

Directors charter

Hamilton Gallery Board

Adopted by the Directors on ***[insert date]***

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Hamilton Gallery Board

1 Purpose of the Directors Charter

The directors of Hamilton Gallery Board (**Company**) have adopted this Directors Charter to outline the manner in which the powers and responsibilities of the Directors in the constitution of the Company will be exercised and discharged by the Directors.

The Charter ensures compliance with the 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 role and responsibilities of the Directors;
- (b) the requirements and duties of Directors;
- (c) size and composition;
- (d) the relationship and interaction between the Directors and the Council;
- (e) the authority delegated by the Directors to Council employees and Directors Committees;
- (f) Directors procedures; and
- (g) transparency and accountability.

The Directors Charter and the charters adopted by the Directors for its Committees have been prepared and adopted on the basis that strong corporate governance can add to the performance of the Company and engender the confidence of the community.

This Charter is to be reviewed by the Directors as required.

This Charter is to be signed by each Director and given to and signed by all new Directors.

2 Entity type, charity and tax status

2.1 Entity types and ABNs

The Company is a charitable company limited by guarantee. ABN:

The Company operates a public fund called Hamilton Gallery Fund for the collection of tax deductible gifts and grants from philanthropic foundations.

2.2 ACNC

The Company is on the ACNC register as a charity.

2.3 ATO

The Company is applying to go on the Register of Cultural Organisations (ROCO) and to have its public fund, Hamilton Gallery Fund endorsed by the ATO as an item 1 deductible gift recipient (DGR) and as a tax concession charity.

2.4 Regulators and reporting

The Company's regulators are ROCO operated by the Commonwealth Department of the Arts, the ACNC and the ATO. All changes in directors, address, constitution and all reporting goes to the ACNC through its online charity portal and to ROCO.

2.5 Key documents

- (a) Constitution of the Company.
- (b) Directors charter.
- (c) Policies and procedures.
- (d) MoU with the Council as to application of funds and administration.

3 Purpose and activities of the Company

3.1 Purpose

The primary role of the Directors is to ensure the Company carries out the purposes as expressed in the constitution which are:

to promote the arts, in particular visual arts, in Hamilton and surrounding regions by, without limitation:

- (a) assisting and supporting the Hamilton Gallery to be a centre of excellence in regional arts;*
- (b) operating or assisting in the operation of the Hamilton Gallery*
- (c) providing education on artworks, collections and exhibitions;*
- (d) providing cultural experiences;*
- (e) encouraging appreciation and understanding of different artworks;*
- (f) engaging artists, curators and art experts for events and workshops.*

3.2 Not-for-profit

The Directors must ensure the not-for-profit nature of the Company is maintained by not providing any profit, distribution or benefits to Council as its member or Directors other than in carrying out the purposes.

Funds can be collected by the Company and provided to the Hamilton Gallery while operated by the Council.

3.3 Activities

The activities of the Company are initially focussed on raising interest and funds in the proposed new building for the Hamilton Gallery.

The Directors will ensure there is a current strategic and business plan outlining the activities of the Company consistent with its purposes.

4 Directors role and responsibilities

4.1 Directors role

The role of the Directors is to govern the Company in such a way that it is able to pursue its purposes successfully and ensure it is in compliance with the relevant laws.

The Directors are responsible for and has the authority to determine all matters relating to the policies, practices, administration and operations of the organisation. This includes ensuring good corporate governance, determining and approving strategies and providing guidance and oversight to staff assisting the Company.

The Directors will:

- (a) set strategies, plans and policies for the Company;
- (b) monitor and evaluate performance or impact against the purposes, strategies and plans;
- (c) consider the viewpoints of the various stakeholders; and
- (d) implement effective risk management strategies.

4.2 Directors key responsibilities

The responsibilities/functions of the Directors are:

- (a) setting in each year a fundraising strategy and budget;
- (b) setting a calendar of events and budget;
- (c) ensuring the public fund complies with the ROCO requirements;
- (d) delegating operational management to Council employees and monitoring performance;
- (e) reviewing, ratifying and monitoring systems of risk management and ethical and legal compliance;
- (f) monitoring performance, impact and implementation of strategy and the policies;
- (g) reviewing and approving financial and other reporting.

