

**41ST PARLIAMENT**



## **Report 49**

### **STANDING COMMITTEE ON LEGISLATION**

*Sports and Entertainment Trust Bill 2023*

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Presented by  
Hon Dr Sally Talbot MLC (Chair)  
March 2024

## **Standing Committee on Legislation**

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## EXECUTIVE SUMMARY

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- 1 The Legislative Council referred the Sports and Entertainment Trust Bill 2023 (Bill) to the Standing Committee on Legislation (Committee) with the power to inquire into policy. This report comments on significant clauses of the Bill.
- 2 The Committee found that none of the Bill's clauses unjustly offend against the fundamental legislative principles.
- 3 The purpose of the Bill is to repeal the *Western Australian Sports Centre Trust Act 1986* (WASCT Act) and therefore, the Western Australian Sports Centre Trust, which is established under the WASCT Act.
- 4 The Western Australian Sports Centre Trust trades as VenuesWest and owns and manages 14 sport and entertainment venues on behalf of the Western Australian Government.
- 5 The Explanatory Memorandum of the Bill explained that the WASCT Act has not been significantly amended since it came into force 37 years ago and its provisions are no longer contemporary.
- 6 The Bill establishes a Sports and Entertainment Trust (Trust) and empowers it to conduct commercial, retail and promotional activities, thus optimising the use of venues for sports, entertainment and recreation.
- 7 The Bill would effectively come into operation on a day fixed by proclamation. Proclamation relies on action from the Executive government and erodes Parliamentary sovereignty. However, the Committee determined that commencement upon proclamation was justified because various actions must be completed before the Bill's commencement, including but not limited to:
  - appointment of the Board
  - updating the terms and conditions of entry for venues owned and operated by the Trust
  - amending business and domain names
  - amending existing contracts
  - establishing special purpose accounts.
- 8 The maximum term of office for a Board member is 3 years, with the option of re-appointment twice. The Minister appoints Board members on skills-based criteria in areas of modern governance practice such as financial management, human resource management, management of major events and law and commerce. The Minister determines Board remuneration on a recommendation from the Public Sector Commissioner. The Minister has the power to remove a Board member on the grounds of neglect of duty, misconduct, incompetence or mental incapacity.
- 9 The Bill authorises the Board of the Trust to delegate, in writing, the exercise of any power or duty under the Bill. This power is broad in terms of the duties which can be delegated and to whom. However, this delegation must be executed in writing and the person receiving the delegation must not delegate it further. The Committee determined the power to delegate was appropriate for the operation of the Trust.
- 10 The Committee considered the power to exclude people from the Trust's premises. The underpinning policy is to enhance public safety by allowing the Trust to ban people temporarily or permanently from Trust venues.

- 11 Clause 97 provides for regulations to be made which have the effect of amending primary legislation. This diminishes parliamentary sovereignty by removing the Parliament's right to consider or debate amendments before they take effect. However, the regulations would not operate to the extent that they prejudicially affect the existing rights of a person prior to publication, or impose a liability on a person for anything done or omitted to be done prior to publication. The Committee determined this clause was justified to transition from the Western Australian Sports Centre Trust to the Trust.
- 12 Clause 56 of the Bill is an appropriation clause. Bills with appropriation clauses must not originate in the Legislative Council. Section 46 of the *Constitution Acts Amendment Act 1899* provides all appropriation bills shall originate in the Assembly and that a message from the Governor is an essential precondition to the Assembly considering the appropriation bill.
- 13 Whilst failure to comply with the provisions of s 46 of the *Constitution Acts Amendment Act 1899* will not affect the validity of any Act, the Legislative Assembly may rule the Bill out of order. That House ruled the School Boarding Facilities Legislation Amendment and Repeal Bill 2015 out of order on the same basis.
- 14 The Committee recommends the Bill be withdrawn from the consideration of the Legislative Council and re-introduced in the Legislative Assembly.

## Findings and recommendations

Findings and recommendations are grouped as they appear in the text at the page number indicated:

### FINDING 1

Page 7

The Department has provided sufficient justification for permitting the commencement of the greater part of the Sports and Entertainment Trust Bill 2023 by proclamation.

### FINDING 2

Page 11

Clauses 13 and 38(5) of the Sports and Entertainment Bill 2023, dealing with the delegation of the Board's powers and duties, do not offend against fundamental legislative principles.

### FINDING 3

Page 13

Clause 15 of the Sports and Entertainment Trust Bill 2023 would provide for a skills-based Board of the Sports and Entertainment Trust that reflects good governance practices.

### FINDING 4

Page 14

'Material personal interest' is not defined in the Bill or the Explanatory Memorandum.

### RECOMMENDATION 1

Page 15

The Minister provide a definition of 'material personal interest' in relation to Trust board members and conflict of interest provisions.

**FINDING 5**

Page 16

Clause 37 of the Sports and Entertainment Bill 2023, dealing with the Ministerial power to declare inapplicable proposed sections 34 and/or 36, does not offend against fundamental legislative principles.

**FINDING 6**

Page 22

Part 5, Division 4 of the Sports and Entertainment Bill 2023, dealing with the power to exclude persons from Trust premises, does not offend against fundamental legislative principles.

**FINDING 7**

Page 24

The Committee regards the review provisions as in line with best regulatory practice.

**FINDING 8**

Page 26

Although clause 97 of the Sports and Entertainment Trust Bill 2023 offends against a fundamental legislative principle because it authorises the amendment of primary legislation by regulation, it is sufficiently justified.

**FINDING 9**

Page 28

Clause 56 of the Sports and Entertainment Trust Bill 2023 is an appropriation clause. Therefore, section 46 of the *Constitution Acts Amendment Act 1899* applies.

**RECOMMENDATION 2**

Page 28

Due to the appropriation measure in clause 56, the Sports and Entertainment Trust Bill 2023 be withdrawn from the Legislative Council and re-introduced into the Legislative Assembly.

# 1 Introduction

## Referral and procedure

- 1.1 The Sports and Entertainment Trust Bill 2023 (Bill) was first and second read into the Legislative Council on 18 May 2023.<sup>1</sup> This Bill is for an Act to:
- establish the Sports and Entertainment Trust; and
  - repeal the *Western Australian Sports Centre Trust Act 1986* and the *Western Australian Sports Centre Trust (Traffic) Regulations 2017*; and
  - make consequential amendments to various Acts.
- 1.2 It was referred to the Standing Committee on Legislation (Committee) on 15 November 2023. The referral motion states:
- That the order of the day for the Sports and Entertainment Trust Bill 2023 be discharged, and the bill be referred to the Standing Committee on Legislation for consideration and report not later than 14 March 2024.<sup>2</sup>
- 1.3 Given the nature and content of the Bill, the Committee saw no need to advertise the inquiry or call for public submissions. It held one joint hearing with representatives of the Department of Local Government, Sport and Cultural Industries (Department) and VenuesWest.<sup>3</sup>
- 1.4 The Committee thanks those representatives for their assistance.

## Committee approach

- 1.5 As with previous inquiries, the Committee's method of scrutinising the Bill included an assessment as to whether its provisions are consistent with fundamental legislative principles (FLPs), which are listed in Appendix 1 of this report.
- 1.6 FLPs are the principles relating to legislation that underlies a parliamentary democracy based on the rule of law.<sup>4</sup> They fall under two broad headings:
- Does the Bill have sufficient regard for the rights and liberties of individuals? (FLPs 1–11.)
  - Does the Bill have sufficient regard to the institution of Parliament? (FLPs 12–16.)
- 1.7 The Committee has routinely used FLPs as a convenient and informal framework for scrutinising proposed legislation since 2004. They are not enshrined in Western Australian law, and for some bills, many FLPs do not apply. The question the Committee asks is not whether there is strict compliance with FLPs, but whether a bill has sufficient regard to them.
- 1.8 The Committee has scrutinised the Bill and reports on selected clauses.

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<sup>1</sup> Legislative Council, *Debates*, 2023, pp 2480–81.

<sup>2</sup> Legislative Council, *Debates*, 2023, pp 6327–29.

<sup>3</sup> Lanie Chopping, Director General, Department of Local Government, Sport and Cultural Industries; David Etherton, Chief Executive Officer, VenuesWest; Kaye Kubach, Manager, Planning, Research and Reporting, VenuesWest; Helen Hill, Manager, Governance and Executive Services, VenuesWest.

<sup>4</sup> The fundamental legislative principles are based on principles set out in the *Legislative Standards Act 1992* (Qld), though other Parliaments often rely on similar principles.



## Background to the Bill

1.9 The Bill, if enacted, would repeal and replace the *Western Australian Sports Centre Trust Act 1986* (WASCT Act) under which the Western Australian Sports Centre Trust (WASCT) was founded, and would replace WASCT with the Sports and Entertainment Trust (Trust). WASCT currently trades under the name 'VenuesWest'.

