

Kooyoora Ltd

Board Charter

1. Introduction

Kooyoora Ltd (**the Company**) was incorporated on 12 January 2017 as a company limited by guarantee under the *Corporations Act 2001* (Cth). The Company is registered as a charity under the *Australian Charities and Not-for-Profits Act 2012* (Cth) (the **ACNC Act**) and its regulations.

2. Role of the Board

- 2.1 The Board is responsible for the strategic direction, performance and governance of the Company. This Board Charter (**Charter**) sets out the role, responsibilities, structure and processes of the board of directors of the Company.
- 2.2 The Board and individual directors operate in accordance with the constitution of the Company and the law.

3. Governance standards

General

- 3.1 The Board acknowledges that–
- (a) as a registered charity under the ACNC Act, the Company is subject to the governance standards prescribed by Division 45 of the ACNC Regulations made under that legislation;
 - (b) it will have regard to the “*Good Governance Principles and Guidance for Not for Profit Organisations*” (Australian Institute of Company Directors, 2013); and
 - (c) it will respect the distinction between its role and the role of the Company’s management, recognising that administrative and operational details are generally management responsibilities to be discharged under the leadership of the Executive Director of the Company (**the Executive Director**).

The minimum governance standards

- 3.2 Honouring the condition of its entitlement to registration as a charity, the Company will on an ongoing basis comply with the prescribed minimum

governance standards set out in the *ACNC Regulations*: s25-5(3)(b) of the *ACNC Act 2012*.¹

- 3.3 The Company will in accordance with–
- (a) **Governance Standard 1**, comply with its purposes and its character as a not-for-profit entity and, by its website and otherwise, make public information about those purposes;
 - (b) **Governance Standard 2**, adhere to the standard of accountability to its members;
 - (c) **Governance Standard 3**, not engage in unlawful conduct;
 - (d) **Governance Standard 4**, adhere to the standard of the suitability of its directors ensuring that they are not disqualified from managing a corporation or from being a director; and
 - (d) **Governance Standard 5**, take reasonable steps to ensure that its directors are subject to, and comply with, the duties prescribed by the *ACNC Regulations*²:
- 3.4 Each director is to enter into a written agreement with the Company that sets out the key terms and conditions of their appointment, including the duties in Governance Standard 5, the director's initial and ongoing obligation to disclose their interests, positions, associations or relationships and any matters that may affect their independence.
- 3.5 The Board will allow directors to be available to assist in areas where there are individual competencies without usurping the role of management.

4. Board reserved powers and authorities

The Board has reserved for itself the following specific powers and responsibilities:

A. Strategy

- Providing strategic guidance to the Company by reviewing and ratifying strategies and monitoring their implementation;
- Decision making in relation to significant matters of a sensitive, extraordinary or strategic nature;
- Providing advice and counsel to management on a periodic and ad hoc basis;

¹ For the legislative background under which provisions of the *Corporations Act 2001* are “switched off”, see endnote 1.

² The duties are listed in endnote 2 to this charter.

B. Governance

- Overseeing the review and update of corporate governance policies, practices and procedures as necessary to support its commitment to good corporate governance;
- Assessing the performance of each individual director and of the Board collectively;
- Driving Board succession planning to ensure membership of the Board is skilled, diverse and appropriate for the Company's needs;
- Overseeing the work of Board committees and attending to matters referred to it by those committees;
- Approving delegations of authority to the Executive Director, and overseeing the Executive Director's delegations of authority to management;

C. Oversight

- Overseeing the conduct and performance of the Company including monitoring performance against strategic plans, budgets and peer organisations;
- Monitoring the progress of strategic initiatives, major expenditure programs and projects;

D. Senior executive appointment, performance and remuneration

- Approving the Company's overall remuneration framework;
- Appointing, evaluating the performance of, determining the remuneration and should it be necessary, terminating the employment of, the Executive Director;
- Appointing, evaluating the performance of, and should it be necessary, terminating the employment of, the Company Secretary;
- Reviewing the Executive Director's evaluation of the performance of staff reporting to the Executive Director;
- Developing and approving succession plans for the Executive Director and reviewing and approving succession plans for executives reporting to the Executive Director;

E. Financial

- Approving annual operating and capital expenditure budgets;
- Overseeing the Company's financial position including its ability to meet its debts as and when they fall due;

- Approving the annual and half year financial statements, the accounting policies on which the statements are based, the directors' reports and key elements of other related, regulatory lodgements and market releases;
- Overseeing the Company's financial integrity through overseeing systems of internal control and financial reporting, the establishment and review of financial performance objectives, and approving treasury policies;
- Overseeing the Company's external audit and internal audit activities;
- Approving decisions concerning the capital of the Company;
- Approving investment or expenditure initiatives above the Company's expenditure delegations;

