

TASMANIA

TASMANIAN EARLY YEARS FOUNDATION BILL 2005

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TASMANIAN EARLY YEARS FOUNDATION BILL 2005

*(Brought in by the Minister for Education, the Honourable
Paula Catherine Wriedt)*

A BILL FOR

An Act to establish the Tasmanian Early Years Foundation

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Tasmanian Early Years Foundation Act 2005*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Interpretation

In this Act, unless the contrary intention appears –

“**Board**” means the Tasmanian Early Years Foundation Board established under section 7;

“Commissioner for Children” means the person appointed and holding office as Commissioner for Children under the *Children, Young Persons and Their Families Act 1997*;

“Foundation” means the Tasmanian Early Years Foundation established under section 4.

4. Establishment of Foundation

- (1) The Tasmanian Early Years Foundation is established.
- (2) The Foundation –
 - (a) is a body corporate with perpetual succession; and
 - (b) may have a seal; and
 - (c) may sue and be sued in its corporate name.
- (3) If the Foundation has a seal –
 - (a) it is to be kept and used as authorised by the Foundation; and
 - (b) all courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that it was duly sealed by the Foundation.

5. Object of Foundation

The object of the Foundation is to support and promote the wellbeing, development and learning of Tasmanian children up to the age of 6 years.

6. Functions and powers of Foundation

- (1) The Foundation has the following functions:
 - (a) to provide grants for evidence-based early childhood projects and initiatives;
 - (b) to promote awareness of the importance of early years of childhood;
 - (c) to promote research in relation to the wellbeing, development and learning of Tasmanian children up to the age of 6 years;
 - (d) such other functions as may be prescribed.
- (2) Other than employing staff, the Foundation has power to do all things necessary or convenient to be done in connection with the performance of its functions.
- (3) Without limiting subsection (2), the Foundation may hold, dispose of or otherwise deal with property.

7. Establishment of Board

- (1) The Tasmanian Early Years Foundation Board is established.
- (2) The Board consists of the following members:
 - (a) seven persons appointed by the Minister who have skills and experience to enable them to further the objects of the Foundation;
 - (b) the Secretary of the Department;
 - (c) the Secretary of the responsible Department in relation to the *Children, Young Persons and Their Families Act 1997*;
 - (d) the Commissioner for Children.
- (3) The Minister is to appoint one of the members referred to in subsection (2)(a) to be the chairperson of the Board.
- (4) A person referred to in subsection (2)(b) or (c) may, by written instrument, appoint a suitable person who is a State Service officer or State Service employee to be his or her deputy, and to act on his or her behalf, in respect of matters relating to the Board.
- (5) An appointment under subsection (4) –
 - (a) may be for an indefinite period or a period specified in the instrument of appointment; and

- (b) may be in respect of all matters relating to the Board or any specified matters; and
 - (c) is revocable at will.
- (6) A person appointed under subsection (4), while acting as deputy and in accordance with the terms of his or her appointment, is taken to be a member of the Board with all the powers, rights and functions of such a member.
- (7) Schedule 1 has effect with respect to membership of the Board.
- (8) Schedule 2 has effect with respect to meetings of the Board.

8. Role of Board

The role of the Board is –

- (a) to manage and conduct the affairs of the Foundation in a manner that will further the objects of the Foundation; and
- (b) to perform such other functions as may be prescribed.

9. Powers of Board

The Board has power to do all things necessary or convenient to be done in connection with the performance of its role.

10. Committees

- (1) The Board may from time to time establish such committees as it considers necessary for the purpose of assisting it in the performance of any of its functions or the exercise of any of its powers or advising it on any matter relating to the objects of the Foundation.
- (2) A committee comprises such persons as the Board appoints.
- (3) A member of the Board may be a member of a committee.
- (4) The Board may give written directions to a committee and the committee must comply with those directions.
- (5) A committee is to keep accurate minutes of its proceedings.
- (6) Except as otherwise provided in this Act, a committee may regulate its own proceedings.

11. Chief executive officer

- (1) The Minister may appoint a person, other than a member of the Board, as chief executive officer of the Foundation.
- (2) The chief executive officer is entitled to be paid the remuneration and allowances specified in his or her instrument of appointment.
- (3) The chief executive officer holds office for a term not exceeding 5 years on the terms and conditions specified in his or her instrument of appointment and may be reappointed.

