

TASMANIA

JIM BACON FOUNDATION BILL 2004

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JIM BACON FOUNDATION BILL 2004

(Brought in by the Premier, the Honourable Paul Anthony Lennon)

A BILL FOR

An Act to establish the Jim Bacon 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:

Short title

1. This Act may be cited as the *Jim Bacon Foundation Act 2004*.

Commencement

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

Interpretation

3. In this Act, unless the contrary intention appears –

“**functions**” includes duties;

“**Foundation**” means the Jim Bacon Foundation established under this Act.

Establishment of Foundation

4. (1) The Jim Bacon Foundation is established.

(2) The Foundation –

- (a) is a body corporate with perpetual succession;
and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

(3) 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.

Objects of Foundation

5. The objects of the Foundation are as follows:

- (a) the provision of financial and other assistance to persons undergoing treatment for cancer and to organisations providing support to persons undergoing treatment for cancer;
- (b) the provision of financial assistance, by way of an annual scholarship program, for up to 3 students who are studying –
 - (i) the care and treatment of cancer; or
 - (ii) visual arts; or
 - (iii) political science.

Membership of Foundation

6. (1) The Foundation consists of the following members:

- (a) two 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 *Public Account Act 1986*;
- (d) the executive officer of the Foundation.

(2) The Minister is to appoint one of the members referred to in subsection (1)(a), (b) or (c) to be the chairperson of the Foundation.

(3) A person referred to in subsection (1)(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 matters relating to the Foundation.

(4) An appointment under subsection (3) –

- (a) may be for an indefinite period or a period specified in the instrument of appointment; and
- (b) may be in relation to all matters relating to the Foundation or any specified matters; and
- (c) is revocable at will.

(5) A person appointed under subsection (3), while acting as deputy and in accordance with the terms of his or her appointment, is taken to be a member with all the powers, rights and functions of a member.

(6) Schedule 1 has effect with respect to membership of the Foundation.

(7) Schedule 2 has effect with respect to meetings of the Foundation.

Functions of Foundation

7. The Foundation has the functions imposed on it by this Act.

Powers of Foundation

8. (1) The Foundation has power to do all things necessary or convenient to be done in connection with the performance of its functions and in furtherance of the objects of the Foundation.

(2) Without limiting subsection (1), the Foundation may acquire, hold, dispose of or otherwise deal with property.

Committees

9. (1) The Foundation 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 Foundation appoints.

(3) A member of the Foundation may be a member of a committee.

(4) The Foundation 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.

Executive officer

10. (1) Subject to and in accordance with the *State Service Act 2000*, a person may be appointed as executive officer of the Foundation.

(2) The Secretary of the Department may appoint a State Service officer or State Service employee employed in the Department to be executive officer of the Foundation and that officer or employee may hold that office in conjunction with State Service employment.

Investment of funds

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

Income of Foundation

12. The Foundation is to expend its income for the purpose of providing financial assistance to persons or organisations in pursuance of the objects of the Foundation.

Guidelines

13. The Foundation is to establish guidelines for the provision of financial assistance to persons or organisations in pursuance of the objects of the Foundation.

Gifts, &c.

14. The Foundation may accept a devise, bequest or gift of any money or property and is to use that money or property to further the objects of the Foundation.

Prohibition on payment of dividends, &c.

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

Exemption of Foundation from State taxes, &c.

16. 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.

Accounts and audits

17. (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*.

Annual report

18. (1) The Foundation, not later than 31 October in each year, is to prepare a report of its 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 17(1) in respect of the financial year to which the report relates; and
- (b) a copy of the Auditor-General's report with respect to those financial statements.

(3) A report referred to in subsection (1) is to be appended to the annual report prepared by the Department pursuant to section 36(1) of the *State Service Act 2000*.

(4) Subsection (3) has effect notwithstanding section 36(3) of the *State Service Act 2000*.

Administration of Act

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

- (a) the administration of this Act is assigned to the Premier; and
- (b) the department responsible to the Premier in relation to the administration of this Act is the Department of Premier and Cabinet.

SCHEDULE 1 – MEMBERSHIP OF FOUNDATION

Section 6(6)

Interpretation**1.** In this Schedule –

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

Term of office

2. 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.

Holding other office

3. 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.

State Service Act 2000

4. (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.

Remuneration and conditions of appointment

5. (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.

Vacation of office

6. (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 Foundation without the permission of the Foundation; 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.

Filling of vacancies

7. 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.

Validation of proceedings, &c.

8. (1) An act or proceeding of the Foundation or of a person acting under a direction of the Foundation 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 Foundation or of a person acting under a direction of the Foundation 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 Foundation had been fully constituted.

Presumptions

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

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

SCHEDULE 2 – MEETINGS OF FOUNDATION

Section 6(7)

Interpretation

1. In this Schedule –

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

Convening of meetings

2. (1) The chairperson of the Foundation, 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 Foundation 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 Foundation to do so.

(3) For the purposes of subclauses (1) and (2), what constitutes reasonable notice is to be determined by the Foundation.

Presiding at meetings

3. (1) The chairperson of the Foundation is to preside at all meetings of the Foundation at which he or she is present.

(2) If the chairperson is not present at a meeting of the Foundation, a member elected by the members present at the meeting is to preside.

Quorum and voting at meetings

4. (1) Three members constitute a quorum at a meeting of the Foundation.

(2) A meeting of the Foundation at which a quorum is present is competent to transact any business of the Foundation.

(3) The person presiding at a meeting of the Foundation has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Conduct of meetings

5. (1) Subject to this Act, the Foundation may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.

(2) The Foundation 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 Foundation.

(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 Foundation may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

Resolutions without meetings

6. (1) If all members sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the Foundation held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last of the members signs the document.

(2) If a resolution is taken to have been passed under subclause (1), each member is to be –

- (a) advised immediately of the matter; and
- (b) given a copy of the terms of the resolution.

(3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, is taken to constitute one document.

Minutes

7. The Foundation is to keep accurate minutes of its meetings.

General procedure

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

Presumptions

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

- (a) any resolution of the Foundation; and
- (b) the presence of a quorum at any meeting of the Foundation.