



HERBERT  
SMITH  
FREEHILLS

# Board Charter

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## Mumbulla Foundation

ABN 75 094 731 601

Registered Office:  
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# Board Charter

## 1 Purpose of this charter

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The board of Mumbulla Foundation (**Foundation**) has adopted this charter to outline the manner in which it will exercise its powers and responsibilities.

This charter ensures compliance with principles of good governance, the Australian Charities and Not-for-profits Commission (**ACNC**) Governance Standards and applicable laws.

This charter includes an overview of:

- (a) the Foundation's entity type, purposes and activities;
- (b) the role, responsibilities and duties of the board;
- (c) accountability to stakeholders; and
- (d) the roles of the chair and secretary.

This charter has been prepared and adopted on the basis that strong corporate governance enhances the performance of the charity and builds confidence in the community.

## 2 Entity type, charity and tax status

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### 2.1 Entity type and ABN

Mumbulla Foundation (ABN 75 094 731 601) is a company limited by guarantee and is also trustee of the public ancillary fund named Mumbulla Foundation Trust (ABN 72 199 314 980) (**Public Fund**).

### 2.2 ACNC

The Foundation is listed on the ACNC register as a charity under the sub-type of:

- Purposes beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the other charitable purposes.

The Public Fund is listed on the ACNC register a charity under the sub-types of:

- Advancing social or public welfare.
- Advancing culture.
- Purposes beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the other charitable purposes.

### 2.3 ATO

- The Foundation is endorsed by the ATO as a tax concession charity with income tax exemption, GST concessions and FBT rebate.



- The Public Fund is endorsed by the ATO as a tax concession charity with income tax exemption, GST concessions, and as an item 2 deductible gift recipient (DGR) as a public ancillary fund.

## 2.4 Key documents

- Constitution (last amended February 2005)
- Trust Deed dated 25 October 2000 as amended on 20 May 2002 and 9 September 2002.
- Board policies: Conflict of Interest Policy (Schedule 2), Company Decision Checklist (Schedule 3), Public Fund Compliance Checklist (Schedule 4, Board Composition Policy (Schedule 5), other Policies as found on [www.mumbulla.org.au/policies](http://www.mumbulla.org.au/policies).
- Annual reports.
- Key funding agreements.

## 2.5 Committees

- The currently no Committees but may be formed as required.

# 3 Purpose and activities of the Foundation

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## 3.1 Purpose

As noted above, the Foundation comprises a charitable company and a Public Fund. The primary role of the board of the company is to ensure it carries out its purpose as expressed in the constitution, and that it carries out its role as trustee of the Public Fund.

The purpose of the company as expressed in the constitution is:

*'... to support communities in and around the Bega Valley Shire by, without limitation:*

*(a) undertaking charitable activities;*

*(b) acting as trustee of one or more charitable trusts.'*

The purpose of the Public Fund is to:

*'...apply the Trust Fund solely for the purpose of providing money, property or benefits to or for Eligible Entities or the establishment of Eligible Entities as the Trustee decides, in accordance with the Public ancillary fund guidelines.'*

Where Eligible Entity is defined as:

*'...a fund, authority or institution:*

*1 which is Charitable; and*

*2 gifts to which are deductible under item 1 of the table in section 30-15 of ITAA 97.'*



### 3.2 Background

The Foundation was launched in November 2000. Initial financial support was given by the Myer Foundation, Foundation for Regional & Rural Renewal (FRRR) and the Bega Valley Shire Council. FRRR and the BVSC continue to provide ongoing financial support.

The Foundation provides funds to support community groups in the Bega Valley whose viability and activities depend on additional funding. The Foundation's slogan '*Give where you live*' explains our ethos. We seek local grants and donations and do our own fundraising from local residents and businesses.

### 3.3 Not-for-profit

The board must ensure the not-for-profit nature of the Foundation is maintained by not providing any profit, distribution or benefits to members or board members other than in carrying out the purposes.

### 3.4 Activities

The main activities of the Foundation are:

- investing in local not-for-profit organisations through grants and other support
- supporting efforts that promote a just, equitable and sustainable society
- supporting educational development
- serving as a resource broker, convenor and catalyst in the community

### 3.5 Stakeholders

The key stakeholders are:

- Our donors and benefactors.
- Bega Valley Shire community.
- Volunteers.
- Local, State and Federal government.
- Other Funding bodies.

