

Lord Mayor's Charitable Foundation Act 2017

No. of 2017

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Management of the Lord Mayor's Charitable Fund.

- (4) It is expedient that the **Lord Mayor's Charitable Fund Act 1996** is repealed and new provision should be made for the governance, management, powers and object of the body corporate that administers the Fund and for the administration of the Fund.

The Parliament of Victoria therefore enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

- (a) to provide for the governance, management, powers and object of the body corporate that administers the Lord Mayor's Charitable Fund; and
- (b) to provide for the administration of that Fund and other funds; and
- (c) to repeal the **Lord Mayor's Charitable Fund Act 1996**.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 October 2017, it comes into operation on that day.

3 Definitions

In this Act—

Board means the Board of the Foundation under Part 3;

Chair means Chair of the Board;

chief executive officer means the person for the time being holding the office of chief executive officer of the Foundation appointed under section 29(1)(a);

committee means a committee of the Board established under section 28;

Deputy Chair means Deputy Chair of the Board;

Foundation means the Lord Mayor's Charitable Foundation continued under section 4;

Fund means the Lord Mayor's Charitable Fund continued under section 25;

Lord Mayor means the Lord Mayor of the City of Melbourne;

member means member of the Board;

metropolitan area means the metropolitan municipal districts within the meaning of the **Public Holidays Act 1993**;

Nominations Committee means the committee established by the Board under section 13;

organisation includes a body corporate, a body politic, an unincorporated association or body of persons or a trust;

rules of the Board mean the rules made under section 31;

special resolution means a resolution of the Board passed by a majority of at least 3 quarters of those members present and voting.

Part 2—Lord Mayor's Charitable Foundation

4 Lord Mayor's Charitable Foundation

- (1) Subject to subsection (2), the body corporate called the "Board of Management of the Lord Mayor's Charitable Fund" established under Part 3 of the **Lord Mayor's Charitable Fund Act 1996** as in force immediately before its repeal continues in existence under this Act as a body corporate by the name "Lord Mayor's Charitable Foundation".
- (2) The Foundation—
 - (a) continues to have perpetual succession; and
 - (b) ceases—
 - (i) to be constituted as set out in section 11 of the **Lord Mayor's Charitable Fund Act 1996** as in force immediately before its repeal; and
 - (ii) to have a common seal; and
 - (c) has an official seal; and
 - (d) may sue and be sued in its corporate name given under subsection (1); and
 - (e) may acquire, hold and dispose of real and personal property; and
 - (f) may do and suffer all acts and things that a body corporate may, by law, do and suffer; and
 - (g) is a not-for-profit body.

5 Object of the Foundation

The object of the Foundation is to respond to social, economic, cultural, educational, environmental and other charitable needs of the community for the public benefit.

6 Functions of the Foundation

- (1) The Foundation has the function of holding and administering the Fund and administering other charitable trusts.
 - (2) Without limiting subsection (1), the functions of the Foundation include the following—
 - (a) to manage and administer charitable trusts and funds for charitable purposes, including the Fund;
 - (b) to coordinate fundraising and make grants to support the object of the Foundation;
 - (c) to educate and engage the community and donors in understanding and addressing the object of the Foundation;
 - (d) to undertake research into areas of need and opportunity within the community in relation to the object of the Foundation;
 - (e) to form or participate in the formation of partnerships and to collaborate or enter into joint ventures or joint undertakings with other bodies, including with other philanthropic organisations, not-for-profit organisations, businesses, research institutions and governments to address the areas to which the object of the Foundation relates;
 - (f) to undertake any other lawful thing necessary, desirable or incidental to the attainment of the object of the Foundation;
 - (g) any other function given to the Foundation by or under this Act.
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7 Powers of the Foundation

- (1) The Foundation has the power to do all things necessary or convenient to enable it to perform its functions.
- (2) Without limiting subsection (1), the Foundation may—
 - (a) take, purchase, hold, lease, mortgage, sell and dispose of or otherwise deal with, real and personal property; and
 - (b) invest money in the Fund in any manner in which money may be invested under the **Trustee Act 1958**; and
 - (c) invest money in a trust fund of which it is trustee (other than the Fund) in accordance with the terms of the trust; and
 - (d) invest money in the Fund or in any other trust which it administers, or any part of that money or those funds, as one or more common funds.

