



*Tonga*

# **HEALTH PROMOTION FOUNDATION ACT**

**Chapter 28.11  
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# HEALTH PROMOTION FOUNDATION ACT

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# HEALTH PROMOTION FOUNDATION ACT

## AN ACT TO PROVIDE FOR THE ESTABLISHMENT AND ADMINISTRATION OF A HEALTH PROMOTION FOUNDATION TO PROMOTE HEALTHY LIFESTYLES FOR THE PEOPLE OF TONGA<sup>1</sup>

Commencement [<sup>2</sup>]

### PART 1 - PRELIMINARY

#### 1 Short title, commencement

- (1) This Act may be cited as the Health Promotion Foundation Act 2007.
- (2) This Act shall come into force on a day to be proclaimed by His Majesty in Council.

#### 2 Interpretation

In this Act, unless the contrary intention appears —

“**Board**” means the governing body of the Foundation established by section 7;

“**Chairman**” means the person appointed by the Minister of Health to head the Board;

“**financial year**” means the period of 12 months ending with the 30<sup>th</sup> day of June in any year;

“**Foundation**” means the Health Promotion Foundation established by section 3;

“**Fund**” means the Tongan Health Promotion Fund established by section 15;

“**Minister**” means the Minister of Health;

“**National Non-communicable Disease Committee for Tonga**” means the National Non-communicable Disease Committee for Tonga established under section 6(2) of the Public Health Act.<sup>3</sup>

## **PART 2 - ESTABLISHMENT OF THE HEALTH PROMOTION FOUNDATION**

### **3 Establishment of the Foundation**

- (1) A Health Promotion Foundation is established to administer the Tongan Health Promotion Fund in accordance with this Act.
- (2) The general direction and supervision of the Foundation shall be vested in the Board.

### **4 Status of the Foundation**

- (1) The Foundation is an autonomous body.
- (2) The Foundation is a body corporate with perpetual succession and a common seal and shall have all the rights and duties of a body corporate.
- (3) The Foundation may sue and be sued in its corporate name and may enter into contracts and may acquire, purchase or lease property and may convey, assign, transfer, mortgage or otherwise dispose of any real or personal property or any interest vested in the Foundation upon such terms as the Board determines to be appropriate in the circumstances of each transaction.
- (4) For the avoidance of any doubt, the Public Enterprises Act does not apply to the Foundation.

### **5 Functions of the Foundation**

The functions of the Foundation are to —

- (a) act as the guardian of the Fund;
- (b) make grants from the Fund for activities, facilities, projects or research programmes related to the promotion of good health, safety and the prevention and early detection of diseases;

- (c) keep statistics and other records relating to the achievements of the Foundation;
- (d) provide advice on matters referred by the Minister to the Foundation and matters which are relevant to the operation of the Foundation;
- (e) consult regularly with relevant Government Departments and agencies and to liaise with persons and organisations affected by or who may have an interest in the operation of the Foundation;
- (f) seek and secure funds for the Foundation; and
- (g) perform such other functions as are conferred on the Foundation by this Act or any other Act.

## **PART 3 - ADMINISTRATION OF THE FOUNDATION**

### **6 Board**

- (1) The Board of the Foundation is hereby established.
- (2) The Board is the governing body of the Foundation with the authority, in the Foundation's name, to exercise the powers and perform the functions of the Foundation.

### **7 Accountability of members**

Members of the Board are accountable to the Minister for the performance of their duties as Board members.

### **8 Board appointments**

- (1) The Board shall consist of —
  - (a) two persons with expertise in health and illness prevention;
  - (b) one person with expertise in business, management or law;
  - (c) one person who represents the interests of churches or community groups; and
  - (d) one member of the Legislative Assembly.
- (2) The members of the Board are to be appointed by an appointment committee comprising the Minister and the chairmen of the National Non-communicable Disease Committee for Tonga and its 3 sub-committees.
- (3) The appointment committee may only appoint persons to the Board who have the appropriate knowledge, skills, and experience to assist the Foundation to efficiently perform its functions.