## 4 Role, responsibilities and duties

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### 4.1 Role

The role of the board is to govern the Foundation in such a way that it is able to pursue its purposes successfully and ensure it is compliant with the constitution, Public Fund trust deed and relevant law.

The board is responsible for and has the authority to determine all matters relating to the policies, practices, administration and operations of the Foundation. This includes ensuring good corporate governance, determining and approving strategies and providing guidance and oversight to management.

## 4.2 Key responsibilities

- (a) The key responsibilities of the board are:
- (1) setting strategies, plans and policies for the Foundation carrying out the purpose;
  - (2) in relation to the Public Fund, setting in each year:
    - an investment policy in accordance with the relevant law;
    - a grant-making policy;
    - a fundraising policy.
  - (3) approving operating budgets and sources of funding;
  - (4) implementing, monitoring and reviewing systems of risk management and ethical and legal compliance;
  - (5) ensuring that the Foundation keeps written and operational records;
  - (6) monitoring and reviewing the performance of the board;
  - (7) ensuring that the Foundation is accountable to its stakeholders;
  - (8) monitoring and evaluating performance or impact against the purpose, strategies and plans;
  - (9) ensuring there are adequate staff and resources within the strategy and budget;
  - (10) approving major capital expenditure, acquisitions and divestitures, and monitoring capital management; and
  - (11) monitoring and reviewing management processes aimed at ensuring the integrity of financial and other reporting.
- (b) Board members will consider the attached decision checklist for material board decisions, as well as the attached summary compliance checklist in relation to the Public Fund.
- (c) Board members must treat all board meetings, board discussions and information obtained in the course of performing their duties as a board member as confidential, and not disclose information or share board papers outside of the board, without the chair's permission.

## 4.3 Governance Standards

Board members will:

- (a) exercise their powers and discharge their duties with the degree of care and diligence of a reasonable person in their position;
- (b) act in good faith, in the best interests of the Foundation and to further its purposes;
- (c) not misuse their position e.g. not use the position as board member to gain an advantage for themselves or someone else or to the detriment of the Foundation;
- (d) not misuse information obtained in the performance of being a board member e.g. only use this information to further the charity's purposes in its interests and not for the benefit of the board member or someone else, nor for the detriment of the Foundation;



- (e) disclose perceived, potential and actual conflicts of interest in accordance with the policy and procedures and not vote or participate in board discussions unless permitted;
- (f) ensure the Foundation's financial affairs are managed responsibly; and
- (g) not allow the Foundation to operate while insolvent. The board members must adequately understand the finances and ensure there are sufficient resources to pay debts as and when they are due.

#### **4.4 Reliance on others**

Board members may rely on information, in good faith, when making decisions if:

- (a) the board member makes an independent assessment of the information;
- (b) the information is given by:
  - (1) an employee that the board member believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
  - (2) a professional adviser or expert on matters the board member believes on reasonable grounds to be within their competence;
  - (3) another board member or committee in relation to matters within their authority or area of responsibility.

## **5 Accountability**

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### **5.1 Members**

The members of the Foundation are its board members. The members acknowledge that as board members they have full access to governance information and the opportunity to ask questions at any time.

### **5.2 The public**

The board will ensure the Foundation makes available the following documents to the public by lodging them with the ACNC for the ACNC public register:

- (a) company constitution;
- (b) Public Fund trust deed;
- (c) annual reports;
- (d) annual financial statements; and
- (e) annual information statements.

## **6 Chair**

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- (a) The board will appoint one of its members to be chair each year or for a set term in accordance with the constitution.
- (b) The chair is responsible for:



- (1) providing leadership and promoting cohesive, effective teamwork by the board;
- (2) ensuring the board is meeting its functions, duties and responsibilities;
- (3) setting the board meeting agendas;
- (4) leading board meetings;
- (5) ensuring the minutes correctly reflect the meetings.

## 7 Secretary

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- (a) The board must appoint at least one secretary.
- (b) The secretary is accountable to the board.
- (c) The secretary is responsible for:
  - (1) carrying out the administrative functions of the Foundation, including coordinating all board business and ensuring compliance with reporting and reporting obligations;
  - (2) preparing, compiling and distributing agendas and board papers;
  - (3) maintaining minutes of board meetings and following up on action items;
  - (4) ensuring the necessary paperwork and resolutions are effective for change in the composition of the board, change to auditors and any changes required to be submitted to the members;
  - (5) maintaining member registers or other registers as required;
  - (6) communicating with regulatory bodies and completing all statutory, financial and other necessary filing;
  - (7) ensuring compliance with legislation and reporting requirements, as applicable; and
  - (8) undertaking any other roles clearly delegated to the secretary or required by the board.