F. Risk management compliance, and workplace health and safety

- Set the risk appetite for the Company, oversee the risk management framework and satisfy itself that it is sound;
- Monitoring the integrity of risk management controls and reporting systems;
- Monitoring strategic risk management systems, including reviewing of processes for identifying areas of significant business risk, monitoring risk management policies and procedures, the implementation of appropriate systems to manage these risks and oversight of internal controls;
- Satisfying itself that appropriate internal controls, disclosure, reporting and management are in place and effective;
- Overseeing the annual insurance program;
- Overseeing the Company's sustainability program;
- Overseeing the Company's workplace health and safety measures and appropriate due diligence to ensure compliance with relevant laws and regulations;
- Requiring appropriate compliance frameworks and controls to be in place and operating effectively for compliance with relevant laws and regulations;
- Monitoring significant litigation in which the Company is involved;
- Approving environmental and employment policies;

G. Culture

- Supporting the Executive Director to deliver strong leadership of the Company on a continuing basis;

- Supporting diversity in the workplace by monitoring the effectiveness of the Company's diversity policy and its progress in achieving annual diversity objectives;
- Fostering a culture of compliance with the highest legal, ethical and environmental standards and business practices, including the Company's applicable codes of conduct.

5. Board structure

Composition

- 5.1 The minimum number of directors is 3. The maximum number of directors is to be fixed by the directors, but may not be more than 9, unless the company in general meeting resolves otherwise. The directors must not fix a maximum which is less than the number of directors in office at the time.

Appointment

- 5.2 Subject to the constitution of the Company, the directors may appoint any individual as a director, either to fill a casual vacancy or as an addition to the existing directors. The members of the Corporation may appoint and remove the directors pursuant to the *Corporations Act 2001*.
- 5.3 The Board will provide the members with material information in its possession relevant to the appointment of a director.
- 5.4 Directors, collectively, are to have the appropriate balance of skills, knowledge, experience, independence and diversity to enable it to discharge its duties and responsibilities effectively.
- 5.5 The Board will determine and regularly review the composition of the Board having regard to the optimum number and skill mix of directors, subject to the limits imposed by the Company's Constitution and the terms served by existing directors.

6. Committees of the Board

- 6.1 The Board may establish a committee or committees and delegate to them prescribed powers and authority to act.
- 6.2 Each committee operates under a charter, approved by the Board, which sets out the authority, membership and responsibilities of the committee, together with any relevant administrative arrangements and any other matters considered appropriate by the Board.
- 6.3 The role of a committee is to advise and make recommendations to the Board. They do not have the power to commit the Board or management to the

implementation of their recommendations except as expressly stated in the committee's charter or as authorised by the Board.

6.4 A Board committee may be:

- (a) one established by the Board for the purpose of considering and advising the Board on ongoing matters or to discharge ongoing delegations on the Board's behalf; or
- (b) an ad hoc committee established by the Board for the purpose of considering and advising the Board on a specific matter or to discharge a specific delegation on the Board's behalf.

6.5 The Board will appoint:

- (a) directors (or others as the Board may consider appropriate) to be members of each Board committee; and
- (b) the chair of each Board committee.

6.6 The chair of the Board is an ex-officio member of each Board committee.

6.7 Each committee shall report to the Board on the manner in which it is discharging its functions and responsibilities. Minutes of committee meetings shall be prepared and circulated to all directors.

6.8 Any director is entitled to attend committee meetings and to receive committee papers.

6.9 The Board will periodically review the appropriateness of the existing committee structure, as well as the membership and the charter of each committee.

7. Chair of the Board

7.1 The directors will elect one of the directors as chair of directors (**the Chair**) and may decide the period for which that director is to be the Chair.

7.2 The Chair is to –

- (a) provide effective leadership of the Board and the Company;
- (b) represent the Board to the members of the Company;
- (c) maintain an open and regular dialogue with the Executive Director;
- (d) facilitate the proper briefing of all directors on all matters relevant to their role and responsibilities;
- (e) facilitate effective and open discussion of matters considered by the Board;
- (f) guide and promote the ongoing effectiveness and development of the Board and individual directors; and

- (g) chair the annual general meeting and any other meetings of the members of the Company.

7.3. The Board will develop a plan for succession of the Chair and periodically evaluate the plan.

8. Meetings of the Board, access and advice

8.1 The Board shall meet as often as is required to fulfil its purposes and goals but in any case will meet not less than six times per annum. Meeting papers should be provided to directors sufficiently far in advance of scheduled meetings to permit adequate preparation.

8.2 The Board's meetings will be held at venues as approved by the Chair and may be held by teleconference or any other electronic form.

8.3 A quorum consists of a majority of the directors, or at least 3 directors, whichever is the greater number.

8.4 The Board may–

- (a) extend an invitation to any person to attend all or part of any meeting;
- (b) meet with external advisers and any personnel of the Company, and may do so with or without management (including the Executive Director) present.

8.5 The company secretary will circulate the agenda and any supporting documentation to all directors within a reasonable time prior to a meeting (wherever possible, not less than 3 clear days prior to the meeting.)

8.6 The company secretary will arrange for minutes of all meetings of the Board and Board committees to be prepared and will circulate the draft minutes to all directors as soon as practicable after the meeting.

8.7 The Board collectively, and each director individually, has the right to seek independent professional advice at the Company's expense to help them carry out their responsibilities.