1.10 WASCT was established in order:

(a) to establish and maintain a comprehensive sports and recreational complex, to be known as the Western Australian Sports Centre, comprising —

(i) facilities for holding competitive sporting events of international, national and State standards; and

(ii) training facilities for training sportspersons who are seeking to improve their sporting standards, performances and skills; and

(iii) sports education facilities for the purpose of developing the skills or potential skills of sports administrators, coaches and sportspersons; and

(iv) such accommodation or other ancillary facilities as may be required for the effective operation of the Centre; and

(b) to encourage, promote and facilitate the use and enjoyment of the Centre by members of the public; and

(c) to do such other things consistent with the use and enjoyment by the public of the Centre as the board considers appropriate.<sup>5</sup>

1.11 The Western Australian Sports Centre opened as the Claremont Superdrome in 1986 and then became the Perth Superdrome. Its first commercial naming-rights deal came in 1996 when it was renamed Challenge Stadium. Despite the Challenge Bank deal expiring in 2002, it retained the name until 2014 when it became HBF Stadium.<sup>6</sup>

1.12 However, over time, WASCT has expanded its operations, as it is entitled to do under section 8(3) of the WASCT Act. That provision reads:

(3) The Minister may direct the Trust to manage or operate any facilities specified in the direction being facilities that are of a similar kind to those mentioned in subsection (1)(a) but do not form part of the Centre, and while such direction has effect —

(a) it shall be a function of the Trust to manage those facilities; and

(b) this Act shall apply to and in relation to those facilities as if they formed part of the Centre.

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<sup>5</sup> *Western Australian Sports Centre Trust Act 1986*, s 8(1).

<sup>6</sup> AUStadiums, [\*HBF Stadium\*](#), n.d., accessed 6 December 23.

- 1.13 VenuesWest's growth and the Bill was described by David Etherton, Chief Executive of VenuesWest as follows:

It has been nearly four decades since our enabling legislation, the *Western Australian Sports Centre Trust Act 1986* (WASCT Act), was first written. In that time the organisation has grown from one to 14 venues, and hosted tens of millions of patrons and thousands of world class events. It was time for an update, and new legislation titled the Sport and Entertainment Trust Bill was introduced into parliament in May 2023.

Once assented it will see the repeal of the WASCT Act, and the new Sport and Entertainment Trust Act will provide VenuesWest with greater clarity regarding responsibilities, broader powers, and greater flexibility to carry out our duties. Alongside the Major Events Regulations 2023, it will also enable the temporary activation of places to deliver sport and entertainment events to add to the attractiveness and vibrancy of Perth as a great place to work, live, visit and invest.<sup>7</sup>

- 1.14 The 14 venues currently managed by VenuesWest under various management models are:

- Bendat Basketball Centre, Mount Claremont
- Champion Lakes Regatta Centre, Champion Lakes
- Gold Netball Centre, Jolimont
- HBF Arena, Joondalup
- HBF Park, Perth
- HBF Stadium, Mount Claremont
- Optus Stadium, Burswood
- Perth Motorplex, Kwinana
- RAC Arena, Perth
- State Football Centre, Welshpool
- SpeedDome, Midvale
- WA Athletics Stadium, Mount Claremont
- WAIS High Performance Service Centre, Mount Claremont
- WA Rugby Centre, Mount Claremont.<sup>8</sup>

## 2 The Bill

- 2.1 The Bill contains 103 clauses set out in 8 Parts:

- Part 1 deals with preliminaries
- Part 2 provides for the establishment of the Trust, and its proposed functions and powers
- Part 3, Division 1 deals with the administration of the Trust – Board membership, Board meetings, the establishment of committees and conflicts of interest. Division 2 deals with the staffing of the Trust

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<sup>7</sup> VenuesWest, [Annual Report 2022-23](#), Government of Western Australia, 2022-23, accessed 6 December 23, p 5.

<sup>8</sup> VenuesWest, [Annual Report 2022-23](#), p 8.

- Part 4 sets out accountability and financial provisions
- Part 5 codifies in statute the powers available for dealing with customer behaviour at Trust venues, including exclusion orders
- Part 6 covers various miscellaneous matters, including exclusions from liability and the making of regulations by the Governor
- Part 7 contains the necessary transitional and savings provisions
- Part 8 lists the laws repealed or consequentially amended.

## Part 1 - Preliminary

- 2.2 Clause 1 contains the short title (the *Sports and Entertainment Trust Act 2023*) and clause 3 the definitions. Clause 5 confirms that the Act would bind the Crown.
- 2.3 Should this Bill be enacted, it would effectively come into operation on a day fixed by proclamation (clause 2(b)). This, according to the Explanatory Memorandum (EM), is to allow for:
- the drafting of regulations
  - the development of updated policies and procedures
  - the establishment of new bank accounts
  - the timely transfer of contractual arrangements.<sup>9</sup>
- 2.4 Clause 2(b) is a device whereby the commencement of almost the entire Bill is dependent on Executive action. In rare circumstances, a bill may never be proclaimed.
- 2.5 Clause 2(b) erodes parliamentary sovereignty. The Executive controls the commencement date, not Parliament. In considering whether the Bill has sufficient regard to the institution of Parliament, there should be cogent reasons for Parliament to permit commencement by proclamation.
- 2.6 During the joint briefing with representatives of the Department and VenuesWest, David Etherton, CEO of VenuesWest, told the Committee that he thought the effective date for the coming into force of the Act would be 9 to 12 months from Assent.<sup>10</sup> Responding to a question taken on notice, the Department provided the Committee with a list of tasks in tabular form, which is at Appendix 2 to this report.<sup>11</sup>
- 2.7 In the Committee's view, the Department has provided sufficient justification for permitting the commencement of the greater part of the Bill by proclamation.

### FINDING 1

The Department has provided sufficient justification for permitting the commencement of the greater part of the Sports and Entertainment Trust Bill 2023 by proclamation.

- 2.8 Clause 4 would allow the Minister to declare a place as a venue to be used by the Trust for sports, entertainment or recreational purposes, in addition to the ones listed in

<sup>9</sup> Sports and Entertainment Trust Bill 2023, *Explanatory Memorandum*, Legislative Council, p 2.

<sup>10</sup> David Etherton, Chief Executive Officer, VenuesWest, *transcript of evidence*, Legislative Council, 6 December 23, p 15.

<sup>11</sup> Department of Local Government, Sport and Cultural Industries, Answer to question on notice 1 asked at hearing held 6 December 23, dated 4 January 24, pp 1-2.

paragraph 1.14, allowing a deal of flexibility. The declaration may be of temporary effect. It must be published by notice in the *Government Gazette*.

2.9 According to the EM:

VenuesWest has the expertise and capability to deliver major events at temporary sites across Perth, but does not have the power to do so under the existing legislation.<sup>12</sup>

## Part 2 - Sports and Entertainment Trust

2.10 Clause 6 would establish the Trust as a corporate entity, and clause 7 would allow it to use one or more trading names with Ministerial approval. That approval must be published in the *Government Gazette*.

2.11 It is intended that the new entity will continue to use the trading name 'VenuesWest.'<sup>13</sup>

### Functions

2.12 Clause 8 would confirm the Trust's status as an agent of the Crown, and clause 9 would list its functions. They are:

(a) to establish, care for, control, manage, operate, maintain, develop and improve Trust venues and other Trust property;

(b) to use, or authorise the use of, Trust venues and other Trust property for —

(i) the holding of competitive sporting events of international, national and State standards; or

(ii) the training of sportspersons who are seeking to improve their sporting standards, performances or skills; or

(iii) the development of skills of sports administrators, coaches and sportspersons; or

(iv) the purpose of public entertainment or recreation; or

(v) the holding of entertainment or recreational events; or

(vi) activities of a cultural or educational nature; or

(vii) any other purpose approved by the Minister; or

(viii) any purpose ancillary to activities or purposes referred to in subparagraphs (i) to (vii);

(c) to encourage, foster, promote and facilitate the use and enjoyment of Trust venues and other Trust property;

(d) without limiting paragraph (c), to promote, or take part in promoting, activities conducted at Trust venues;

(e) to promote public awareness of, and foster public interest in, matters relating or incidental to sports and entertainment;

(f) without limiting paragraph (e), to promote and provide educational and training activities in relation to sports and entertainment;

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<sup>12</sup> Sports and Entertainment Trust Bill 2023, *Explanatory Memorandum*, Legislative Council, p 2.

<sup>13</sup> Sports and Entertainment Trust Bill 2023, *Explanatory Memorandum*, p 3.