8 Application of section 7K of the Charities Act 1978

- (1) Without limiting any other power of the Foundation, in respect of any charitable trust of which it is the trustee (including the Fund), the Foundation has the powers of a trustee of a charitable trust conferred by section 7K of the **Charities Act 1978**.
- (2) Subsection (1) applies whether or not a declaration referred to in section 7K(3) of the **Charities Act 1978** is in force in respect of the Foundation.

9 Official seal and its use

- (1) The official seal of the Foundation—
 - (a) must be kept as directed by the Foundation; and
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- (b) must not be used except as authorised by the Foundation.
- (2) All courts, tribunals and other persons acting judicially—
 - (a) must take judicial notice of the seal of the Foundation on a document; and
 - (b) until the contrary is proved, must presume that the seal was duly affixed.
- (3) A document which is required to be authenticated by the Foundation may be sufficiently authenticated without the official seal of the Foundation if the document is signed—
 - (a) by 2 members of the Board; or
 - (b) by any other person who has written authorisation from the Foundation to authenticate that document or class of document.

10 Annual meetings of the Foundation

- (1) An annual meeting of the Foundation must be held as soon as practicable after 30 June each year on a date fixed by the Board.
 - (2) The agenda for the annual meeting of the Foundation must include—
 - (a) consideration of the financial statements of the Foundation and the annual report on the affairs of the Foundation, including the Fund, for the 12 months to the 30 June last preceding the meeting; and
 - (b) consideration of the financial statements of the Fund for the 12 months to the 30 June last preceding the meeting; and
 - (c) consideration of the auditor's report on the financial statements of the Foundation; and
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- (d) consideration of the auditor's report on the financial statements of the Fund; and
 - (e) details of the changes to the membership of the Board since the Foundation's last annual meeting.
- (3) The agenda for the annual meeting of the Foundation may include any other matters the Board determines are appropriate for consideration at the annual meeting.
- (4) An annual meeting of the Foundation is to be public but only a member may vote at the annual meeting.

Part 3—The Board of the Foundation

11 Board

- (1) The Foundation has a Board which is the governing body of the Foundation.
- (2) The Board—
 - (a) is responsible for the management of the affairs of the Foundation; and
 - (b) may exercise the powers of the Foundation.

12 Membership

- (1) Subject to section 35, the Board consists of not less than 3 but not more than 9 members appointed by the Board.

Note

Section 35 provides for the constitution of the initial Board.

- (2) In making appointments to the Board, the Board must take into account—
 - (a) that the composition of the Board includes members with skills, expertise or experience in any area relevant to the Foundation; and
 - (b) any recommendations of the Nominations Committee.
 - (3) Subject to subsection (4), the Board must not consist of less than 5 members for a period that is greater than 90 days.
 - (4) If the membership of the Board falls below 3 members, the remaining member or members must appoint sufficient members to the Board so that the Board consists of at least 3 members.
 - (5) Before filling a vacancy in the membership of the Board, the Foundation must advertise the vacancy by any means that the Foundation considers appropriate.
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13 Nominations Committee

- (1) The Board must establish a Nominations Committee and determine its terms of reference.
- (2) The Nominations Committee consists of—
 - (a) the Lord Mayor, who is also the chair of the Nominations Committee; and
 - (b) such other persons as the Board appoints to the Nominations Committee from time to time, provided that the majority of persons on the Nominations Committee are not members of the Board.
- (3) The functions of the Nominations Committee are—
 - (a) to advise the Board on the appointment of members under section 12; and
 - (b) to provide recommendations to the Board on suitable candidates for appointment as members.

