

EXPLANATORY MEMORANDUM

Western Australian Health Promotion Foundation Bill 2015

Introduction

The purpose of the Western Australian Health Promotion Bill 2015 (“the Bill”) is to establish the Western Australian Health Promotion Foundation and to fund activities, programmes and research that promote and facilitate in Western Australia good health and activities which encourage healthy lifestyles.

Key Features of the Bill

The key features of the Bill are as follows:

Part 1 – Preliminary

Clause 1: Short title

This clause provides for the short title of the Bill.

Clause 2: Commencement

This clause provides for the commencement of the Bill.

- (i) Clauses 1 and 2 commence on the day on which this Act receives Royal Assent.
- (ii) The rest of the Bill is to commence on a day fixed by proclamation.

Clause 3: Terms used

This clause defines certain terms used in the Bill, such as:

- (i) **Account** means the Western Australian Health Promotion Account referred to in clause 41.
- (ii) **Foundation** means the Western Australian Health Promotion Foundation established by clause 5.
- (iii) **Member** means a member of the Foundation mentioned in clause 11(1)(a) or (b).

Clause 4: Object of Act

The object of the Bill is to promote and facilitate in Western Australia good health and activities which encourage healthy lifestyles.

Part 2 – Western Australian Health Promotion Foundation

Division 1 – The Foundation

Clause 5: Foundation established

This clause establishes the Western Australian Health Promotion Foundation and defines the nature and legal capacity of that body.

The Foundation is a body corporate with perpetual succession and proceedings may be taken by or against the Foundation in its corporate name. The Foundation may operate under a trading name approved by the Minister.

Clause 6: Status of Foundation

This clause establishes the status of the Foundation. The Foundation has the status, immunities and privileges of the State and is an organisation for the purposes of the *Public Sector Management Act 1994*.

Division 2 – Functions of Foundation

Clause 7: Functions

This clause describes the functions of the Foundation. The functions of the Foundation are:

- (i) to fund activities related to the promotion of good health;
- (ii) to support sporting and arts activities which encourage healthy lifestyles and advance health promotion programmes;
- (iii) to provide grants to organisations engaged in health promotion programmes;
- (iv) to fund research relevant to health promotion;
- (v) to raise funds;
- (vi) to evaluate and report on the effectiveness of the performance of the Foundation in achieving health promotion activities; and
- (vii) generally to fulfil the object of the Act.

Clause 8: Powers

This clause provides the Foundation with broad powers to do all things necessary to perform its functions. The Foundation may make grants; engage in the production or marketing or both of goods and services which themselves constitute or form part of health promotion activities; acquire, hold, deal with and dispose of real and personal property.

Clause 9: Delegation by Foundation

This clause allows the Foundation to delegate, subject to this clause, any of its powers or duties to a member, the CEO, staff member or a committee.

The Foundation cannot delegate its functions of determining to whom or in what amounts financial support may be provided unless that function is delegated to the CEO or a committee and is limited to \$5000 or less.

The delegation must be in writing and executed by the Foundation. Nothing in this clause limits the ability of the Foundation to perform a function through an officer or agent.

Part 3- Administration of Foundation

Division 1 – How Foundation is constituted

Clause 10: Term used: unable to act

This clause defines the term *unable to act* used in this Division.

Unable to act means unable to act as a member for any reason, including –

- (i) illness; and
- (ii) absence; and
- (iii) the operation of section 31(1).

This term is used in clauses 12 and 18.

Clause 11: Foundation membership, presiding member

This clause provides for the membership of the Foundation. The Foundation consists of 7 members appointed by the Minister. The presiding member is to be nominated by the Premier and the Premier must consult with the leader of each party in the Parliament before making a nomination.

1 member must have knowledge and experience in the arts, 1 member must have knowledge and experience in health and 1 member must have knowledge and experience in sport. The 4 remaining members must have knowledge of and experience in the fields of the arts, finance, governance, health, law, management marketing or sport.

Clause 12: Deputy presiding member

This clause requires the Minister to designate a member other than the presiding member to be the deputy presiding member of the Foundation.

Clause 13: Remuneration and allowances

This clause provides for the remuneration and allowances of members as determined by the Minister on the recommendation of the Public Sector Commissioner.

Clause 14: Term of office

This clause provides for the term of office of members which is not to exceed 3 years. A member is eligible for reappointment but cannot hold office for more than 9 years, consecutively or otherwise.