## Schedule 1

### Board member's acknowledgment of board charter

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I [insert name of board member] board member of the Foundation have read the board charter of the Foundation, adopted by the board on [date].

I am aware that I am subject to the requirements and duties as a board member at law and those set out in the board charter. I will comply with these requirements and duties.

I will resign as a board member of the Foundation if I have been:

- (a) disqualified from managing a corporation, within the meaning of the *Corporations Act 2001*; or
- (b) disqualified by the ACNC Commissioner.

#### Signed by

*sign here*



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*print name*

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*date*

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## Schedule 2

### Conflict of interest policy

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#### 1 High standards

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The Foundation wishes to adopt a high standard of conduct to ensure all perceived, actual and potential conflicts of interest are disclosed. This will avoid not only real conflicts of interest affecting the responsible decision making of the board but also avoid any perception of conflicts of interest in relation to the decision making.

#### 2 What is a conflict of interest for this policy?

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- (a) A conflict of interest exists where loyalties of board members are divided. This policy covers:
  - (1) if a board member's interests or other duties may affect her or his decision making or may be seen to possibly affect her or his decision making as a board member; or
  - (2) if a board member's interests or other duties may be affected by a decision of the Foundation.
- (b) Conflicts of interest cover any real or sensible conflicts the board members may have with other duties owed, such as being a board member or trustee of another company or trust, and conflicts with a personal interest, such as the interests of an associate or relative. For example, offering the services to the Foundation of a business the board member or family member is involved in.
- (c) Board members representing a stakeholder group, e.g. users of the services of the Foundation, must ensure that they are acting in the interests of the purposes of the Foundation and not just in the interests of the stakeholder group.
- (d) The conflicting interest may arise as a result of the board member's employment, consultancy or personal interests, often, but not limited to, financial investment.
- (e) A board member can have a potential conflict of interest if any decision they make as a board member may provide an improper gain or benefit to themselves or an associate.
- (f) Board members perform their functions subject to many influences and loyalties but this conflict of interest code of conduct applies to those types of interests and duties which have the possibility or the perception that they could influence the board members when making judgements relating to the Foundation.
- (g) The issue normally arises only in relation to pecuniary interest but it does extend to all influences, loyalties, interest or duties which may affect or be seen as likely to affect the board member in his or her decision making for the Foundation.



## 3 What must a board member do?

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### 3.1 Disclosure

- (a) Board members must disclose to the board, through the secretary, their employment, their connection to any stakeholder group and other board memberships, as well as any actual potential or perceived conflict of interest.
- (b) The secretary will keep a list of disclosures to be provided to any board member on request and to new board members for their information.
- (c) Board members must disclose any actual, potential or perceived conflicts of interest to the chair prior to a board meeting where the conflict may be relevant or to the board members at a board meeting prior to discussions.
- (d) Board members must ensure any change in circumstances relevant to the disclosure of interest is advised to the chair, secretary or all board members at a board meeting considering a matter that gives rise to or may give rise to that board member having an actual, potential or perceived conflict of interest.
- (e) If the board member wishes to keep the matter giving rise to the possible conflict confidential he or she may just advise board members that he or she has a conflict with the matter under discussion and that the protocol will apply.

### 3.2 Protocol

If there is a conflict of interest, or the board members or chair have decided there is sufficient potential for a perceived or actual material conflict to arise so as to apply the protocol, then the board member:

- (a) will not receive the papers on the matter, but will be advised that certain papers have been excluded;
- (b) cannot be present (by phone or in person) when the matter is considered unless permitted by law and the other board members resolve that the board member in question can stay; and
- (c) cannot vote on the matter.

### 3.3 Open discussion

- (a) When any matter is being discussed at board level, any board member may query another board member as to whether they consider they have a possible conflict of interest with the matter under discussion.
- (b) This matter should then be discussed and considered by the board and if the board (other than the board member who is being queried) considers that there may be a possibility of a perceived or actual material conflict of interest, then disclosure must be made and the protocol must apply.
- (c) If a board member is uncertain as to whether he or she has or may have a perceived or actual material conflict of interest, he or she must disclose this at the board meeting discussing the matter or with the chair.