14 Appointment of members where all offices of member of the Board are vacant

If all the offices of member of the Board are vacant, the Lord Mayor must appoint sufficient members to the Board within 14 days of all offices being vacant so that the Board consists of 3 members.

15 Term of office

- (1) A member holds office for the term (not exceeding 3 years) that is specified in the instrument of appointment.
 - (2) A member is eligible for reappointment at the expiry of the term of the member's appointment but may not hold office for more than 9 consecutive years.
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- (3) The office of member becomes vacant if the member—
 - (a) resigns in accordance with subsection (4); or
 - (b) is removed from office in accordance with subsection (5); or
 - (c) becomes an insolvent under administration; or
 - (d) fails to attend 3 consecutive meetings of the Board without the approval of the Board; or
 - (e) is found guilty of an indictable offence; or
 - (f) is disqualified from managing a corporation under a law of the Commonwealth, Victoria or another State or a Territory.
- (4) A person may resign from the office of member by written notice delivered to—
 - (a) in the case of a member other than the Chair—the Chair; or
 - (b) in the case of the Chair—the chief executive officer.
- (5) The Board may remove a member from office if the Board determines that the member is no longer capable physically or mentally of satisfactorily carrying out the duties of a member.

16 Chair and Deputy Chair

- (1) The Board must elect a member as Chair—
 - (a) at the first ordinary meeting of the Board after each annual meeting of the Foundation; or
 - (b) at the first ordinary meeting of the Board after a vacancy in the office of Chair arises.
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- (2) The Board must elect a member as Deputy Chair—
 - (a) at the first ordinary meeting of the Board after each annual meeting of the Foundation; or
 - (b) at the first ordinary meeting of the Board after a vacancy in the office of Deputy Chair arises.
 - (3) The Board must not elect the same member—
 - (a) as Chair for more than 3 consecutive years; or
 - (b) as Deputy Chair for more than 3 consecutive years.
 - (4) The office of Chair becomes vacant—
 - (a) at the beginning of the first ordinary meeting of the Board after the annual meeting of the Foundation; or
 - (b) on the resignation of the Chair from the office of Chair by written notice delivered to the Board; or
 - (c) if the Chair ceases to be a member of the Board.
 - (5) The office of Deputy Chair becomes vacant—
 - (a) at the beginning of the first ordinary meeting of the Board after the annual meeting of the Foundation; or
 - (b) on the resignation of the Deputy Chair from the office of Deputy Chair by written notice delivered to the Board; or
 - (c) if the Deputy Chair ceases to be a member of the Board.
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17 Patrons

- (1) The Lord Mayor is the honorary Founding Patron of the Foundation.
- (2) The Board may appoint one or more persons as honorary Patrons of the Foundation.
- (3) A Patron of the Foundation is entitled—
 - (a) to receive notice of Board meetings and copies of documents relevant to Board meetings; and
 - (b) to attend meetings of the Board.
- (4) A Patron of the Foundation is not entitled to vote at a meeting of the Board.
- (5) A Patron of the Foundation is not eligible for appointment as a member.

18 Ordinary meetings

- (1) An ordinary meeting of the Board must be held at least every 3 months.
- (2) The dates and times of ordinary meetings of the Board must be fixed by resolution of the Board or, if no dates and times are fixed, by the Chair.

19 Special meetings

- (1) The Chair or the Deputy Chair may call a special meeting of the Board at any time.
 - (2) The chief executive officer must call a special meeting of the Board at the written request of at least one third of the members of the Board.
 - (3) A special meeting of the Board must not be held unless at least 7 days' notice of the meeting has been given to each member.
 - (4) If all members consent in writing, a special meeting may be held with less than 7 days' notice.
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- (5) Notice of a special meeting must—
 - (a) be in writing; and
 - (b) be given to each member in accordance with the rules of the Board; and
 - (c) specify the time and place of the meeting and the reason for it.
- (6) A special meeting must deal only with business stated in the notice.

