

# **TASMANIA**

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## **TASMANIAN COMMUNITY FUND BILL 2005**

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# **TASMANIAN COMMUNITY FUND BILL 2005**

*(Brought in by the Minister for Finance, the Honourable  
James Glennister Cox)*

## **A BILL FOR**

**An Act to provide for the continuation of the operation of  
the Tasmanian Community Fund and the Tasmanian  
Community Fund Board and for other purposes**

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  
Community Fund 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 Community  
Fund Board continued in existence under  
section 6;

**“Fund”** means the Tasmanian Community Fund continued in existence under section 4;

**“repealed Act”** means the *Trust Bank Sale Act 1999*.

#### 4. Tasmanian Community Fund

- (1) The Tasmanian Community Fund established under the repealed Act continues in existence.
- (2) Money standing immediately before the commencement of this Act to the credit of the fund established within the Special Deposits and Trust Fund under the repealed Act stands to the credit of the Fund.
- (3) Any amounts determined in accordance with section 5 are to be paid into the Fund each year out of the Consolidated Fund without further appropriation than this section.

#### 5. Amounts to be paid into Fund

- (1) The amount to be paid into the Fund in each financial year is an amount that is equal to the amount paid into the Fund in the previous financial year indexed, in accordance with the ratio of the most recent March quarter CPI figure for Hobart, to the March quarter CPI figure for Hobart in the preceding year.
- (2) For the purposes of subsection (1) –

**“CPI figure for Hobart”** means the Consumer Price Index : All Groups Index

Number for Hobart published by the Australian Statistician under the authority of the *Census and Statistics Act 1905* of the Commonwealth.

## **6. Tasmanian Community Fund Board**

- (1) The Tasmanian Community Fund Board established under the repealed Act continues in existence.
- (2) The Board is to consist of not more than 6 persons appointed by the Governor on the recommendation of the Minister.
- (3) One of the persons appointed under subsection (2) is to be appointed by the Governor, on the recommendation of the Minister, as chairperson.
- (4) The Minister must not make a recommendation to the Governor under subsection (2) unless he or she has consulted with the Board.
- (5) Schedule 1 has effect with respect to the membership of the Board.
- (6) Schedule 2 has effect with respect to the meetings of the Board.

## **7. Functions of Board**

- (1) The functions of the Board are to –
  - (a) provide grants out of the Fund for community purposes as the Board thinks fit; and

- (b) manage the Fund, in any manner in which the Board thinks fit, so as to maximise the return earned on any money standing to the credit of the Fund, having regard to the need to –
    - (i) provide grants out of the Fund; and
    - (ii) exercise reasonable care and prudence so as to maintain the integrity of the Fund; and
  - (c) conduct its operations in an efficient, effective and economical manner.
- (2) For the purposes of subsection (1)(a), grants may be made by the Board for –
  - (a) charitable purposes; and
  - (b) sporting or recreational purposes; and
  - (c) cultural and arts purposes; and
  - (d) educational purposes; and
  - (e) religious purposes; and
  - (f) any other community purpose approved by the Minister on the recommendation of the Board.
- (3) The Board may distribute, at its sole discretion, the whole or any part of the balance standing to the credit of the Fund.
- (4) The Board may, at its sole discretion, resolve to accumulate the whole or any part of the balance standing to the credit of the Fund and to invest the whole or any part of that balance, with the

intent that the accumulations are to be available for subsequent distribution in future financial years.

- (5) In performing its functions and exercising its powers, the Board must –
  - (a) act honestly in all matters concerning the Fund; and
  - (b) ensure that its functions and powers are performed and exercised in the best interests of the Tasmanian community.
- (6) The Board may make arrangements with the Secretary of the Department for persons employed in the Department to be made available to the Board to enable the Board to perform its functions and exercise its powers under this Act and those persons may, in conjunction with State Service employment, serve the Board in any capacity.
- (7) Other than employing staff, the Board may do anything necessary or convenient to perform its functions.

## **8. Accounts and records**

- (1) The Board must ensure that proper accounts and records are kept in relation to the transactions and affairs of the Board.
- (2) As soon as practicable after 30 June in each year, the Board must prepare a statement of accounts, in a form that complies with Australian Accounting Standards, showing the true and correct financial position of the Fund as at that

date and the transactions of the Fund in respect of the period of 12 months ending on that date.