(g) to do any other thing consistent with the use and enjoyment by the public of a Trust venue as the Board considers appropriate;

(h) to undertake or provide, or facilitate the undertaking or provision of, promotional, commercial, operational or retail activities and facilities in, or in relation to, a Trust venue;

(i) to perform any other functions that are conferred or imposed on it by this Act or another written law.

2.13 For the purposes of this provision, *promote* includes *attract, organise, commission, fund, invest in, support, market, advertise and act as project manager*.<sup>14</sup>

2.14 The statutory functions of WASCT, currently operating under the WASCT Act, are narrower, focusing on sporting and recreational activities and venues.<sup>15</sup> The functions of the Trust would take into account the fact that its activities include other forms of entertainment, as well as cultural and educational events. They also set out more clearly the ability to undertake commercial activities at the venues.

## **Powers**

2.15 Clause 10 of the Bill sets out the powers that would be granted to the Trust in order to perform its functions. The EM states that these powers are intended to:

both align with current requirements and allow for future growth. The Trust will be empowered to conduct the commercial, retail and promotional activities essential to optimise the use of venues and precincts.<sup>16</sup>

2.16 Clause 10(2) states that the Trust *has all the powers it needs to perform its* functions, but clause 10(3) goes on to state that, without limiting clause 10(2), the Trust would be able to do all or any of the following:

(a) acquire, hold, dispose of or otherwise deal in real or personal property;

(b) carry out, or arrange to be carried out, work in connection with the maintenance, development and improvement of any Trust venue or other Trust property and, in particular, for the purpose of making any Trust venue or other Trust property suitable for the activities or purposes referred to in section 9(2)(b);

(c) enter into a contract or other arrangement, including a contract or arrangement for the provision of services to the Trust;

(d) without limiting paragraph (c), enter into a contract or arrangement for any person to manage any Trust venue;

(e) provide, or permit any person to provide, refreshments (including liquor) at Trust venues and apply for, hold and dispose of any licence, permit or other authority required in connection with the provision of those refreshments;

(f) participate in a business arrangement and acquire, hold and dispose of shares, units or other interests in or relating to a business arrangement;

(g) cooperate with, and provide financial or other assistance to, other bodies and individuals;

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<sup>14</sup> Sports and Entertainment Trust Bill 2023 cl 9(1).

<sup>15</sup> *Western Australian Sports Centre Trust Act 1986* s 8.

<sup>16</sup> Sports and Entertainment Trust Bill 2023, *Explanatory Memorandum*, Legislative Council, p 3.

- (h) produce and deal in any equipment, facilities or system associated with the performance of its functions;
- (i) develop and turn to account any technology, software, resource or intellectual property that relates to its functions and, for that purpose, apply for, hold, receive, exploit and dispose of any intellectual property;
- (j) provide and turn to account advertising opportunities or opportunities to participate in arrangements in the nature of advertising or having a purpose similar to advertising;
- (k) use its expertise and resources to provide consultancy, management, advisory or other services for a fee or otherwise;
- (l) require payment of rent, fees or other charges for, or in connection with —
  - (i) the hire or use of a Trust venue, or any part of a Trust venue, or any other Trust property; or
  - (ii) entry to a Trust venue or any part of a Trust venue; or
  - (iii) admission to any activity at a Trust venue; or
  - (iv) the parking of vehicles on or in any part of a Trust venue;
- (m) fix the amount of rent, fees or charges referred to in paragraphs (k) and (l) with power to waive, reduce or refund the amount payable in particular cases;
- (n) produce and publish information on matters related to its functions;
- (o) appoint or engage agents or attorneys;
- (p) act as agent for other persons.

- 2.17 These powers are a more modern and flexible version of the list in section 9 of the existing WASCT Act. They would allow for the Trust to enter into a wider range of business arrangements, and to profit from technology development and intellectual property, advertising activities and the provision of its expertise to others. They make explicit the power to enter into commercial arrangements for the provision of refreshments at venues.
- 2.18 Clause 10(5) adds that the Trust may make any gift for a charitable purpose or any other purpose of benefit to the community or a section of the community, or accept any gift, bequest or other payment if it is absolute, or subject to conditions that the Trust would be able to satisfy. Clause 10(6) confirms that the Trust, in exercising its powers, may act in conjunction with any person or firm, or public authority, or any Government department, or another agency or instrumentality, of this State, another State or Territory or the Commonwealth.
- 2.19 The powers to acquire or dispose of real property (clause 10(3)(a)) or to enter into a contract or arrangement for any person to manage any Trust venue (clause 10(3)(d)) must not be exercised without the Minister's written approval (clause 11(3)). The power in clause 10(3)(f) in relation to a business arrangement must not be exercised unless the Minister and the Treasurer approve the terms of that arrangement in respect of that particular business arrangement, business arrangements of that class or business arrangements generally, that is, blanket general approvals (clause 12(1)). Under clauses 12(3) and (4), the Treasurer would be entitled to exempt any business arrangement or type of arrangement by written notice to the Trust (which notice may or may not contain conditions), and to give directions to the Trust regarding the exercise of the power.

## Delegation

- 2.20 Clause 13 would allow the Board of the Trust to delegate, in writing, the exercise of any power or duty under the Act to a Board member, a staff member or a committee. This power of delegation would not extend to the execution of documents, but that particular duty would be delegable under clause 38(5).
- 2.21 Clause 38(5) would allow for the Trust, in writing and under its common seal to authorise one or more Board members or staff members to sign documents on behalf of the Trust, either generally or subject to the conditions that are specified in the authorisation.

### *Fundamental legislative principal 3*

- 2.22 FLP 3 asks:
- Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?
- 2.23 Where organisations are led by a non-executive Board, delegation is necessary to allow for the proper day to day activities to be carried out.
- 2.24 Allowing the exercise of statutory powers and duties by any staff member or committee may appear to be too generous, both in terms of the variety of powers and duties that may be delegated and the class of recipients of the delegation.
- 2.25 However, balance is achieved with some of the built-in safeguards:
- the delegation must be executed by the Trust in writing (clause 13(2)), or under seal in the case of clause 38(5)
  - the person or committee receiving the delegation must not delegate it further (clause 13(3)).
- 2.26 Identical powers of delegation were included in the *Arts and Culture Trust Act 2021*.<sup>17</sup>
- 2.27 The Committee is of the view that the powers of delegation are appropriate.

## **FINDING 2**

Clauses 13 and 38(5) of the Sports and Entertainment Bill 2023, dealing with the delegation of the Board's powers and duties, do not offend against fundamental legislative principles.

## **Part 3 - Administration of Trust**

### **The Board**

- 2.28 Clause 14 would mandate that the Trust has a Board, which would be its governing body.
- 2.29 During the second reading speech, the Parliamentary Secretary said:

Many reforms in the bill relate to the board that will manage the trust. The new trust's board will consist of seven members, compared with nine members on the current WASCT board. The bill will require board members to have specific and relevant skills and experience that relate to the trust's operations. These changes are reflective of contemporary practice towards smaller, skills-based boards. Board members will also be protected from liability when they act in good faith in carrying out their duties.<sup>18</sup>

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<sup>17</sup> Sections 15 and 40(5).

<sup>18</sup> Legislative Council, *Debates*, 2023, p 2480.

2.30 Under the current WASCT Act, the structure of the Board is as follows:

#### **5. Board of Trust**

(1) The Trust shall have a board of management comprising —

(a) 3 persons appointed as trustees by the Minister, each of whom is in the Minister's opinion qualified for appointment by reason of knowledge of or experience in commerce, law, financial management or administration or personnel management or administration; and

(b) 3 other persons appointed as trustees by the Minister, each of whom is in the Minister's opinion qualified for appointment by reason of knowledge of or experience in sport; and

(c) 3 other persons appointed as trustees by the Minister of whom —

(i) 2 shall be officers of the public service of the State; and

(ii) the other shall be a member of the staff of The University of Western Australia.<sup>19</sup>

2.31 Clause 15(2) of the Bill would replace section 5 of the current WASCT Act with a much different membership list. It reads as follows:

#### **15. Board membership**

(1) The Board consists of 7 persons, each of whom is appointed by the Minister as a Board member.

(2) The Minister must ensure that each Board member has knowledge of, and experience in, 1 or more of the following —

(a) commerce;

(b) law;

(c) financial management;

(d) human resource management;

(e) management of major events;

(f) infrastructure planning and management;

(g) sport;

(h) public administration.

(3) A person is not eligible to be appointed as a Board member if the person is, according to the Interpretation Act 1984 section 13D, a bankrupt or a person whose affairs are under insolvency laws.

2.32 It is considered good governance when boards are not representative, but skills based. The clause would allow for a Board whose members are selected on the basis of their abilities in areas of importance in modern governance practices, rather than being individuals who simply hold an office.