8.8 All directors shall have unfettered access to any company records and information they consider necessary to fulfil their responsibilities excluding any complaints and screening records and information that are confidential under any applicable laws or rules of a client institution.

8.9 Directors (within and outside of Board and Committee meetings) shall also have access to the company secretary and other members of the management team to seek additional information concerning the company's business (excluding any complaints and screening information that are confidential under any applicable laws or rules of a client institution).

9. Performance and development

- 9.1 Each director is expected to participate in an induction program on appointment, and to undertake appropriate professional development to develop and maintain the skills and knowledge needed to perform their roles as a director effectively. The Board will be briefed by management on relevant changes in the legislative, regulatory or sector framework.
- 9.2 A director is expected to make every reasonable effort to attend each board meeting and to be fully prepared to participate in that meeting.
- 9.3 Every two years or more frequently as may be determined by the Board, the Board will undertake an annual assessment of its performance, including its performance against the requirements of this Charter, the performance of individual committees and the performance of individual directors. The assessment may be facilitated by an external consultant.
- 9.4 A director is not remunerated for their board service however the Company will reimburse directors for all reasonable expenses necessary to perform Board duties. A director should make every effort to minimise expenses.

10. Ethics and Conflicts of Interest

- 10.1 A Director shall act in accordance with all applicable laws and adhere to the codes of conduct from time to time approved by the Board.
- 10.2 A director must take all reasonable steps to avoid actual, potential or perceived conflicts of interests and must disclose any conflicts of interest and otherwise act in accordance with the provisions of the Corporations Act and the constitution of the Company.
- 10.3 In addition to a director's legal obligation regarding material personal interests under the Corporations Act and the constitution and the requirements to declare external interests where conflicts may arise at each meeting of the Board, if any actual or potential conflict of interest between a director's duty to the Company and another person arises, the director must notify the Chair and the company secretary. The Board will determine whether the director should participate in any discussions or decisions in relation to the matter.

11. Executive Director and management

- 11.1 The Board has delegated responsibility for the day-to-day management of the Company to the Executive Director and through the Executive Director to other members of executive management. The Board may impose specific limitations on the delegation of authority from time to time.

- 11.2 The Executive Director is accountable to the Board for the exercise of this delegation, with the support of executive management.
- 11.3 The Executive Director is to keep the Board informed of significant legal matters and risks arising in the day to day operations of the Company, obtain legal advice for the Board, assist the Board with legal issues and to alert the Board of any legal or other risks associated with actions taken by the Board.
- 11.4 Directors shall receive regular detailed financial and operational reports and may request management to provide elaboration or explanation of those reports at any time.

12. Company Secretary

- 12.1 The company secretary is accountable to the Board, through the Chair, for all matters to do with the proper functioning of the Board.
- 12.2 The company secretary is authorised and responsible:
- (a) for the fulfilment of obligations and responsibilities required under relevant law or which are generally associated with the statutory office of a company secretary; and
 - (b) will work with the Chair and the Executive Director in discharging their duties and responsibilities.

13. Review of charter

The Board will review this charter annually to ensure its continuing appropriateness having regard to relevant corporate governance standards and practices.

Endnotes

1. **Switching off provisions:** Section 111L of the Corporations Act 2001 provides that certain specified provisions of that Act do not apply to bodies corporate registered under the ACNC Act. The provisions include - item 9 – Part 2G.2 (other than sections 250PAA and 250 PAB) which cover the topic of meetings of members. That Part includes s250N which requires the holding of an annual general meeting.

The switched off provisions also include ss 180 to 183 – Duties of Directors. These provisions do not apply to the Company. In effect the directors' duties imposed by the Corporations Act 2001 are switched off for directors of charities registered with the ACNC.

The statutory cause of action for breach of directors' duties that would otherwise accrue in favour of the Company against a director under ss1317E and 1317H of the Corporations Act 2001 can no longer do so.

Directors are still subject to the criminal liability provisions for directors under the Corporations Act 2001 such as ss 184 and 185. They are also still subject to insolvent trading liability under the Corporations Act 2001 and to fiduciary duties at common law.

2. **Governance Standard 5 - Duties of directors**

- (5) A registered entity must take reasonable steps to ensure that its responsible entities [ie directors] are subject to, and comply with, the following duties:
- (a) to exercise the responsible entity's powers and discharge the responsible entity's duties with the degree of care and diligence that a reasonable individual would exercise if they were a responsible entity of the registered entity;
 - (b) to act in good faith in the registered entity's best interests, and to further the purposes of the registered entity;
 - (c) not to misuse the responsible entity's position;
 - (d) not to misuse information obtained in the performance of the responsible entity's duties as a responsible entity of the registered entity;
 - (e) to disclose perceived or actual material conflicts of interest of the responsible entity;
Note: A perceived or actual material conflict of interest that must be disclosed includes a related party transaction.
 - (f) to ensure that the registered entity's financial affairs are managed in a responsible manner;
 - (g) not to allow the registered entity to operate while insolvent.