meeting. The agenda will be available from the Board Secretariat and the Board-approved website for document management.

12.8 Requirements for Board papers

All Board papers must be prepared in accordance with an approved template and approved by the CEO prior to distribution.

Business of the Board which is not included in the agenda, or for which the papers were late, may be discussed at a Board meeting only with the consent of the Chair and a majority of Board directors present.

The CEO may forward supplementary notes to his/her report by close of business the night before the Board meeting in respect to critical and/or strategic issues or events.

12.9 Minutes

The Board minutes will be prepared by the Board Secretariat in accordance with an agreed format.

The draft minutes of each Board meeting will be circulated to all directors no later than the distribution date for papers for the next Board meeting.

Minutes will be confirmed by the Board at its next meeting and be signed by the Chair presiding at that meeting. Following confirmation and signing, the minutes will be included in the minute book.

The Board Secretariat is the custodian of the minute book.

The minute book must be available for inspection by any director. Once minutes have been approved by the Board they will be also made available on the Board-approved website for document management. Minutes from in-camera sessions will only be provided to the CEO and executive directors with prior approval from the Board Chair.

A statement of actions arising from the Board meetings will be included in the papers and circulated to directors for each Board meeting. A Board action statement will adhere to an agreed format.

The Board Secretariat will retain a complete copy of the Board papers of each meeting.

13. Stakeholder communication

While it is appropriate that directors engage in discussions with a range of different stakeholders in order to fully inform and perform their role, when communicating with EMPHN employees, public servants, Members of Parliament and the broader community, directors should be mindful of their responsibilities to the EMPHN as set out in section 4 of this Charter.

14. Charter review

This Charter will be reviewed annually by the Board or as otherwise required to ensure it remains consistent with the Board's objectives and responsibilities and relevant standards of corporate governance.

References

Australian Charities and Not-for-Profits Commission Governance and External Conduct Standards

<https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-standards>

<https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/acnc-external-conduct-standards>

ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations with 2010 Amendments* (4th edition, 2019)

<https://www.asx.com.au/content/dam/asx/about/corporate-governance-council/cgc-principles-and-recommendations-fourth-edn.pdf>