- (4) The Minister may remove the chief executive officer from office if –
- (a) the chief executive officer becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the chief executive officer's creditors or makes an assignment of the chief executive officer's remuneration or estate for their benefit; or
 - (b) the chief executive officer is convicted, in Tasmania or elsewhere, of a crime or offence punishable by imprisonment for a term of 12 months or longer or a fine of 300 penalty units or more; or
 - (c) the Minister is satisfied that the chief executive officer has been guilty of misconduct; or
 - (d) the Minister is satisfied that the chief executive officer is unable to perform adequately or competently the duties of office.

12. Role of chief executive officer

The chief executive officer of the Foundation is responsible to the Board for the general administration and management of the Foundation.

13. Disclosure of interests

The chief executive officer of the Foundation must inform the Board, in writing, of any direct or indirect pecuniary interest that he or she has in any business, or body corporate that carries on a business, as soon as practicable after he or she acquires, or becomes aware of, that interest.

14. Staff of Foundation

- (1) The Foundation may make arrangements with the Secretary of the Head of a State Service Agency for persons employed in that Agency to be made available to the Foundation to enable the Foundation to perform its functions and exercise its powers under this Act and those persons may, in conjunction with State Service employment, serve the Foundation in any capacity.
- (2) In making any arrangements under subsection (1), the Secretary of the Department is to consult with the Commissioner for Children.

15. Funds of Foundation

The funds of the Foundation consist of –

- (a) such money as is provided by Parliament for the purposes of the Foundation; and
- (b) any money received by the Foundation from any other source.

16. Trust Account

The Foundation may establish a trust account for the purpose of administering its funds.

17. Investment of funds

The Foundation may invest its funds in any manner in which trustees may by law invest trust funds.

18. Expenditure of funds

The Foundation is to expend its funds in pursuance of the objects of the Foundation.

19. Guidelines

The Foundation is to establish guidelines for the provision of grants to organisations in pursuance of the objects of the Foundation.

20. Gifts, &c.

The Foundation may accept a devise, bequest or gift of any money or property.

21. Prohibition on payment of dividends, &c.

No dividend, bonus or other profit is at any time to be paid out of the funds of the Foundation to any member of the Board in his or her capacity as such a member.

22. Exemption of Foundation from State taxes, &c.

The Foundation and instruments to which the Foundation is a party are not liable to any tax, duty, fee, charge or other impost under the law of Tasmania.

23. Accounts and audit

- (1) The Foundation is to keep proper accounts and records in relation to all its financial affairs and activities and, as soon as practicable after 1 July and not later than 31 October in each year, is to prepare financial statements exhibiting a true and correct record of its financial position and transactions in respect of the preceding financial year.
- (2) The accounts of the Foundation kept for the purposes of this Act are subject to the *Financial Management and Audit Act 1990*.

24. Annual report

- (1) The Board, not later than 31 October in each year, is to prepare for the Foundation a report of the Foundation's operations in respect of the preceding financial year.
- (2) A report under subsection (1) is to include –
 - (a) a copy of the financial statements prepared under section 23(1) in respect of the financial year to which the report relates; and

- (b) a copy of the Auditor-General's report in respect of those financial statements.
- (3) The Board is to submit the annual report to the Minister so as to enable the Minister, on or before 31 October in each year, to cause copies of the report to be laid before each House of Parliament.
- (4) If the Minister is unable to comply with subsection (3) because either House of Parliament is not sitting, the Minister must –
 - (a) on 31 October following the end of the financial year –
 - (i) forward copies of the annual report to the Clerk of that House; and
 - (ii) make the annual report available to the public; and
 - (b) within the next 7 sitting-days of that House, cause copies of the annual report to be laid before that House.

25. Regulations

The Governor may make regulations for the purposes of this Act.

26. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

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- (a) the administration of this Act is assigned to the Minister for Education; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Education.

SCHEDULE 1 – MEMBERSHIP OF BOARD

Section 7(7)

1. Interpretation

In this Schedule –

“**member**” means a member of the Board appointed by the Minister.