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<sup>19</sup> *Western Australian Sports Centre Trust Act 1986* s 5.



### FINDING 3

Clause 15 of the Sports and Entertainment Trust Bill 2023 would provide for a skills-based Board of the Sports and Entertainment Trust that reflects good governance practices.

- 2.33 The Minister must designate one Board member as Chair and another as Deputy Chair, to allow for business continuity in the absence of the Chair for health or travel reasons, for example (clause 16). There is no provision for the appointment of a Deputy Chair in the current WASCT Act.
- 2.34 The maximum term of office of a Board member is 3 years (clause 17). Under the current WASCT Act, there is no limit on the number of re-appointments (Schedule 1, paragraph 3). Under the Bill, the member would be eligible for re-appointment, but only twice. The EM states:
- This will ensure that continuity and stability of Board membership is balanced with regular opportunities to bring fresh perspectives and new resources to the Board.<sup>20</sup>
- 2.35 A Board member may resign at any time by notice to the Minister (clause 18(2)-(4)). Clause 18(1) sets out the other circumstances in which a Board appointment may come to an end. This arises where a member:
- (a) dies, resigns or is removed from office under this section; or
  - (b) becomes, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
  - (c) is convicted of an offence punishable by imprisonment for more than 12 months; or
  - (d) is convicted of an offence under section 33(1) or (2) or 76(1).
- 2.36 Further, the Minister would be empowered by clause 18(5) to remove a Board member:
- (a) on the grounds of neglect of duty; or
  - (b) on the grounds of misconduct or incompetence; or
  - (c) on the grounds of mental or physical incapacity, other than temporary illness, impairing the performance of the Board member's duties; or
  - (d) on the grounds of absence, without leave, from 3 consecutive meetings of the Board of which the Board member has had notice; or
  - (e) for any other reasonable cause.
- 2.37 For the purposes of stability and continuity, clause 19 sets out what is to occur if a position on the Board becomes vacant due to the expiry of a Board member's term. The member is taken to remain as a Board member until the earliest of one of the following:
- 3 months from the date of expiry
  - the vacancy is filled
  - the member resigns, or
  - the member is removed from office under proposed section 18(5).
- 2.38 Clause 20 would allow the Minister to appoint a person as a temporary Board member to replace one that is unable to act. If the Board member unable to act happens to be the Chair,

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<sup>20</sup> Sports and Entertainment Trust Bill 2023, *Explanatory Memorandum*, Legislative Council, p 8.

then the Deputy Chair is elevated, and the Minister may appoint an alternative member to act as Deputy Chair.

- 2.39 The Minister would set the remuneration and allowances of Board members after a recommendation from the Public Sector Commissioner (clause 21). This reflects the arrangements in section 7 of the current WASCT Act.

### **Board meetings**

- 2.40 Provisions relating to Board meetings are currently set out in Schedule 2 to the current WASCT Act, but are lacking in detail. The quorum is 4, with the person presiding having a casting vote in the event of equality of votes.
- 2.41 In the Bill, those provisions are more fulsome (clauses 22 to 30). They reflect more modern methods of conducting meetings, including remote attendance, and provide more flexibility, such as allowing that a resolution in writing, signed or assented to in writing by at least 4 members, has the same effect as if it were passed at a meeting. Further, the Board would determine its own meeting procedures where they are not covered by the Bill.
- 2.42 Clause 30 would provide for the Chief Executive Officer (CEO) of the Trust, or a person authorised in the CEO's place, to attend a meeting and participate in deliberations (unless the Board requests that the person does not attend the meeting or part of it). That person would have no vote. If the CEO or authorised person attends a Board meeting, then certain provisions, with suitable modifications, would apply to that person as if they were a Board member. They are clauses 27 (remote meetings), 33 (disclosure of material interests), 34 (voting by interested member) and 35 (declaration by Board that clause 34 is inapplicable).

### **Committees**

- 2.43 The Board of the Trust would be empowered to appoint committees to advise or assist it (clause 31). Such a committee may consist of any number of people, but must include one Board member. The Board may issue directions to the committee, which must be complied with.
- 2.44 Committee members would be entitled to be paid such remuneration or allowances as determined by the Minister on the recommendation of the Public Sector Commission.
- 2.45 The power to establish committees already exists at section 10 of the WASCT Act, though there is currently no provision for the payment of committee members.

### **Disclosure of interests**

- 2.46 Provisions relating to the disclosure of pecuniary interests are in Schedule 1 to the current Act, at paragraph 7. They are referred to in the Bill (clause 33) as 'material personal interests' rather than 'pecuniary interests', thus including interests that are not just financial. For the first time, penalties are imposed for a breach.
- 2.47 The Committee notes that the concept of a 'material personal interest' may differ from a pecuniary interest, yet is not defined in the Bill or the explanatory memorandum.

### **FINDING 4**

'Material personal interest' is not defined in the Bill or the Explanatory Memorandum.

## RECOMMENDATION 1

The Minister provide a definition of 'material personal interest' in relation to Trust board members and conflict of interest provisions.

- 2.48 Under clause 33, a Board member who becomes aware of a personal material interest in a matter being considered by the Board must disclose that interest at the next available meeting and a fine of \$10,000 is intended for a breach of this duty. The same provision and punishment would apply to a member of a committee appointed by the Board.
- 2.49 Disclosures must be reported in the minutes.
- 2.50 A Board or committee member affected by such a conflict of interest cannot vote on the matter, or be present when the matter is being considered at a meeting (clause 34). However, under clause 35, these restrictions would not apply if the Board or committee resolves that:
- the Board or committee member has disclosed an interest in a matter, and
  - the members voting for the resolution are satisfied 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 considering or voting on the matter.
- 2.51 It is the view of the Committee that these constitute reasonable conflict of interest measures.
- 2.52 If a Board member is prevented from voting or attending under clause 34, due to a conflict of interest, the quorum for the meeting is reduced from 4 to 3. If the Board lacks quorum due to one or more such disqualifications, the Minister may step in and deal with the matter to the extent that the Board is unable to do so (clause 36).
- 2.53 The Committee is of the view that these provisions would enable the business of the Board to proceed uninhibited and unconstrained in the circumstances.
- 2.54 Under clause 37, the Minister would be empowered to declare in writing that clause 34 (prevention of voting or attendance by a Board member with a conflict of interest) or 36 (a reduction in quorum if clause 34 applies), or both clauses 34 and 36, do not apply in relation to a specified matter. The Minister must cause a copy of this declaration to be laid before each House of Parliament within fourteen sitting days after the declaration is made.
- 2.55 The matters covered by clauses 35 to 37 are new.

### *Fundamental legislative principle 13*

- 2.56 FLP 13 reads:
13. Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?
- 2.57 Clause 37 could be viewed as disregarding the institution of Parliament. A definition of Parliamentary sovereignty is to make or unmake a law. In this instance, the Executive can declare that 2 sections of a statute don't apply.
- 2.58 It is noted that the proposed provision makes no mention of the Minister having to give reasons for a declaration, nor does it specify any particular duration of such a declaration. It is also noted that a declaration such as this would not be subject to the disallowance provisions of the *Interpretation Act 1984*.
- 2.59 However, the Committee is of the view that the provision is justified as an accountability measure, and as the Minister is mandated to cause a copy of a declaration to be laid before

each House of Parliament within fourteen sitting days, the declaration (instrument) will be sufficiently subject to the scrutiny of the Legislative Council.

#### **FINDING 5**

Clause 37 of the Sports and Entertainment Bill 2023, dealing with the Ministerial power to declare inapplicable proposed sections 34 and/or 36, does not offend against fundamental legislative principles.

#### **Execution of documents**

- 2.60 Clause 38 would deal with the use of the Trust's common seal in the execution of documents.
- 2.61 A document is regarded as properly executed by the Trust if:
- the seal is applied to the document, following authorisation by the Trust, and in the presence of the chair or deputy chair and the CEO, each of whom must sign the document to attest that the common seal was so applied
  - the document is signed by the chair or deputy chair and the CEO.
- 2.62 The Trust may, in writing under its common seal, authorise one or more Board members or staff members to sign documents on behalf of the Trust, either generally or subject to any conditions that are set out in the authorisation.