4.3 Directors sub-committees

[Insert a list of any Directors sub-committees or advisory committees and their roles]

[Public Fund committee – this will be required if a majority of the Directors are not Responsible Persons as defined in the ROCO guidelines]

5 Directors Composition Policy

5.1 Directors composition and size

- (a) It is intended that the Directors should comprise a minimum of 5 and maximum of 9 Directors members and ideally have 7.
- (b) The Directors intend there to be a degree of diversity, including age, gender, experience and skills.
- (c) The Directors will make recommendations for appointment and removal of directors in accordance with this charter to the Council for Council approval prior to appointment or removal, provided the Council responds within **[2] months** of any recommendation.
- (d) In order to remain charitable, the Constitution requires there a majority of the Directors to be independent from the Council and any government or government entity.
- (e) The constitution requires a majority of the Directors to be the Responsible Persons as defined in ROCO requirements, if the Directors are to administer the Public Fund.

A Responsible Person is generally defined as 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) can witness a statutory declaration; or
- (7) is approved as a Responsible Person by the ATO.

If a majority of Directors does not meet the requirements of a Responsible Person, a sub-committee can be formed to administer the Public Fund, with a majority of that committee meeting these requirements. There must be a minimum of 3 individuals on that sub-committee.

- (f) The Directors, as a whole, should ensure as far as possible to have the following skills represented on the Directors or on applicable sub-committees:
 - (1) **Fundraising and philanthropic experience of knowledge;**
 - (2) **Connections and networks in the region;**
 - (3) **Connections and networks in art funding;**
 - (4) **Knowledge about regional and rural Australia;**
 - (5) **Knowledge of the visual arts sector in Australia;**
 - (6) **experience on governance issues and practices;**
 - (7) **accounting or auditing skills;**
 - (8) **strategic planning experience.**

5.2 Retirement, term or re-appointment

- (a) Directors should review their appointment after 3 years with the assistance of the Chair to ensure they are still adding value to the Directors. These Directors must consider their performance and must retire and, subject to the maximum term, may offer themselves for re-appointment.
- (b) There is a maximum term of **[9]** years, unless the Directors otherwise decides for a particular Director, and in each case, this must be reviewed each year.
- (c) The Secretary will keep a schedule of appointments and re-appointments and at each meeting approving the end of years accounts, note the period of service of each Director to determine if any Director is up for review.

6 Commitment of Directors

Directors will:

- (a) use all reasonable endeavours to attend every Directors meeting either in person or by phone;
- (b) use all reasonable endeavours to attend fundraising events and contribute contacts and networks to assist in raising funds for the Hamilton Gallery;
- (c) maintain a strong commitment to the purposes of the Company and its not-for-profit character;
- (d) participate in any induction and Directors programs and all training arranged for them;
- (e) be well informed on the activities of the Company and the issues affecting the activities;
- (f) be well informed on all matters to be discussed by the Directors and participate in discussions and express their views at Directors meetings;
- (g) be well informed on the finances and the financial management;
- (h) adhere to all policies of the Company;
- (i) treat all Directors meetings and Directors discussions as confidential and not share Directors papers or Directors discussions outside of the Directors, without the permission;
- (j) if appointed as a representative, or if otherwise appointed to represent an interest or stakeholder group, ensure that decisions are made in the interests of the Company and not only in the interests of the stakeholder group;
- (k) immediately declare a possible, perceived or actual conflict of interest and follow the conflict of interest procedure and policy;
- (l) immediately notify the Chair and resign as and when requested by the Directors, if they are likely to be or are:
 - (1) disqualified from managing a corporation, within the meaning of the *Corporations Act 2001*; or
 - (2) disqualified by the ACNC Commissioner.

- (m) immediately raise any concerns with the Chair or the Directors on any matter, including any behaviours that may be inconsistent with the purposes of the Company, this charter, any duties of the Directors or any policy;
- (n) always act in a manner which promotes the public reputation and integrity of the Company.