- (4) The Minister shall appoint one member to be the Chairman of the Board.

## 9 Term of office

- (1) A Board member appointed under section 8 holds office for a period of 3 years, and is eligible for reappointment.
- (2) A Board member continues in office despite the expiry of his term of office until —
  - (a) the member is reappointed; or
  - (b) the member's successor is appointed.

## 10 Removal and resignation

- (1) The Minister may remove any Board member for just cause.
- (2) The removal must be made by written notice to the member, with a copy to the Foundation.
- (3) The notice shall —
  - (a) state the date on which the removal takes effect which shall not be earlier than the date on which the notice is received; and
  - (b) state the reason for the removal.
- (4) A Board member may resign by writing to the Minister.

## 11 Validity of acts

An act or decision of the Board is not invalid by reason only —

- (a) of a vacancy in the office of a member; or
- (b) of any defect or irregularity in or in connection with the appointment of a member or meeting procedures.

## 12 Board duties

- (1) A Board member when exercising his powers or performing his duties, shall act —
  - (a) in good faith;
  - (b) with reasonable care, diligence, and skill; and
  - (c) with honesty and integrity.
- (2) The Board shall —
  - (a) ensure that the Foundation acts in a manner consistent with its functions;

- (b) not act in a manner that contravenes this Act or any other Act;
- (c) ensure that the activities of the Foundation, are conducted efficiently and effectively and in a manner consistent with the spirit of service to the public in Tonga; and
- (d) endeavour to ensure that the Foundation operates in a financially responsible manner.

### **13 Board procedures**

- (1) The Board may regulate its own procedures and shall have the power to make rules for the conduct of its proceedings.
- (2) Board meetings shall be convened at least once a month to consider the Foundation's performance and other matters within the responsibility of the Board.
- (3) The Chairman has the right to convene meetings at any time as required to carry out the Foundation's duties expeditiously.
- (4) The Chairman shall ensure that members are given notice of the intention to hold a meeting.
- (5) Any 3 Board members present at a meeting shall constitute a quorum.
- (6) Resolutions of the Board shall be carried by majority voting and in the case of an equal number of votes, the Chairman shall have a deciding vote.
- (7) In the absence of the Chairman at a meeting of the Board, the members present shall appoint an Acting Chairman for that meeting.
- (8) A Board member shall not communicate to any person or any organisation any facts or information of any kind acquired by him as a member of the Board except as may be required for the due discharge of his duties as a Board member.
- (9) A Board member having directly or indirectly by himself, his spouse or children, or any other person, any interest in agenda items or subjects to be discussed by the Board or in committees of the Board of which he is a member, shall disclose to the Board or the committee, as the case may be, the fact of his interest and the nature thereof as soon as practicable after the relevant fact has come to his knowledge and shall absent himself with the permission of the Chairman when such agenda items come under consideration.

### **14 Chief executive officer and staff**

- (1) There shall be a chief executive officer of the Foundation, who shall be appointed by the Board with the approval of the Minister.

- (2) The chief executive officer is responsible for managing the Foundation and implementing the decisions of the Board.
- (3) The Board may employ such staff as are necessary for the effective and efficient administration of the Foundation.

## PART 4 - FINANCIAL MATTERS

### 15 Fund

- (1) There shall be established a fund called the Tongan Health Promotion Fund which shall be administered by the Foundation.
- (2) All money received by the Foundation must be paid into the Fund.
- (3) The Fund's monies may be derived from —
  - (a) money appropriated by the Legislative Assembly for that purpose;
  - (b) appropriate revenue measures as agreed by the Minister of Finance and the Minister of Health from time to time;
  - (c) bequests, donations or grants made to the Fund; or
  - (d) any other income or payment due to the Fund.
- (4) The Fund may be expended for —
  - (a) the performance of the Foundation's functions;
  - (b) meeting expenses, costs and expenditure properly incurred or accepted by the Board in the exercise of its powers and duties; or
  - (c) meeting any expenses properly incurred in the administration of this Act and the Fund.
- (5) No expenditure may be made from the Fund unless the expenditure is within the budget set under section 18.