#### **Staff of Trust**

- 2.63 Clauses 39 to 41 and 43 state that the Trust must have a full-time CEO, to administer its day-to-day operations, subject to the control of the Board. The CEO is to be appointed by the Board for a period not exceeding 5 years (though eligible for re-appointment), on terms and conditions set by the Board. Remuneration and allowances are also set by the Board, on the recommendation of the Public Service Commissioner, including the leave entitlements of a permanent officer of the Public Service.
- 2.64 The CEO may resign at any time in writing (clause 42). The Trust may remove the CEO on the grounds of:
- neglect of duty
  - misconduct or incompetence
  - mental or physical incapacity, other than temporary illness, which impairs the performance of the CEO's duties
- or for any other reasonable cause.
- 2.65 Clause 44 would provide for the appointment of an acting CEO for a period not exceeding 12 months, if the CEO is unable to act or the position is vacant. The terms and conditions of appointment are determined by the Board, but must not exceed those of the current or previous CEO.
- 2.66 The appointment of other staff to the Trust would be permitted under clauses 45 and 46, and their employment would be subject to the usual statutory provisions relating to public sector employees. Clause 47 would allow for the secondment of other public sector employees from other public authorities or agencies.

## Part 4 - Accountability and financial provisions

### Accountability

- 2.67 Accountability to the Minister is provided for in Part 4, Division 1 of the Bill.
- 2.68 The Minister would be empowered to issue written directions to the Trust in respect of the performance of its functions, either generally or in relation to a particular matter, and the directions must be laid before both Houses of Parliament within 14 days. The direction must also be included in the Trust's annual report (clause 48).
- 2.69 Additional accountability measures would include:
- the Minister having the right to be kept apprised of the operations and financial health of the Trust, and the Trust must give the Minister reports and information required to enable the Minister to make informed assessments of those matters (clause 49)
  - the Minister having the power to obtain any document or information in the possession of the Trust (clause 50). The clause sets out how the Minister may request documents or information.
- 2.70 The Trust or another person performing a function under this Act would not be liable in respect of any claim arising as a consequence of the disclosure of information or documents under these provisions, or under clause 59 (notice of financial difficulties), or under a requirement imposed under the *Financial Management Act 2006* or the *Auditor General Act 2006*. This is a sensible protective mechanism for staff.

### Financial provisions

- 2.71 The usual provisions that regulate the financial administration, audit and reporting of statutory authorities would apply to the Trust — the *Financial Management Act 2006* and the *Auditor General Act 2006*. An agency special purpose account (SPA), the Sports and Entertainment Trust Account, must be established (clauses 52 and 53), and clause 54 would deal with the lawful use of the Trust's funds.
- 2.72 SPAs are established under statute for the delivery of key Government policy outcomes. Agency SPAs are not part of the Public Ledger and are the agency's accounts. They are controlled and administered by the agency.<sup>21</sup>
- 2.73 Under clause 55, the Trust would enjoy borrowing powers, or powers to enter into other such financial arrangements, subject to the Treasurer's approval.
- 2.74 Clause 56 empowers the Treasurer, on the Minister's recommendation, to guarantee the Trust's financial obligations. Subclauses (3) and (4) provide that due payment of money payable by the Treasurer under such a guarantee must be charged to the Consolidated Account, and any amounts received or recovered from the Trust under the guarantee are to be credited to the Consolidated Account. The Treasurer may impose charges on the Trust for the giving of such a guarantee (clause 57).
- 2.75 The implications of clause 56 are discussed at paragraphs 3.1 to 3.10 of this report.
- 2.76 The Trust would be exempt from certain rates, taxes and duties under clause 58 of the Bill. Rates and taxes under State laws are not chargeable on Trust property unless that property has been leased-out for non-Trust purposes. The *Duties Act 2008* will not apply to any gifts or bequests. As the EM says (at page 19):

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<sup>21</sup> Standing Committee on Estimates and Financial Operations, report 80, *2018-19 Budget Cycle – Part 2: Annual Report Hearings*, Western Australia, Legislative Council, March 20, pp 4-5.

This clause provides legal certainty for VenuesWest and its lessees. Specifically, rates cannot be levied against any leased or otherwise occupied venue or precinct if the purpose is directly related to the performance of the Trust of any of its functions.

- 2.77 Should the Trust discover that it is in financial difficulties, it must give immediate notice to the Minister, in writing, setting out the reasons for the Trust's opinion that it cannot meet its financial obligations (clause 59). Within 7 days, the Minister must confer with the Trust and the Treasurer in order to seek a solution, and then initiate such action as is required to satisfy the relevant financial obligation. The Minister may, in the meantime, direct the Trust to cease or limit the performance of any of its functions.

## **Part 5 - Control of conduct on Trust property**

- 2.78 Of Part 5, Division 1 of the Bill, the EM states:

To ensure the safety of spectators, players, participants, players, artists and staff on Trust property, this Bill will provide for the creation of conduct offences.<sup>22</sup>

- 2.79 The WASCT Act does not explicitly deal with patron behaviour. VenuesWest security staff are forced to rely on the conditions of entry to venues, printed on the ticket. As Mr Etherton told the Committee:

Over a 12-month period up to April this year, we did some measurement. There were 500 people who were ejected from our venues, and we actually banned 30 people, four of those for pitch invasions. At the moment, to implement a ban, so if someone jumps onto the pitch, tackles a player, stops the televised game, injures a player, we rely on our conditions of entry as a reason for banning that individual, so they breach their condition of entry. We then advise them that they are no longer welcome to the venue for, say, five years and then we rely on the laws of trespass in order to prosecute them. Having a legislative framework to provide that banning regime and a fine regime rather than relying on our conditions of entry that a lot of people do not read, we thought was important.<sup>23</sup>

### **Trust officers**

- 2.80 Dealing with behaviour on Trust property will be entrusted to 'Trust officers'. The reason for this title is explained in the EM:

Under the *Western Australian Sports Centre Trust Act 1986*, which is to be repealed by this Bill, the Western Australian Sports Centre Trust appoints "authorised officers". This Bill uses the term "Trust officer" so as to avoid confusion, should a Trust officer be authorised under the *Criminal Procedure Act 2004* Part 2 to issue infringement notices for alleged offences under the Bill. Persons authorised under the *Criminal Procedure Act 2004* Part 2 are referred to as "authorised officers". Not every person appointed as a Trust officer under this clause (such as a third-party crowd controller) will be an authorised officer.<sup>24</sup>

- 2.81 Under clauses 60 and 61, a person considered suitable, having regard to the person's experience, expertise, training or qualifications and any requirements that may be specified in regulations, may be appointed as a Trust officer for a period specified in the instrument of appointment.

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<sup>22</sup> Sports and Entertainment Trust Bill 2023, *Explanatory Memorandum*, Legislative Council, p 20.

<sup>23</sup> David Etherton, Chief Executive Officer, VenuesWest, *transcript of evidence*, Legislative Council, 6 December 23, p 5.

<sup>24</sup> Sports and Entertainment Trust Bill 2023, *Explanatory Memorandum*, Legislative Council, p 20.

- 2.82 To be eligible for appointment, the person would need to be:
- an employee of the Trust
  - a person engaged under a contract for services by the Trust
  - a person employed by a person engaged under a contract for services (this would cover licensed crowd controllers employed by an agent under contract to provide security services to the Trust or partner managed venues)
  - a person of a class prescribed in regulations.
- 2.83 The limitations and conditions applying to the functions of a Trust officer in terms of dealing with behaviour on Trust property would be set out in the officer's instrument of appointment, or by notice in writing to the officer, or in regulations.
- 2.84 The Trust would be bound to issue each Trust officer with a photographic identity card (clause 63), which would need to be clearly visibly displayed or produced for inspection when the officer is exercising a power under the proposed Act. A person appointed as a Trust officer would be bound to return their identity card to the Trust within 21 days after ceasing to be a Trust officer. Failure to do so would be an offence, attracting a fine of \$2,000.
- 2.85 It is to be noted that the provisions of this clause, if enacted, would not authorise a contravention of the *Security and Related Activities (Control) Act 1996* (clause 61(5)). As the EM explains:
- That Act provides for the licensing of crowd controllers and requires that the services of crowd controllers are to be supplied by crowd control agents licensed under that Act. These requirements will still need to be adhered to in the case of a crowd controller who might be appointed a Trust officer.<sup>25</sup>

## Offences

- 2.86 The EM explains why the following offence provisions have been included in the Bill.
- Currently, the majority of VenuesWest patron conduct is regulated through contractual arrangements, via the terms and conditions under which a ticket is issued. Failure to comply with a condition of entry may result in a patron being required to leave Trust property. It may also attract WA Police prosecution action if the conduct is an offence (such as trespass or property damage) under the *Criminal Code* or another written law.
- 2.87 Clause 64 would create an offence relating to the invasion of an arena (an area within Trust property where a sporting contest or a performance is being carried out), with a penalty of \$5,000. The EM states:
- This is a significant public safety requirement given the high-profile public venues within the portfolio. Staff, spectators, participants, players and artists at events require protection. The creation of this offence is intended to act as a significant deterrent to this type of conduct.<sup>26</sup>
- 2.88 No-one would be permitted to enter or remain on an arena unless they are:
- a participant in the sporting contest or performance
  - engaged in the control or management of the sporting contest or performance

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<sup>25</sup> Sports and Entertainment Trust Bill 2023, *Explanatory Memorandum*, Legislative Council, p 22.