### 3.4 Records

Any discussions, disclosures, resolutions and the application of the protocol relating to a conflict of interest should be recorded in the board member's minutes.



### **3.5 Confidentiality**

- (a) Board members must remember that board papers and matters discussed at board meetings are confidential as each board member has a duty to maintain the confidentiality of information he or she learns by virtue of his or her position as board member.
- (b) If there is a need or desire by a board member to disclose or report on resolutions or matters discussed at board meetings, or information gained as a result of the being a board member, to third parties, then the disclosure or reporting can only be made with the consent of the board members at the meeting or by the chair.

### **3.6 Chair's role**

- (a) The chair will be available to discuss with any board member the application of this procedure to particular circumstances and provide guidance as to whether he or she should be making a disclosure or whether the protocol should apply.
- (b) The chair shall also seek to remind the board members from time to time of their obligations and commitments under this policy and this policy will be given to any new board members.



## Schedule 3

### Company decision checklist

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- Does the proposal relate to the company or the Public Fund? If it relates to the Public Fund, please refer instead to the Public Fund checklist at Schedule 4.
- Is the proposal in furtherance of the company's purposes, or incidental to the company's purposes, and is the reason for the proposal for a proper purpose?
- Do you or any other board members have a conflict of interest or perceived conflict of interest related to the proposal?
- Does the proposal comply with the constitution and the not-for-profit nature?
- Is the proposal consistent with the strategic plan and within budget?
- Does the decision comply with applicable laws, e.g. fundraising, local government approvals, copyright, privacy, OH&S, etc.?
- Are the risks adequately identified and considered, e.g. financial, reputational, personal injury, property damage?
- Have you considered the effect on all the stakeholders e.g. funders, donors, community, employees, volunteers, public?
- Is the proposal in the best interests of the company as a whole, i.e. you are not favouring any one group of stakeholders over another?
- If there is a chance things could go wrong, is there a plan to reduce the effects of things going wrong?
- Does the board need to amend or develop any budgets or policies with respect to the proposal?
- Is there a plan to communicate the outcome of this proposal to any stakeholders (government agencies, communities, media. etc.)?
- Does the proposal contain a system for monitoring how the decision will be actioned and/or the impact of the decision?
- If the proposal is controversial, do you have more than one source of information and/or a source of independent advice?
- Are you satisfied that you have been fully informed on the topic?
- Would your common sense lead you to accept or reject this proposal?



## Schedule 4

### Public Fund compliance checklist

*Based on the checklist in Philanthropy Australia's Handbook for Trustees of Public Ancillary Funds*

	Ongoing	Annual	To be actioned by
<b>Administration</b>			
Notify ACNC of any change to the Public Fund Trust Deed	√		
Notify ACNC of any change in the trustee company, Mumbulla Foundation, or its registered address	√		
Ensure a majority of the board of the trustee company are Responsible Persons as defined in the Public Fund Trust Deed	√		
Prepare annual financial statements		√	
Ensure the audit or review covers both the financial statements and compliance with the public ancillary fund guidelines		√	
Lodge ACNC Annual Information Statement (AIS)		√	
Lodge claim for refund of franking credits with ATO		√	
<b>Investment</b>			
Ensure there is an Investment Strategy which is compliant with the public ancillary fund guidelines		√	
Ensure all investment decisions are consistent with the Investment Strategy	√		
Ensure any related party transactions are on commercial terms	√		
Ensure any related party transactions are disclosed in the financial statements		√	
Confirm sufficient liquidity for grants		√	
Confirm there has been no borrowing or pledging of fund assets and no purchase of restricted assets		√	
Review Investment Strategy and performance		√	
<b>Distribution</b>			



	Ongoing	Annual	To be actioned by
Based on previous 30 June valuation, set 4% minimum distribution		√	
Review grant commitments and set target level of new grants		√	
Ensure that at least 4% of the previous 30 June value been distributed		√	
Ensure all grants are being paid to eligible DGRs	√		
Check whether there are additional grant conditions that may require GST to be paid	√		
Ensure receipts been received from all recipients		√	

## Schedule 5

### Board composition policy

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#### 1 Board composition and size