### 16 Bank accounts

- (1) The Foundation shall establish and maintain such bank account or accounts, as determined by the Board, for the purposes of the financial management of the Fund.
- (2) The bank accounts of the Foundation shall be maintained at the National Reserve Bank of Tonga, or other bank approved by the Minister of Finance.
- (3) The Foundation's account or accounts signatories shall be such persons as may be authorised by the Board from time to time for that purpose.

**17 Exemption from tax**

No tax, duty, levy or government impost shall be payable by the Foundation on Fund monies.

**18 Budget**

- (1) The Foundation shall, before the first of June in each year, submit to the Minister for approval a budget for the next financial year, of money to be paid into the Fund and money to be paid out of the Fund.
- (2) The Minister may, after consultation with the Minister of Finance approve a budget as submitted to the Minister, or approve it with such alterations as the Minister determines.
- (3) The Minister may, if requested to do so by the Foundation, at any time, approve alterations to the budget.

**19 Manner of operation**

The Foundation shall operate in a financially responsible manner and, for this purpose, shall —

- (a) endeavour to maintain its long-term financial viability;
- (b) endeavour to cover all its annual costs, including the cost of capital, from its annual income;
- (c) endeavour to be a successful going concern; and
- (d) prudently manage its assets and liabilities.

**20 Auditor**

The Foundation shall engage an auditor, qualified under section 208 of the Companies Act, to audit its financial statements and the financial statements relating to the Fund.

## **PART 5 - REPORTING**

**21 Statement of corporate intent**

- (1) The Chairman of the Board shall provide the Minister with a draft statement of corporate intent not later than one month before the commencement of each financial year.
- (2) Each statement of corporate intent shall specify in respect of the next financial year —

- (a) the objectives of the Foundation;
  - (b) the nature and scope of the activities to be undertaken;
  - (c) the performance targets against which the Foundation can be judged in relation to its objectives;
  - (d) a statement of financial position;
  - (e) a statement of anticipated borrowing; and
  - (f) any other matters as are agreed between the Minister and the Board.
- (3) The Board shall consider any comments made on the draft statement of corporate intent made by the Minister no later than 14 days before the commencement of the financial year or such later date that the Minister determines.
- (4) The Foundation's statement of corporate intent may be modified at any time by the Board provided —
- (a) that the Minister has received written notice of the proposed modification; and
  - (b) the Minister's comments on the proposed alteration have been conveyed to the Board within one month of the date from which the notice was given.

## 22 Annual report and accounts

- (1) The Chairman shall provide the Minister with a report of the operations of the Foundation within 2 months after the end of the first half of each financial year.
- (2) The report required under subsection (1) shall include the information to be provided in the statement of corporate intent.
- (3) The Chairman shall provide to the Minister —
  - (a) the annual report of the operations of the Foundation and the consolidated financial statements for that financial year consisting of statements of financial position, financial performance, changes in financial position, and any other necessary statements, within 3 months of the end of each financial year; and
  - (b) an audit report on the financial statements within 6 months of the end of the financial year.
- (4) The annual report under subsection (3)(a) shall contain such information as is necessary to enable an informed assessment of the operations of the Foundation including a comparison of the performance of the Foundation with the relevant statement of corporate intent.

**23 Tabling of reports<sup>4</sup>**

The Minister shall table the annual report in Cabinet and the Legislative Assembly.

**PART 6 - MISCELLANEOUS****24 Charitable purpose**

Any bequest, donation or grant made to the Foundation or the Fund shall be deemed to have been made for a charitable purpose.

**25 Regulations**

The Minister may, with the consent of the Cabinet, make regulations which are necessary for the carrying out of the purposes of this Act.

## ENDNOTES

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<sup>1</sup> **Act 2 of 2007**, See GS 37/2008

<sup>2</sup> No commencement proclamation found at the date of the preparation of this revised edition

<sup>3</sup> Cap 28.30

<sup>4</sup> Amended by Act 42 of 2010