<sup>26</sup> Sports and Entertainment Trust Bill 2023, *Explanatory Memorandum*, p 22.

- a Trust officer
  - a member of a class of persons who have been authorised to enter the arena by the Trust or its staff or agents (intended to include emergency response personnel or contractors who may be required to carry out repairs).
- 2.89 Clause 65 would codify the Trust's ability to remove a patron from Trust property, reflecting the current practice under the contractual arrangements. A Trust officer would be empowered to give a person a direction to leave Trust property if:
- (a) the Trust officer reasonably suspects that the person has committed or is committing an offence under this Act; or
  - (b) in the opinion of the Trust officer, the person has breached or is breaching a condition of entry to the Trust property; or
  - (c) the person does not comply with a request under proposed section 66(3) (that is, a request to provide personal details where those details are unknown to the Trust officer).
- 2.90 An offence, punishable with a fine of \$3,000, would be created. This would apply if:
- (a) the person is given a direction to leave; and
  - (b) the Trust officer warns the person that failure to comply with a direction to leave is an offence; and
  - (c) the person fails to comply with the direction.
- 2.91 A police officer would be permitted to use reasonable force to enforce a direction from a Trust officer.
- 2.92 A person given a direction, or removed by the police, would be barred from re-entering the premises for 48 hours, or be liable to a fine of \$8,000.
- 2.93 Under clause 66, where a Trust officer reasonably suspects that a person on Trust property has committed or is committing an offence under this Act, or is subject to a temporary or permanent exclusion order (see below), that Trust officer would be empowered to request the person's personal details, being the person's full name, date of birth and the address of where the person is living or usually lives.

### **Exclusion orders**

- 2.94 Clauses 67 and 68 provide that the Board would be able to make a temporary exclusion order of up to 5 years, which would prohibit a person from entering specified Trust property, or indeed any Trust property. At present, relying on breaches of conditions of entry, a person may only be excluded from the venue in question. These new powers would allow for exclusion from any and all Trust venues.
- 2.95 A temporary exclusion order would be possible where the person:
- (a) has been convicted of an offence under this proposed Act; or
  - (b) has been removed from Trust property under proposed section 65(3); or
  - (c) has been convicted of an offence under another written law on or in relation to Trust property.
- 2.96 Before making a temporary exclusion order, the Board would need to give the person a reasonable opportunity to make submissions or to be heard in relation to the proposed order, and would also need to have regard to any information or document provided by a Trust officer or the person.



2.97 A temporary exclusion order would need to contain an explanation of the right to apply for a reconsideration of the Board's decision under clause 73 (paragraphs 2.103 to 2.107 below), though such an exclusion order would not be invalid merely because it does not contain this explanation.

2.98 Failure to comply with a temporary exclusion order would attract a fine of \$3,000 (clause 69).

2.99 Of these proposed temporary exclusion orders, the EM explains:

The use of this power is expected to continue to be conservative. Currently, very few individuals are banned each year as a result of a breach of conditions of entry that impacts adversely on other patrons and/or staff.

In determining whether to exercise this power, the Board will have regard to various matters which will include consideration of:

- the seriousness of the incident
- the cumulative impact of all relevant incidents
- the acceptance or not of wrongdoing by the patron
- the likelihood of further incidents
- any action already taken by VenuesWest
- whether or not there was police involvement and/or prosecution.<sup>27</sup>

2.100 If a person failed to comply with a temporary exclusion order, and was convicted under proposed section 69, then clauses 70 and 71 would empower the Board to make a permanent exclusion order that would prohibit the person from entering specified Trust property or any Trust property. Again, the Board would need to give the person a reasonable opportunity to make submissions or to be heard in relation to the proposed order, and would also need to have regard to any information or document provided by a Trust officer or the person. The order would again need to contain an explanation of the right to apply for a reconsideration of the Board's decision.

2.101 Failure to comply with a permanent exclusion order would attract a fine of \$10,000.

2.102 The Board would be able at any time to revoke a temporary or permanent exclusion order by written notice given to the relevant person.

#### **Reconsideration and review of exclusion orders**

2.103 As mentioned previously, a person dissatisfied with a decision by the Board to make a temporary or permanent exclusion order would be able to apply to the Board for reconsideration of that decision (clause 73).

2.104 The timeframe for such an appeal is set out in subclause (2), generally being one month from the occurrence of certain events, though the Board may allow an extension of time.

2.105 On reconsideration of a decision, the Board would be able to affirm the original decision, vary the decision or set it aside and substitute another decision.

2.106 The Board would then need to give the applicant a written notice of the decision that —  
(a) states the reasons for the decision; and

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<sup>27</sup> Sports and Entertainment Trust Bill 2023, *Explanatory Memorandum*, Legislative Council, p 24.

(b) states that the person may apply under proposed section 74 for a review of the Board's decision; and

(c) explains how the application for review is made.

- 2.107 Proposed section 74 would allow a person to apply to the State Administrative Tribunal (SAT) for a review of the Board's decision, within 28 days of receiving that decision. A decision that is the subject of an application to the SAT would continue to have effect pending the outcome of the review, unless the SAT orders otherwise.

#### *Fundamental legislative principles 1 and 2*

- 2.108 The clauses relating to exclusion orders raise the question as to whether they are consistent with natural justice principles.

- 2.109 FLPs 1 and 2 read:

1. Are rights, freedoms or obligations, dependent on administrative power only if sufficiently defined and subject to appropriate review?

2. Is the Bill consistent with principles of natural justice?

- 2.110 On their face, the powers of exclusion may be regarded as failing these principles. However, the following matters are taken into account:

- In respect of both temporary or permanent exclusion orders, the Board may not make them unless and until:
  - the relevant person has been given a reasonable opportunity to make submissions or to be heard in relation to the proposed exclusion order, and
  - the Board has taken into account any information or document provided by a Trust officer in relation to the proposed exclusion order and any information or document provided by the relevant person.
- An exclusion order must contain an explanation of the right to apply for reconsideration of the Board's decision (though an exclusion order is not invalid merely because it does not contain this explanation).
- The relevant person has the right to apply for the Board to reconsider its decision.
- A person who is aggrieved by a decision of the Board following its reconsideration may apply to the SAT for a review of the Board's decision.

- 2.111 In the circumstances, the provisions are reasonable and do not breach FLPs 1 and 2.

#### **FINDING 6**

Part 5, Division 4 of the Sports and Entertainment Bill 2023, dealing with the power to exclude persons from Trust premises, does not offend against fundamental legislative principles.

### **Part 6 - Miscellaneous**

- 2.112 Clause 75 deals with the potential liability of people acting on behalf of the Trust. It provides that no action or claim for damages would lie against a person other than the Trust for anything that the person has done or not done, in good faith, in the performance or purported performance of a function under the proposed Act.

- 2.113 The EM explains:

Board members must make commercial decisions which may involve some form of risk and are made on the basis of information provided. It would be unjust to hold

Board members personally liable for a breach of duty when they acted in good faith.<sup>28</sup>

- 2.114 This clause would ensure that liability attaches to the Trust or the State, not the person.
- 2.115 Clauses 76 and 77 deal with confidentiality of information. A person would not be able, directly or indirectly, to use or disclose any information obtained by the person because of their office, position, employment or engagement, or because of any disclosure made to the person under or for the purposes of the proposed Act, unless that information is already in the public domain. A penalty of \$10,000 would apply.
- 2.116 However, the use or disclosure of such information in good faith would be authorised, for the protection of people merely carrying out their duties, in the following circumstances (clause 77(1)):
- (a) for the purpose of, or in connection with, performing a function under this or any other Act;
  - (b) as otherwise authorised or required under or for the purposes of this Act;
  - (c) under another law;
  - (d) to a court or other person or body acting judicially in the course of proceedings before the court, person or body;
  - (e) under an order of a court or other person or body acting judicially;
  - (f) any other circumstances prescribed for the purposes of this subsection.
- 2.117 In any of those circumstances, no civil or criminal liability would be incurred in respect of the use or disclosure. Further, the use or disclosure would not be regarded as a breach of the following duties:
- any duty of confidentiality or secrecy imposed by law
  - a breach of professional ethics or standards or a breach of any principles of conduct applicable to a person's employment
  - unprofessional conduct.
- 2.118 Clause 79 sets out the usual provisions for laying a document before Parliament when it is not sitting.