7 Duties and Governance standards

Directors 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 Company and to further its purposes;
- (c) not misuse their position e.g. not use the position as Directors to gain an advantage for a Director or someone else or to the detriment of the Company;
- (d) not misuse information obtained in the performance of being a Director eg. only use this information to further the purposes of the Company;
- (e) disclose perceived, potential and actual conflicts of interest in accordance with the policy and procedures and not vote or participate in Directors discussions if requested not to;
- (f) ensure the Company's financial affairs are managed responsibly by considering the systems and processes in place to ensure the finances are effectively allocated to the correct entity, public fund assets are kept separate and applied for the purposes of the Company.

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

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

8 Directors review

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

- (a) the size and composition;
- (b) whether there is a majority of Directors independent of the Council;
- (c) whether there is a majority of Responsible Persons or a sub-committee which meets this requirement for administering the Public Fund;

- (d) the Directors succession plan;
- (e) the necessary and desirable competencies and skills of the Directors;
- (f) the number and type of sub-committees and their size and composition;
- (g) the performance evaluation of the Directors, Directors committees and individual Directors, and the development and implementation of plans for identifying, assessing and enhancing Director competencies;
- (h) the suitability of Directors, including satisfying itself that the Directors:
 - (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;
- (i) any amendments required to this Directors Charter.

Hamilton Gallery Board

Directors Members' acknowledgment of Directors Charter

I **[insert name]** Director of the Company have read the Directors Charter, adopted by the Directors on **[insert date]**.

I am aware that I am subject to the requirements and duties as a Director at law and those set out in the Directors Charter. I will comply with these requirements and duties.

I will resign as a Director of the Company 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



print name

date

Conflict of interest – code of conduct

High standards

The Company 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 Directors but also avoid any perception of conflicts of interest in relation to the decision making.

What is a conflict of interest for this policy?

A conflict of interest exists where loyalties of Directors are divided. If a Director's interests or other duties may affect his or her decision making or may be seen to possibly affect his or her decision making as a Director of the company, or may be affected by a decision of the company, then this interest is covered in this code of conduct.

Conflicts of interest cover any real or sensible conflicts the Directors may have with other duties owed, such as being a Director 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 company of a business the Director or family member is involved in.

Directors representing a stakeholder group, must ensure that they are acting in the interests of the purposes of the company and not just in the interests of the stakeholder group.

The conflicting interest may arise as a result of the Director's employment, consultancy or personal interests, often, but not limited to, financial investment.

A Director can have a potential conflict of interest if any decision they make as a Director may provide an improper gain or benefit to themselves or an associate.

Directors 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 Directors when making judgements relating to the company.

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 Director in his or her decision making for the company.

What must a director do?

(a) Disclosure

- (1) Directors must disclose to the Directors, their employment, their connection to any stakeholder group and other board memberships, as well as any actual potential or perceived conflict of interest.
- (2) The company will keep a list of disclosures to be provided to any Director on request and to new Directors for their information.
- (3) Directors must disclose any actual, potential or perceived conflicts of interest to the Chair prior to a Directors meeting where the conflict may be relevant or to the Directors at a Directors meeting prior to discussions.
- (4) Directors must ensure any change in circumstances relevant to the disclosure of interest is advised to the Chair or all Directors at a Directors meeting considering a matter that gives rise to or may give rise to that Director having an actual, potential or perceived conflict of interest.

- (5) If the Director wishes to keep the matter giving rise to the possible conflict confidential he or she may just advise Directors that he or she has a conflict with the matter under discussion and that the protocol will apply.

(b) Protocol

If there is a conflict of interest, or the Directors 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 Director:

- (1) will not receive the papers on the matter, but will be advised that certain papers have been excluded;
- (2) cannot be present (by phone or in person) when the matter is considered unless permitted by law and the other Directors resolve that the Director in question can stay; and
- (3) cannot vote on the matter.

(c) Open discussion

- (1) When any matter is being discussed at Director level, any Director may query another Director as to whether they consider they have a possible conflict of interest with the matter under discussion.
- (2) This matter should then be discussed and considered by the Directors and if the Directors (other than the Director 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.
- (3) If a Director 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 Directors meeting discussing the matter or with the Chair.

(d) Records

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

(e) Confidentiality

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

(f) Chair's role

- (1) The Chair will be available to discuss with any Director 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.