## **9. Costs and expenses of Board**

- (1) All costs and expenses associated with the operation of the Board and the Fund are to be met from the Fund.
- (2) For the purposes of subsection (1), costs and expenses include, but are not limited to –
  - (a) remuneration of Board members; and
  - (b) investment expenses; and
  - (c) legal, accounting, advisory and taxation expenses; and
  - (d) the use of the services of persons referred to in section 7(6); and
  - (e) liability for any taxes; and
  - (f) any other costs and expenses approved by the Minister in writing.

## **10. Protection from liability**

A member of the Board does not incur any personal liability in respect of any act done or omitted to be done by the member in good faith in the performance or exercise, or purported performance or exercise, of any function or power of the Board under this Act.

**11. Annual report of Board**

- (1) The Board must, following the end of each financial year, prepare an annual report containing –
  - (a) a report of its operations during the financial year; and
  - (b) an audited statement of the financial position of the Fund; and
  - (c) a statement of all grants made by the Board from the Fund during the financial year.
- (2) 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.
- (3) If the Minister is unable to comply with subsection (2) 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.

- (4) If 31 October in any year is a Sunday or a day that is a statutory holiday as defined in the *Statutory Holidays Act 2000* or a public holiday throughout Tasmania, it is sufficient compliance with this section if, on the next day that is not a statutory holiday or a public holiday throughout Tasmania, copies of the annual report are –
- (a) forwarded to the Clerk of the Legislative Council and the Clerk of the House of Assembly; and
  - (b) made available to the public.

## 12. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Minister or a person holding a position specified in the regulations.

## 13. Administration of Act

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 Minister for Finance; and

- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Treasury and Finance.

#### **14. Savings and transitional provisions**

- (1) A person holding office as a member of the Tasmanian Community Fund Board under the repealed Act immediately before the commencement of this Act continues to hold that office, unless he or she is removed from office or vacates that office under this Act, for the remainder of the period specified in his or her instrument of appointment.
- (2) The accounts and records kept by the Tasmanian Community Fund Board under the repealed Act that are in existence immediately before the commencement of this Act are taken, on and after that commencement, to be accounts and records kept by the Board under this Act.
- (3) All rights, obligations or liabilities acquired, accrued or incurred by the Tasmanian Community Fund Board under the repealed Act that are subsisting immediately before the commencement of this Act are, on and after that commencement, taken to be rights, obligations and liabilities acquired, accrued or incurred by the Board under this Act.
- (4) Any contract, agreement, deed, arrangement or understanding entered into by the Tasmanian Community Fund Board under the repealed Act, if not executed, discharged or otherwise terminated before the commencement of this

Act, is taken to be a contract, agreement, deed, arrangement or undertaking entered into by the Board under this Act.

- (5) Any legal or other proceedings that might, before the commencement of this Act, have been continued or instituted by the Tasmanian Community Fund Board under the repealed Act may, on and after that commencement, be continued or instituted by or against the Board under this Act.

## **15. Legislation repealed**

The legislation specified in Schedule 3 is repealed.

**SCHEDULE 1 – MEMBERSHIP OF BOARD**

Section 6(5)

**1. Term of office**

- (1) A member of the Board is appointed for such term not exceeding 3 years as is specified in his or her instrument of appointment.
- (2) A member of the Board is eligible for reappointment from time to time for such term not exceeding 3 years as is specified in his or her instrument of appointment.

**2. Provisions relating to members**

Where, by or under any Act, provision is made requiring the holder of an office to devote the whole of his or her time to the duties of his or her office, that provision does not operate to disqualify him or her from holding that office and also the office of a member of the Board.

**3. Remuneration, &c., of members**

- (1) A member of the Board is to be paid such remuneration, expenses and allowances as the Governor may determine.
- (2) The Governor may determine, in respect of a member of the Board employed in an Agency, within the meaning of the *State Service Act 2000*, that any payment of remuneration in respect of that member is to be paid to that Agency instead of to that member.

**4. *State Service Act 2000* not to apply**

The provisions of the *State Service Act 2000* do not apply to, or in respect of, the appointment of a member of the Board, and a member of the Board is not, in his or her capacity as such a member, subject to the provisions of that Act during his or her term of office.