Clause 15: Casual vacancies

This clause outlines the circumstances in which the office of a member may become vacant. The office will become vacant if a member:

- (i) dies, resigns or is removed from office under this clause; or
- (ii) a bankrupt or a person whose affairs are under insolvency laws; or
- (iii) is convicted of an offence punishable by imprisonment for more than 12 months; or
- (iv) is convicted of an offence under clause 30.

A member may also be removed from office by the Minister on the grounds of:

- (i) neglect of duty; or
- (ii) misconduct or incompetence; or
- (iii) mental or physical incapacity, other than temporary illness, impairing the performance of the member's duties; or
- (iv) absence, without leave, from 3 consecutive meetings of the Foundation of which the member has had notice.

Clause 16: Extension of term of office during vacancy

This clause provides that a member's term of office extends for a maximum period of 3 months if the office of a member becomes vacant due to the effluxion of time. Subclause (1) ceases to apply if the member resigns or is removed from office.

Clause 17: Leave of absence

This clause allows the Foundation to grant a member leave to be absent from office on any terms and conditions it thinks fit.

Clause 18: Alternate members

This clause governs the appointment of alternate members. If a member other than the presiding member is unable to act, then the Minister may appoint on a temporary basis an alternate member.

If the deputy presiding member is unable to act in the presiding member's place at a meeting the members present may elect one of the members to act as presiding member.

An alternate member has any entitlement of a member.

Division 2 – Foundation meetings

Clause 19: Holding meetings

This clause requires that the first meeting of the Foundation is to be convened by the presiding member and subsequent meetings are to be held at times and places determined by the Foundation.

Clause 20: Quorum

This clause provides that 4 members constitute a quorum.

Clause 21: Presiding member

This clause requires that if the presiding member is present at a meeting of the Foundation, the presiding member must preside at such a meeting.

Clause 22: Procedure at meetings

This clause provides that the Foundation must determine its own meeting procedures to the extent they are not fixed by the Bill.

Clause 23: Holding meetings remotely

This clause provides for a meeting of the Foundation to be held without the necessity for all members being present in person but they must all be simultaneously in contact by telephone or other means of communication.

Clause 24: Voting

This clause specifies the process of voting at a meeting of the Foundation.

Clause 25: Resolution without meeting

This clause provides that a resolution in writing signed or otherwise assented to by each member of the Foundation has the same effect as if it had been passed at a meeting of the Foundation.

Clause 26: Minutes to be kept

This clause provides that the Foundation must keep accurate minutes of its meetings.

Division 3 - Committees

Clause 27: Committees

This clause allows the Foundation to appoint, determine the functions of and discharge any committee it considers necessary to advise or assist it in carrying out the functions of the Foundation.

A committee so established must ensure that there are sufficient country representatives to advise the Foundation on matters relevant to the arts, sports and racing.

Such a committee must comply with all reasonable directions or requirements of the Foundation but otherwise may determine its own procedures and must keep minutes of its meetings.

Clause 28: Remuneration and allowances

This clause requires that any remuneration and allowances paid to committee members is to be determined by the Minister as recommended by the Public Sector Commissioner.

Division 4 – Disclosure of interests

Clause 29: Term used: member

This clause defines the term *member* for the purposes of this Division.

Clause 30: Disclosure of material personal interest

This clause creates an offence when a member fails to disclose a material personal interest in a matter being considered or about to be considered by the Foundation or a committee.

Penalty: a fine of \$10 000.

Clause 31: Voting by interested member

This clause provides that a member who has a material personal interest must not vote and must not be present while the matter is being considered at a meeting.

Clause 32: Section 31 may be declared inapplicable

This clause provides that clause 31 does not apply if the Foundation passes a resolution, specifying the member, the interest and the matter; and that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct and should not disqualify the member from voting on the matter.

Clause 33: Quorum where section 31 applies

This clause provides that if a member is disqualified from voting under clause 31, a quorum for a meeting is at least 3 members.

Division 5 – Execution of documents

Clause 34: Execution of documents by Foundation

This clause requires that the Foundation have a common seal. It also provides for the affixing of the common seal and that the Foundation may authorise one or more of its members or its CEO or staff members to sign documents on behalf of the Foundation.

Part 4 - Staff

Clause 35: Chief Executive Officer

This clause provides that the chief executive officer of the Foundation is to be appointed under Part 3 of the *Public Sector Management Act 1994*.