20 Chair or Deputy Chair to preside at Board meetings

- (1) The Chair, or in the Chair's absence, the Deputy Chair, is to preside at a meeting of the Board.
- (2) If neither the Chair nor the Deputy Chair is present at a meeting of the Board, the members present must elect one of their number to preside at the meeting.

21 Quorum

The quorum for a meeting of the Board is the greater of 3 members of the Board or a majority of the members of the Board for the time being.

22 Voting

Voting at any meeting of the Board is to be in accordance with the rules of the Board.

23 Records

The Board must keep proper records of its proceedings and affairs.

24 Delegation

The Board, by special resolution, may delegate to a committee any of its functions or powers except—

- (a) the power to make rules of the Board; and
 - (b) this power of delegation.
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Part 4—The Fund

25 Continuation of the Fund

The Lord Mayor's Charitable Fund continued under Part 2 of the **Lord Mayor's Charitable Fund Act 1996** continues in existence under this Act as a fund for charitable purposes.

26 Payment of money into and out of Fund

- (1) There must be paid into the Fund—
 - (a) all money given to the Fund; and
 - (b) any income from any investment of money credited to the Fund and the proceeds of the sale of any such investment; and
 - (c) any income from property held by the Foundation as trustee of the Fund and the proceeds of the sale of any such property.
 - (2) There must be paid out of the Fund—
 - (a) money for the benefit of a hospital or other charitable organisation established or carried on within Victoria that is a deductible gift recipient within the meaning of the Income Tax Assessment Act 1997 of the Commonwealth; and
 - (b) money paid out in accordance with section 27; and
 - (c) the cost of administering and managing the Fund; and
 - (d) any other costs and expenses incurred by the Foundation in performing its functions or exercising its powers under this Act in relation to the Fund.
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27 Application of money in special circumstances

- (1) The Board may apply to the Minister for approval for the application of money from the Fund for a hospital or other charitable organisation that is a deductible gift recipient within the meaning of the Income Tax Assessment Act 1997 of the Commonwealth that is not established or carried on within Victoria.
- (2) If the Minister approves the application, the Board may apply money from the Fund in the manner specified in the approval to that hospital or charitable organisation until the Minister revokes the approval.
- (3) The approval of the Minister under this section must be in writing.

Part 5—General

28 Committees

- (1) The Board may—
 - (a) establish one or more committees to perform any function delegated to the committee by the Board; and
 - (b) appoint the members of any committee; and
 - (c) nominate the chair of any committee.
- (2) A committee must keep proper records of its proceedings and affairs.

29 Staff

- (1) The Foundation—
 - (a) must appoint a chief executive officer of the Foundation; and
 - (b) may appoint or employ other persons as it thinks fit.
- (2) The Foundation may determine the terms and conditions of service of persons appointed or employed by it, including remuneration and termination of service.
- (3) A person appointed or employed by the Foundation must not accept a commission for money collected or received on behalf of the Fund.

30 Annual report

The Foundation may publish and circulate the annual report of the affairs of the Foundation in any manner that it thinks fit.

31 Rules of the Board

- (1) The Board, by special resolution, may make rules for or with respect to the procedure of the Foundation and the Board, including, but not limited to, the management and administration of the Foundation, the Board and the Fund.
- (2) The rules of the Board must not be inconsistent with this Act.

Part 6—Repeal and transitional

Division 1—Repeal

32 Repeal of the Lord Mayor's Charitable Fund Act 1996

The **Lord Mayor's Charitable Fund Act 1996** is repealed.

Division 2—Transitional provisions

33 Foundation succeeds Board of Management of the Lord Mayor's Charitable Fund

- (1) On and after the commencement of this Act, the Foundation is taken to be the same body as the Board of Management of the Lord Mayor's Charitable Fund as established under Part 3 of the **Lord Mayor's Charitable Fund Act 1996** immediately before its repeal, despite the changes to its constitution and name by this Act and no decision, act, matter or thing is affected by those changes.
- (2) On and after the commencement of this Act, any decision, act, matter or thing done by or in relation to the Board of Management before that commencement—
 - (a) has effect as if it had been done by or in relation to the Foundation; and
 - (b) continues to have the same effect on and after that commencement as it had before that commencement.