**5. Appointment of substitute to act during absence of member of Board**

- (1) The Governor may appoint any person (including a member of the Board other than the chairperson of the Board) to act in the office of the chairperson or appoint any person to act in the office of a member of the Board other than the chairperson while the chairperson or that member of the Board, as the case may be, is absent from his or her office through illness or any other cause.
- (2) A member of the Board other than the chairperson is, for the purpose of subclause (1), taken to be absent from his or her office if the member is acting in the office of chairperson pursuant to that subclause.
- (3) A member of the Board is, for the purpose of subclause (1), taken to be absent from his or her office if there is a vacancy in that office which has not been filled in accordance with clause 7.
- (4) While a person is acting in the office of a member of the Board, that person is taken to be a member of the Board.

**6. Vacation of office**

- (1) The office of a member of the Board becomes vacant –
- (a) when the member dies; or
  - (b) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration or estate for their benefit; or
  - (c) if the member is absent from 3 consecutive ordinary meetings of the Board of which reasonable notice has been given to him or her, either personally or in the ordinary course of post, unless on leave granted by the Minister or unless, before the expiration of 3 weeks after the last of those meetings, the member is excused by the Minister for his or her absence from those meetings; or
  - (d) if the member is convicted in the State of a crime, or an offence, which is punishable by imprisonment for a term of not less than 12 months, or if the member is convicted elsewhere than in the State of an offence which, if committed in the State, would be a crime, or an offence, so punishable; or
  - (e) if the member resigns his or her office by writing under his or her hand addressed

to the Governor and the Governor accepts the resignation; or

- (f) if the member is removed from office by the Governor under subclause (2).

- (2) The Governor may remove from office a member of the Board if –

- (a) the Governor is satisfied that the member is unable to perform adequately or competently the duties of his or her office; or

- (b) the member fails to disclose an interest as required under clause 6 of Schedule 2.

- (3) A member of the Board must not be removed from office otherwise than in accordance with subclause (2).

## **7. Filling of casual vacancies**

On the occurrence of a vacancy in the office of a member of the Board otherwise than by the expiration of the term for which the member was appointed, the Minister may, after consulting with the Board, appoint a person to the vacant office for the balance of the member's term of office.

## **8. Validity of proceedings, etc.**

- (1) An act or proceeding of the Board or of any person acting pursuant to any direction of the Board is not invalidated or prejudiced by reason only of the fact that, at the time when the act or

proceeding was done, taken or commenced, there was a vacancy in the membership of the Board.

- (2) All acts and proceedings of the Board or of any person acting pursuant to any direction of the Board are, notwithstanding the subsequent discovery of any defect in the appointment of any member of the Board or that any person was disqualified from acting as, or incapable of being, a member of the Board, 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 matter proof is not required of –

- (a) the constitution of the Board; or
- (b) any resolution of the Board; or
- (c) the appointment of any member of the Board; or
- (d) the presence of a quorum at any meeting of the Board.

**SCHEDULE 2 – MEETINGS OF BOARD**

Section 6(6)

**1. Convening of meetings of Board**

Meetings of the Board may be convened by the chairperson of the Board or by any 3 members of the Board.

**2. Presiding at meetings**

- (1) The chairperson 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 is to preside at that meeting.

**3. Quorum and voting at meetings**

- (1) Two thirds of the members of the Board form a quorum at any meeting of the Board.
- (2) Questions arising at a meeting of the Board are to be determined by a majority of votes of the members of the Board present and voting.
- (3) In the event of an equality of votes, the chairperson or other member presiding at a meeting of the Board may exercise a second or casting vote.
- (4) At a meeting of the Board where a member is excluded from being present and taking part in the consideration and decision of the Board in relation to a matter, a quorum for the purposes of

considering and making a decision in relation to the matter is constituted by the number of members specified as constituting a quorum in subclause (1) less the number of members so excluded.

#### **4. Telephone conferences, &c.**

- (1) The Board may permit members to participate in a particular meeting, or all meetings, of the Board by –
  - (a) telephone; or
  - (b) closed-circuit television; or
  - (c) any other means of communication approved by the Board.
- (2) A member who participates in a meeting under a permission granted under subclause (1) is taken to be present at the meeting.

#### **5. Minutes**

The Board is to keep minutes of its meetings.

#### **6. 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.

## **7. General procedure**

The procedure for the calling of, and for the conduct of business at, meetings of the Board is,

2005

*Tasmanian Community Fund*

No.

**sch. 2**

subject to this Schedule, to be as determined by  
the Board.

**sch. 3**

No.

*Tasmanian Community Fund*

2005

**SCHEDULE 3 – LEGISLATION REPEALED**

Section 15

*Trust Bank Sale Act 1999* (No. 76 of 1999)