## **Regulations**

- 2.119 The Bill makes provision for the making of 2 classes of regulations.
- 2.120 Clause 79(1) sets out the Governor's standard regulation-making power. Clause 79(2) then prescribes 11 subject matters for which the Governor would be permitted to make regulations.
- 2.121 A breach of these general regulations would attract a penalty not exceeding a fine of \$5,500.
- 2.122 Clause 80 provides that the Governor would be empowered, in particular, to include in the regulations matters relating to the use and parking of vehicles at Trust venues.

## **Review**

- 2.123 Clause 81 provides that the Minister must review the proposed Act after 5 years and then at intervals of not more than 10 years. The Committee regards this as best regulatory practice.

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<sup>28</sup> Sports and Entertainment Trust Bill 2023, *Explanatory Memorandum*, Legislative Council, p 27.

- 2.124 The report must be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary or the expiry of the period of 10 years, as the case may be.

#### **FINDING 7**

The Committee regards the review provisions as in line with best regulatory practice.

### **Part 7 - Transitional and savings provisions**

- 2.125 Transitional and savings provisions are required to ensure that the transfer of all rights and obligations to the Trust from WASCT are completed smoothly. The EM states:

This Part sets out transitional provisions to allow an orderly handover of the Western Australian Sports Centre Trust's (WASCT) tasks, assets, liabilities and contractual obligations. This will ensure that the transition will not compromise any pre-existing business arrangements or the rights of former WASCT employees. These provisions will also enable the General Manager of the WASCT to seamlessly transition to the role of the chief executive officer (CEO) of the Sports and Entertainment Trust.<sup>29</sup>

- 2.126 After listing the terms used in this Part (clause 82) and confirming that the *Interpretation Act 1984* is unaffected by anything in this Part (clause 83), WASCT would be abolished by clause 84, and its trustees stood down. All of its assets, rights and liabilities would transfer to the Trust on commencement day, including any litigation rights and duties (clause 85). Clause 86 deals with the transfer of funds between bank accounts, and clause 87 would credit all income to the new account (clause 87). Crown land reserves managed by WASCT would be transferred to the Trust (clause 88).
- 2.127 Under clause 89, the Registrar of Titles, the Registrar of Deeds and Transfers and any other person authorised by a written law to record and give effect to the registration of documents must make the appropriate registrations to give effect to this Part of the Act.
- 2.128 By virtue of clause 90, the Trust would be exempt from State tax with regard to any of the transfers and other matters that occur as a result of Part 7.
- 2.129 Division 4 of Part 7 deals with the transfer of staff from commencement day. The general manager of WASCT would become CEO of the Trust under clause 91 (general manager is the title given to the CEO of WASCT under section 12 of the WASCT Act). Unless the CEO agrees to variation, the terms of employment are unaffected. Clause 92 would transfer the other staff subject to the same terms and conditions of employment as before (again, unless variations are agreed).
- 2.130 Clause 93 provides that anything that was commenced by WASCT before the Bill comes into operation may be continued by the Trust as if the WASCT Act had not been repealed. As the EM states at page 35:

This alleviates the requirement for the Sports and Entertainment Trust to obtain approval by the Minister and Treasurer under clause 12, which relates to participation in business arrangements, in order to continue these arrangements.

- 2.131 Clauses 94 to 96 would give continuing effect to:

- directions given to WASCT
- acts, matters and things done by WASCT

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<sup>29</sup> Sports and Entertainment Trust Bill 2023, *Explanatory Memorandum*, Legislative Council, p 30.

- contracts, agreements, arrangements and other instruments.
- 2.132 Clause 97 is a Henry VIII clause, in that it would make provision for regulations to be made which would have the effect of amending primary legislation. This diminishes Parliamentary sovereignty because it removes the Parliament's right to debate the amendments. The clause would empower the Governor to make 'transitional regulations' in the event a transitional matter arises that is not already provided for in Part 7.
- 2.133 Henry VIII clauses require particular attention by the Committee because of this diminution of parliamentary sovereignty.
- 2.134 Clause 97 contains the following provision:
- (2) If there is not sufficient provision in this Act for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.
- (3) Transitional regulations may provide that specified provisions of a written law —
- (a) do not apply to or in relation to a specified matter; or
- (b) apply with specified modifications to or in relation to any matter.
- (4) If transitional regulations provide that a specified state of affairs is taken to have existed, or not to have existed, on and after a day that is earlier than publication day [the date of Gazettal of the transitional regulations] but not earlier than the day on which this section comes into operation, the transitional regulations have effect according to their terms.
- (5) If transitional regulations contain a provision referred to in subsection (4), the provision does not operate so as —
- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before publication day; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before publication day.
- 2.135 Henry VIII clauses are generally considered to be repugnant. They remove from the Parliament to the Executive the power to make or repeal statute law, and place power in the hands of the Executive. The term is a reference to King Henry VIII's preference for making laws by proclamation, rather than through the English Parliament, following the making of the *Statute of Proclamations 1539*.
- 2.136 Subclauses (3) and (4) provide that regulations made under this clause can exempt a specified matter from a written law or modify how a written law applies to that matter. Whilst the regulations might be the subject of a motion for disallowance, and in fact may be disallowed, they would remain in effect from the commencement date until the date of disallowance.

*Fundamental legislative principle 14*

- 2.137 That being so, FLP 14 is relevant. It asks:
- 14: Does the Bill allow or authorise the amendment of an Act only by another Act?
- 2.138 The Committee concluded that clause 97 would offend this principle by allowing for the provisions of Acts to be amended by subsidiary legislation.

- 2.139 However, the Committee takes into account the fact that, under clause 97(5), the regulations would not operate to the extent that they prejudicially affect the rights of a person existing prior to publication. Further, they would not impose a liability on a person for anything done or omitted to be done prior to publication.
- 2.140 The Committee also takes into account that an identical clause was included in the *Arts and Culture Trust Bill 2021*, at clause 95. During the committee stage of that Bill, it was recognised that this was a Henry VIII clause, but the clause was passed nevertheless.
- 2.141 The Committee regards this clause as functioning as a mere device to capture anything which has been overlooked, and which may hinder the transition from WASCT to the Trust. To that extent, the inclusion of the clause is justified.

## **FINDING 8**

Although clause 97 of the Sports and Entertainment Trust Bill 2023 offends against a fundamental legislative principle because it authorises the amendment of primary legislation by regulation, it is sufficiently justified.

- 2.142 Savings provisions would be dealt with by clause 98. So, anything that occurs as a result of this Part 7 would not be regarded as:
- a breach of contract, confidence or any other civil wrong
  - a breach of any contractual provisions which prohibits, restricts or regulates the assignment or transfer of assets, rights or liabilities or the disclosure of information
  - giving rise to any right to damages or compensation
  - giving rise to any remedy by a party to an instrument or causing or permitting the termination of any instrument because of a change in the beneficial or legal ownership of any asset, right or liability
  - causing any contract or instrument to be void or unenforceable
  - releasing or allowing the release of any surety.

## **Part 8 - Repeals and consequential amendments**

- 2.143 Part 8 of the Bill deals with repeals and consequential amendments.
- 2.144 Clause 99 repeals the *Western Australian Sports Centre Trust Act 1986* and the *Western Australian Sports Centre Trust (Traffic) Regulations 2017*.
- 2.145 A number of statutes are consequentially amended to either replace references to the WASCT Act with this new one, or to replace references to WASCT with the Trust that would be created by this Act. They are the:
- *Constitution Acts Amendment Act 1899*, Schedule V, Part 3
  - *Financial Management Act 2006*, Schedule 1
  - *Perry Lakes Redevelopment Act 2005*, section 3(1)
  - *Statutory Corporations (Liability of Directors) Act 1996*, Schedule 1.

### 3 Appropriation clause

- 3.1 An appropriation clause is one that, if passed, would authorise the Government to draw funds from the Consolidated Account.
- 3.2 On consideration of Clause 56, it became clear to the Committee that this clause constitutes an appropriation measure.
- 3.3 Clause 56 of the Bill reads:

#### **56. Treasurer's guarantee**

(1) The Treasurer, on the Minister's recommendation, may, in the name and on behalf of the State, guarantee the performance by the Trust, in the State or elsewhere, of any financial obligation of the Trust.

(2) A guarantee must be in the form, and subject to the terms and conditions, determined by the Treasurer.

(3) The due payment of money payable by the Treasurer under a guarantee must be charged to the Consolidated Account, which this subsection appropriates accordingly.

(4) The Treasurer must cause any amounts received or recovered, from the Trust or otherwise, in respect of any payment made by the Treasurer under a guarantee to be credited to the Consolidated Account.