Clause 36: Other staff

This clause provides that staff other than the chief executive officer may be appointed as:

- public service officers under Part 3 of the *Public Service Management Act 1994*; and
- casual employees under section 100 of the *Public Sector Management Act 1994*.

Clause 37: Contracts for services

This clause allows the Foundation to engage a person to perform services for the purposes of this Bill under a contract for services.

Clause 38: Use of other government staff and facilities

This clause allows the Foundation, by arrangement, to use the services of any officer or employee in the Public Service, a State agency or otherwise in the service of the State.

The Foundation may also by arrangement use any facilities of a department or State agency.

Part 5 – Accountability

Clause 39: Minister may give directions

This clause provides for the Minister to give written directions to the Foundation with respect to the performance of its functions and must cause the text of any direction to be laid before each House of Parliament in a specified time.

The Minister must not direct the Foundation with respect to the provision of funds or grants.

Clause 40: Minister to have access to information

This clause provides for the Minister to have access to information in the possession of the Foundation.

Part 6 – Financial provisions

Clause 41: Application of *Financial Management Act 2006* and *Auditor General Act 2006*

This clause provides for the *Financial Management Act 2006* and *Auditor General Act 2006* to apply to the Foundation.

Clause 42: Western Australian Health Promotion Account

This clause establishes the Western Australian Health Promotion Account. Money received by the Foundation must be credited to the Account and money paid by the Foundation must be debited to the Account.

Clause 43: Foundation's funds and expenditure

This clause provides for a standing appropriation to be made to the Foundation as prescribed by regulation.

Subclause (3) limits disbursement of funds during State or Federal elections.

Subclause (4) specifies the percentage of funds that are to be made available in each year to sporting, arts, health, community, research and racing organisations.

Subclause (5) provides for the continuance of remaining funds from one financial year to the next.

Subclauses (6) and (7) provides for funds received by the Foundation in any financial year to be committed in the same financial year and any funds not so committed within 4 months of the end of the financial year to be returned to the Consolidated Account.

Clause 44: Notice of financial difficulty

This clause requires the Foundation to notify the Minister if it forms the opinion that the Foundation is unable to or will be unlikely to satisfy any of its financial obligations from the financial resources available to it.

Part 7 – Miscellaneous

Clause 45: Protection from liability for wrongdoing

This clause provides for the protection, from an action in tort, of any person performing, in good faith, functions under this Bill.

Clause 46: Confidentiality of information

This clause creates an offence where a person records, discloses or uses any information obtained by reason of a function under this Bill except in certain circumstances specified under subclause (1)(a) to (e).

Penalty: \$10 000 fine or imprisonment for 12 months

Clause 47: Regulations

This clause empowers the Governor to make regulations about matters that are required or permitted by this Bill or are necessary or convenient to be made for giving effect to this Bill.

Clause 48: Laying documents before House of Parliament not sitting

This clause provides that if a provision of this Bill requires the Minister to cause a document to be laid before each House of Parliament and a House of Parliament is not sitting or the Minister is of the opinion that the House will not sit during that period the Minister must transmit a copy of the document to the Clerk of that House. The document is then taken to have been laid before that House. This must be recorded in the Minutes or Votes or Proceedings of the House on the first sitting day of the House following.

Clause 49: Review of Act

This clause provides for a review of the operation and effectiveness of this Bill as soon as practicable after the expiry of 5 years from the day on which Part 2 comes into operation and every fifth anniversary of that day.

Part 8 – Consequential amendments to other Act

Division 1 – *Constitution Acts Amendment 1899* amended

Clause 50: Act amended

This clause provides for the amendment of the *Constitution Acts Amendment 1899*.

Clause 51: Schedule V amended

This clause provides for the replacement of the reference *Tobacco Products Control Act 2006* with *Western Australian Health Promotion Foundation Act 2015* in Schedule V Part 3 of the *Constitution Acts Amendment 1899*.

Division 2 – *Public Sector Management Act 1994* amended

Clause 52: This clause provides for the amendment of the *Public Sector Management Act 1994*.

Clause 53: This clause provides for the insertion of, Western Australian Health Promotion Foundation under the *Western Australian Health Promotion Foundation Act 2015*, in Schedule 2 of the *Public Sector Management Act 1994* which signifies that the Foundation is a SES organisation.

Division 3 – *Tobacco Productions Control Act 2006* amended

Clause 54: Act amended

This clause provides for the amendment of the *Tobacco Products Control Act 2006*.