2. Term of office

A member is appointed for such period, not exceeding 3 years, as is specified in the member’s instrument of appointment and, if eligible, may be reappointed.

3. Holding other office

The holder of an office who is required by the terms of his or her employment to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

4. *State Service Act 2000* not to apply

- (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.
- (2) A person may hold the office of member in conjunction with State Service employment.

5. Remuneration and conditions of appointment

- (1) A member is entitled to be paid such remuneration and allowances as the Minister determines.
- (2) A member who is a State Service officer or State Service employee is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

6. Vacation of office

- (1) A member vacates office if he or she –
 - (a) dies; or
 - (b) resigns by written notice given to the Minister; or
 - (c) is removed from office pursuant to subclause (2) or (3).

- (2) The Minister may remove a member from office if the member –
- (a) is absent from 2 consecutive meetings of the Board without the permission of the Board; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
 - (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for a term of 12 months or longer or a fine of 300 penalty units or more.
- (3) The Minister may remove a member from office if satisfied that the member is unable to perform adequately or competently the duties of office.

7. Filling of vacancies

If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of the member's term of office if the Minister is satisfied that the person has the skills and experience to enable him or her to further the objects of the Foundation.

8. Validation of proceedings, &c.

- (1) An act or proceeding of the Board or of a person acting under a direction of the Board is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member.
- (2) All acts and proceedings of the Board or of a person acting under a direction of the Board are, despite the subsequent discovery of a defect in the appointment of a member or that any other person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Board had been fully constituted.

9. Presumptions

In any proceeding by or against the Board, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Board; or
- (b) the appointment of any member.

SCHEDULE 2 – MEETINGS OF BOARD

Section 7(8)

1. Interpretation

In this Schedule –

“**member**” means a member of the Board.

2. Convening of meetings

- (1) The chairperson of the Board, after giving each member reasonable notice of a meeting –
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting when requested to do so by 2 or more other members.
- (2) If the chairperson of the Board is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened, after reasonable notice of the meeting has been given, by –
 - (a) two or more other members; or
 - (b) a person authorised by the Board to do so.
- (3) For the purposes of subclauses (1) and (2), what constitutes reasonable notice is to be determined by the Board.

3. Presiding at meetings

- (1) The chairperson of the Board is to preside at all meetings of the Board at which he or she is present.
- (2) If the chairperson is not present at a meeting of the Board, a member elected by the members present at the meeting is to preside.

4. Quorum and voting at meetings

- (1) Six members constitute a quorum at a meeting of the Board.
- (2) A meeting of the Board at which a quorum is present is competent to transact any business of the Board.
- (3) Questions arising at a meeting of the Board are determined by a majority of votes of the members present and voting.
- (4) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

5. Conduct of meetings

- (1) Subject to this Act, the Board may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The Board may permit members to participate in a particular meeting or all meetings by –
 - (a) telephone; or

- (b) video conference; or
 - (c) any other means of communication approved by the Board.
- (3) A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) Without limiting subclause (1), the Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

6. Minutes

The Board is to keep accurate minutes of its meetings.

7. Disclosure of interests

- (1) If –
 - (a) a member has an interest, pecuniary or otherwise, in a matter being considered, or about to be considered, by the Board; and
 - (b) the interest could conflict with the proper performance of the member's duties in relation to consideration of the matter –

the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Board.

Penalty: Fine not exceeding 10 penalty units or a term of imprisonment not exceeding 3 months, or both.

- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting at which the matter is considered and, unless the Board otherwise determines, a member who makes a disclosure under subclause (1) in respect of a matter must not –
 - (a) be present during any deliberation of the Board in relation to the matter; or
 - (b) take part in any decision of the Board in relation to the matter.
- (3) For the purpose of making a determination under subclause (2), the member to whom the determination relates must not –
 - (a) be present during any deliberation of the Board for the purpose of making the determination; or
 - (b) take part in making the determination.

8. General procedure

Except as provided by this Act, the Board may regulate its own proceedings.

9. Presumptions

In any proceeding by or against the Board, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the Board; or
- (b) the presence of a quorum at any meeting of the Board.