- 3.4 Where the Parliament is dealing with a Bill containing an appropriation clause, then section 46 of the *Constitution Acts Amendment Act 1899* applies. Subsection (1) states:

Bills appropriating revenue or moneys, or imposing taxation, shall not originate in the Legislative Council; but a Bill shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand of payment or appropriation of fees for licences, or fees for registration or other services under the Bill.

- 3.5 The Bill commenced its Parliamentary passage in the Legislative Council on 18 May 2023, which would appear to be in breach of that provision of the *Constitution Acts Amendment Act 1899*.

- 3.6 Section 46(9) of the *Constitution Acts Amendment Act 1899* goes on to state:

Any failure to observe any provision of this section shall not be taken to affect the validity of any Act whether enacted before or after the coming into operation of the *Constitution Acts Amendment Act 1977*.

- 3.7 Essentially, therefore, it is a matter to be agreed between the Houses of Parliament as to whether this Bill should be permitted to progress. However, the Committee predicts that, in the light of previous rulings, the Legislative Assembly might take a restrictive view.
- 3.8 The School Boarding Facilities Legislation Amendment and Repeal Bill 2015 was introduced into the Legislative Council on 22 October 2015.<sup>30</sup> Amongst other things, the Bill proposed the establishment of student residential colleges, which would involve significant financial commitments for the State. The Bill was given its third reading on 18 August 2016, and was presented to the Legislative Assembly for concurrence on the same day.<sup>31</sup>

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<sup>30</sup> Legislative Council, *Debates*, 2015, pp 7824-25.

<sup>31</sup> Legislative Council Message No. 139 - Thursday, 18 August 16.

- 3.9 On 18 October 2016, the Speaker of the Legislative Assembly made a ruling on that Bill. He stated:

I have had an opportunity to consider the provisions of the School Boarding Facilities Legislation Amendment and Repeal Bill 2015 transmitted by the Legislative Council to the Legislative Assembly on 18 August 2016. In my view, the bill appropriates revenue or moneys and, in accordance with section 46 of the *Constitution Acts Amendment Act 1899*, the bill can only originate in the Legislative Assembly, not the Legislative Council.

...

It is the longstanding practice of this house that if a bill has the effect of creating new costs against the consolidated fund or creates a potential or contingent liability for those costs, it is considered to be a bill appropriating revenue or moneys. The house does not require there to be specific words in the bill appropriating revenue before classifying a bill as one that appropriates revenue or moneys.

Turning to the bill, it empowers the Minister for Education to establish student residential colleges. The minister may "acquire, hold, manage, improve, develop and dispose of property or an interest in property" for the purposes of performing the functions conferred on the minister under proposed part 6A that relates to student residential colleges. Given the large cost of acquiring, improving and developing student residential colleges, the bill will have significant financial implications for the state.

I therefore rule that the bill appropriates revenue or moneys, and, as such a bill cannot originate in the Legislative Council by reason of section 46(1) of the *Constitution Acts Amendment Act 1899*, I rule the bill out of order.

I will be sending a message to the Council advising of the same, together with a request that the Council ensures that it strictly observes section 46(1) of the *Constitution Acts Amendment Act 1899* in relation to all future bills.

- 3.10 It is the Committee's view that, in the circumstances, it is likely that this Bill be ruled out of order. The Committee is therefore bound to recommend that the Bill is withdrawn from the consideration of the Legislative Council and re-introduced in the Legislative Assembly.

#### **FINDING 9**

Clause 56 of the Sports and Entertainment Trust Bill 2023 is an appropriation clause. Therefore, section 46 of the *Constitution Acts Amendment Act 1899* applies.

#### **RECOMMENDATION 2**

Due to the appropriation measure in clause 56, the Sports and Entertainment Trust Bill 2023 be withdrawn from the Legislative Council and re-introduced into the Legislative Assembly.



Hon Dr Sally Talbot MLC  
**Chair**



# APPENDIX 1

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## FUNDAMENTAL LEGISLATIVE PRINCIPLES

### **Does the Bill have sufficient regard to the rights and liberties of individuals?**

1. Are rights, freedoms or obligations, dependent on administrative power only if sufficiently defined and subject to appropriate review?
2. Is the Bill consistent with principles of natural justice?
3. Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?
4. Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?
5. Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?
6. Does the Bill provide appropriate protection against self-incrimination?
7. Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?
8. Does the Bill confer immunity from proceeding or prosecution without adequate justification?
9. Does the Bill provide for the compulsory acquisition of property only with fair compensation?
10. Does the Bill have sufficient regard to Aboriginal tradition and Island custom?
11. Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

### **Does the Bill have sufficient regard to the institution of Parliament?**

12. Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?
13. Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?
14. Does the Bill allow or authorise the amendment of an Act only by another Act?
15. Does the Bill affect parliamentary privilege in any manner?
16. In relation to uniform legislation where the interaction between state and federal powers is concerned: Does the scheme provide for the conduct of Commonwealth and State reviews and, if so, are they tabled in State Parliament?

## APPENDIX 2

### MATTERS FOR COMPLETION PRIOR TO COMMENCEMENT

| Project Management   |
|--|
| Comprehensive Communications Plan to be developed  |
| Develop new Policy and Procedures - Business Arrangements (Sponsorships / Profit Share)  |
| Seek Minister's approval for new Policy - Business Arrangements  |
| Review and update the Delegation Instrument  |
| Confirm remuneration arrangements for the Board - Chair, Deputy Chair and member sitting fees  |
| Prepare Transition Plan for the Board regarding the change of composition from 9 to 7 members  |
| Appoint Board, Chair and Deputy Chair roles  |
| Create and register the new Common Seal  |
| Revise policy regarding the banning of patrons   |
| Implement administrative changes to the Board and Committee process  |
| Update Terms & Conditions of Entry at all venues   |
| Update all internal documents that reference the WASCT Act   |
| Update all corporate publications and external facing documents  |
| Register the Sport and Entertainment Trust for FPINES with the Department of Justice   |
| Amend all business name registrations  |
| Amend all domain name registrations  |
| Trading name - Government Gazette as trading name of Sport and Entertainment Trust   |
| Engage the State Solicitor's Office to create draft precedents for the various agreements in place   |
| Deeds of Amendment to be developed for partner and co-managed venues   |
| Engage the State Solicitors Office to create a draft precedent to amend contracts user groups  |
| Contracts with user groups to be amended (in the form of ongoing licences, ongoing booking agreements)   |
| Deeds of amendment to be developed for all tenants   |
| Advice provided to all suppliers   |
| Develop a central register for all contracts   |
| Deeds of amendment to be developed for contracted suppliers.   |
| On commencement day, any money standing to the credit of the WASCT account must be credited to the new account and the former account to be closed |
| Special purpose accounts to be established in Sports and Entertainment Trust name  |
| Employment Contract letters to be provided to all employees  |
| Acting CEO remuneration to be adjusted   |
| Consultation and Stakeholder Engagement  |
| Advise key stakeholders of the change and request updating of records  |
| Advise the Department of Planning, Lands and Heritage regarding land holdings  |
| Provide update to key stakeholders   |
| Request Treasury to delete the Trust from the STCA Regulations once the new Trust comes into operation   |
| Communication with Internal Stakeholders   |
| Roll out Communications plan to internal stakeholders  |
| Development of Regulations - Banning Provision   |
| Consult with key stakeholders and get input into development of the new banning provisions   |
| Develop Communications plan for internal and external stakeholders responsible the new banning provisions  |
| Development of Regulations - Traffic Infringements   |
| Consult with key internal stakeholders re the new traffic infringements  |

## GLOSSARY

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| Term              | Definition  |
|-------------------|---|
| <b>Bill</b>       | Sport and Entertainment Trust Bill 2023                               |
| <b>Committee</b>  | Standing Committee on Legislation                                     |
| <b>Department</b> | Department of Local Government, Sport and Cultural Industries         |
| <b>EM</b>         | Explanatory Memorandum to the Sport and Entertainment Trust Bill 2023 |
| <b>FLP</b>        | Fundamental legislative principle                                     |
| <b>SPA</b>        | Special Purpose Account   |
| <b>SAT</b>        | State Administrative Tribunal   |
| <b>Trust</b>      | Sports and Entertainment Trust  |
| <b>WASCT Act</b>  | <i>Western Australian Sports Centre Trust Act 1986</i>                |
| <b>WASCT</b>      | Western Australian Sports Centre Trust                                |







## **Standing Committee on Legislation**


### **Date first appointed:**

17 August 2005

### **Terms of Reference:**

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

#### **'4. Legislation Committee**

- 4.1 *A Legislation Committee* is established.
  - 4.2 The Committee consists of 5 Members.
  - 4.3 The functions of the Committee are to consider and report on any Bill referred by the Council.
  - 4.4 Unless otherwise ordered, any amendment recommended by the Committee must be consistent with the policy of the Bill.'
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