34 Executive committee abolished

- (1) On the commencement of this Act, the executive committee established under section 18 of the **Lord Mayor's Charitable Fund Act 1996** as in force immediately before its repeal is abolished
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and its members go out of office as members of the executive committee.

- (2) Nothing in subsection (1) affects the continued service as a member of the Board of any member of the Board who was an executive committee member.

35 Transfer of membership of Board

- (1) On the commencement of this Act, each person who immediately before that commencement was a member of the Board of Management of the Lord Mayor's Charitable Fund as established under Part 3 of the **Lord Mayor's Charitable Fund Act 1996** immediately before its repeal becomes a member of the Board as if appointed under section 12.
- (2) A person referred to in subsection (1)—
- (a) holds office as a member of the Board for the balance of the term of the person's appointment to the former Board; and
 - (b) is eligible for reappointment at the expiry of the person's term.
- (3) For the purposes of sections 15(2) and 16(3), the number of consecutive years in office includes consecutive years that commenced before the commencement of this Act.

36 Transfer of patrons

On the commencement of this Act, a person who was a Patron of the Fund (other than the honorary Patron-in-Chief of the Fund) is taken to be a Patron of the Foundation.

37 Staff

- (1) On and after the commencement of this Act, the chief executive officer and any other person who immediately before that commencement was appointed or employed under section 26 of the **Lord Mayor's Charitable Fund Act 1996** as in force immediately before its repeal is taken to be, as the case requires—
 - (a) the chief executive officer appointed under section 29(1)(a); or
 - (b) an employee of the Foundation appointed or employed under section 29(1)(b).
- (2) A person referred to in subsection (1)—
 - (a) holds a position that is equivalent to the position held immediately before the commencement of this Act; and
 - (b) holds the position on the same terms and conditions as those on which the person was employed immediately before that commencement and with the benefit of all rights accrued in respect of the position.

38 Construction of references

Unless inconsistent with the context or subject matter, in any Act (other than this Act), subordinate instrument or other document, in relation to any period on or after the commencement of this Act—

- (a) a reference to the Board of Management of the Lord Mayor's Charitable Fund as established under Part 3 of the **Lord Mayor's Charitable Fund Act 1996** immediately before its repeal in its capacity as a body corporate is a reference to the Foundation; and
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- (b) a reference to that Board of Management in its capacity as the administrator of the Fund, is a reference to the Board within the meaning of this Act; and
- (c) a reference to the fund known as the "Lord Mayor's Fund" or the "Lord Mayor's Fund for Metropolitan Hospitals and Charities" or to the Fund within the meaning of the **Lord Mayor's Charitable Fund Act 1996** is taken to be a reference to the Fund within the meaning of this Act.

39 Construction of certain instruments

- (1) An instrument that provides for the making of a contribution to the Fund (whether by gift, settlement, bequest, devise, subscription or any other means) for the benefit of a charitable organisation established or carried on within the metropolitan area has effect as if the instrument provides for the making of a contribution for the benefit of a charitable organisation established or carried on within Victoria.
- (2) Subsection (1) applies—
 - (a) whether the instrument is made before, on or after the commencement of this Act; and
 - (b) whether the donor's intention that the contribution benefit a charitable organisation established or carried on within the metropolitan area is express or implied.
- (3) Nothing done under this section gives rise to any cause or right of action before any court or tribunal.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

[†] *Minister's second reading speech—*

Legislative Assembly:

Legislative Council:

The long title for the Bill for this Act was "A Bill for an Act to repeal the **Lord Mayor's Charitable Fund Act 1996** and re-enact with amendments the law relating to the Lord Mayor's Charitable Fund and for other purposes."