Clause 55: Section 3 replaced

This clause replaces section 3 of the *Tobacco Products Control Act 2006* which sets out the purposes of the Act.

Clause 56: Part 5 heading replaced

This clause replaces the heading to Part 5 of the *Tobacco Products Control Act 2006*, Western Australian Health Promotion Foundation and administration, with the heading Administration.

Clause 57: Part 5 Divisions 1 to 3 deleted

This clause deletes Part 5 Divisions 1 to 3 of the *Tobacco Products Control Act 2006*.

Clause 58: Part 5 Division 4 heading deleted

This clause provides for the deletion of the heading to Part 5 Division 4.

Clause 59: Section 122 deleted

This clause provides for the deletion of section 122 (Execution of documents by the Foundation) of the *Tobacco Products Control Act 2006*.

Clause 60: Section 124A amended

This clause specifies that the information that may be supplied under subclause (1) extends to the performance of any function by the Foundation under the *Western Australian Health Promotion Foundation Act 2015*.

Clause 61: Section 126 deleted

This clause provides for the deletion of section 126 (Transitional and savings provisions) of the *Tobacco Products Control Act 2006*.

Clause 62: Schedule 1 deleted

This clause provides for the deletion of Schedule 1 (Constitution and proceedings of Foundation) of the *Tobacco Products Control Act 2006*.

Clause 63: Schedule 2 deleted

This clause provides for the deletion of Schedule 2 (Repeals, transitional provisions, consequential amendments to other Acts) of the *Tobacco Products Control Act 2006*.

Clause 64: Glossary amended

This clause provides for the deletion of various definitions from the Glossary of the *Tobacco Products Control Act 2006*.

The definition of Foundation under the Glossary of the *Tobacco Products Control Act 2006* is amended.

Part 9 – Transitional provisions

Clause 65: Terms used

This clause defines the terms *TPC Act Account*, *TPC Act Foundation* and *transition day* for the purposes of this Part.

Clause 66: Interpretation Act 1984 not affected

This clause provides that this Part, except to the extent that this Part expressly provides differently, does not affect the operation of the *Interpretation Act 1984* in relation to the repeal of the *Tobacco Products Control Act 2006* by Part 8 Division 3 of this Bill.

Clause 67: Foundation continues

This clause provides for the continuation of the TPC Act Foundation, of its assets, rights and liabilities, agreements, remedies on and after transition day. Further references to the TPC Act Foundation in any agreement, instrument or other document has effect on or after the transition day as if the reference were to the continuing Foundation.

Clause 68: Members cease to hold office on transition day

This clause provides that a person who immediately before transition day, was a member of the TPC Act Foundation ceases to be a member on transition day.

Clause 69: First Foundation members under this Act

This clause provides that four of the members of the Foundation as first constituted are to hold office for a term not exceeding 18 months.

Clause 70: First CEO under this Act

This clause requires that a person who immediately before transition day was the executive director of the Foundation under the *Tobacco Products Control Act 2006* must on and after transition day, be taken to be the CEO. This person holds office for the period that is equal to the balance of the person's term of office remaining under the *Tobacco Products Control Act 2006*. Subclause (1) does not apply to a person who is appointed in an acting position.

Clause 71: Other employees of Foundation

This clause provides that a person who immediately before transition day was an employee of the Foundation under the *Tobacco Products Control Act 2006* must on and after transition day be taken to be a public service officer employed in the Foundation.

Clause 72: Preservation of employee rights

This clause preserves the existing rights of existing employees of the Foundation.

Clause 73: People engaged to provide assistance

This clause provides that the repeal or amendment of an Act by Part 8 of this Bill does not affect any contract or arrangement that is in effect under the *Tobacco Products Control Act 2006* immediately before transition day.

Clause 74: Western Australian Health Promotion Account

This clause provides for the continuance of the Western Australian Health Promotion Account and any associated liabilities.

Clause 75: Investments

This clause continues the authorisation to invest any money that was authorised immediately before transition day to be invested under section 72 of the *Tobacco Products Control Act 2006*.

Clause 76: Exemption from State tax

This clause provides that State tax is not payable in relation to anything that occurs by operation of this Part or anything done under this Part or to give effect to this Part.

Clause 77: Transitional regulations

This clause empowers the Governor to make regulations to deal with other transitional matters should the need arise.