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- (a) The Corporations Act requires the board to comprise a minimum of 3 members. However, it is intended that the board should comprise 7 board members, up to a maximum of 10, with a broad range of skills, expertise and experience from a diverse range of backgrounds.
- (b) The board is cognisant of the need for diversity, including a balance of age, gender and cultural identities.
- (c) The board, as a whole, should ideally have the following skills:
  - (1) experience or knowledge in government funding, philanthropic funding and fundraising;
  - (2) experience on governance issues and practices;
  - (3) accounting or auditing skills;
  - (4) marketing, communications or media experience;
  - (5) strategic planning experience;
  - (6) legal experience in relevant fields; and
  - (7) a deep knowledge of and commitment to the Bega Valley.
- (d) The board will annually review the skills represented by the board members and determine whether the composition and mix of those skills remain appropriate for the Foundation's strategy, subject to the limits imposed by the constitution and the terms served by existing board members.

#### 2 Suitability of board members

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##### 2.1 General

Board members must:

- (a) not be disqualified from acting as a director under the Corporations Act;
- (b) not be disqualified from acting as a responsible entity under the ACNC Act;
- (c) not have been convicted of fraud;
- (d) not have been bankrupt.

## 2.2 Responsible person requirements

- (a) The Public Fund Trust Deed and Public ancillary fund guidelines require that a majority of the directors at any time must be residents of Australia and meet the ATO's 'Responsible Person' requirements, by being an individual who:
- (1) performs a significant public function;
  - (2) is a member of a professional body having a code of ethics or rules of conduct;
  - (3) is officially charged with spiritual functions by a religious institution;
  - (4) is a director of a company whose shares are listed on the Australian Securities Exchange;
  - (5) has received formal recognition from government for services to the community;
  - (6) is an individual before whom a statutory declaration may be made; or
  - (7) is approved as a Responsible Person by the ATO.

This is further explained:

*'...persons who are considered to have a degree of responsibility to the community as a whole include: church authorities, school principals, judges, clergymen, solicitors, doctors, and other professional persons, mayors, councillors, town clerks and members of parliament. Generally, persons who are acceptable as having a degree of responsibility to the community as a whole are known to a broad section of the community because they perform a public function or they belong to a professional body (such as the Institute of Chartered Accountants, State Law Societies and Medical Registration Boards) which has a professional code of ethics and rules of conduct. Other persons who are acceptable are appointees of a Chief Justice of the Supreme Court. Persons who have received formal recognition from the Government for their services to the community (for example, an Order of Australia award) will also be considered to have the requisite degree of responsibility.'*

- (b) If the majority of the board do not meet these requirements, the board must appoint additional board members.

## 3 Selection and appointment of board members

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- (a) Board members will be selected for their individual skills, experience and expertise which they can bring to the board, and their suitability.
- (b) The board will review the nomination of a potential board member candidate.
- (c) Factors to be considered when reviewing a potential candidate include, without limitation:
- (1) the skills, experience, expertise and personal qualities that will best complement board effectiveness;
  - (2) the capability of the candidate to devote necessary time and commitment to the role;
  - (3) potential conflicts of interest; and

- (4) the suitability requirements in this board charter, including whether the candidate is a Responsible Person.

## 4 Retirement, term or re-appointment

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- (a) Board members should review their appointment after 3 years with the assistance of the chair to ensure they are still adding value to the board, and if so, put themselves forward to the board for re-appointment.
- (b) There is a maximum term of 9 years, unless the board otherwise decides for a particular board member, and in each case, this must be reviewed each year.
- (c) The secretary will keep a schedule of appointments and re-appointments and will note the period of service of each board member to determine if any board member is up for review.

## 5 Board review

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The board will annually consider the following to ensure the role of the board can be carried out:

- (a) the size and composition of the board;
- (b) the board succession plan;
- (c) the necessary and desirable competencies and skills of the board members;
- (d) the number and type of sub-committees and their size and composition;
- (e) the appointment of board members and consideration of candidates for appointment to the board;
- (f) the performance evaluation of the board, board committees and individual board members, and the development and implementation of plans for identifying, assessing and enhancing board member competencies;
- (g) the suitability of board members, including satisfying itself that the board members:
  - (1) are not disqualified from managing a corporation, within the meaning of the Corporations Act 2001; and
  - (2) are not disqualified by the ACNC Commissioner nor have been disqualified by the ACNC Commissioner at any time during the preceding 12 months;
- (h) any amendments required to this board charter; and
- (i) any remuneration issues.