

TRANSFER OF INCORPORATION (HBF AND HIF) BILL 2009

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Norman Moore (Leader of the House)**, read a first time.

Second Reading

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [10.12 pm]: I move —

That the bill be now read a second time.

The bill the government is introducing today is the Transfer of Incorporation (HBF and HIF) Bill 2009. The purpose of the bill is to facilitate the transfer of the incorporation of HBF Health Funds Inc and Health Insurance Fund of WA Inc from the Western Australian Associations Incorporation Act 1987 to the commonwealth Corporations Act 2001.

The transfer of the incorporation of HBF and HIF is necessary for the two organisations to remain compliant with the requirements of the commonwealth Private Health Insurance Act 2007, which came into effect on 1 April 2007. This act requires that all providers of health insurance be registered under that act as either for profit or not-for-profit insurers. HBF and HIF are both currently registered as not-for-profit insurers. In 2008 the Private Health Insurance Act was amended to provide that all private health insurers must be registered as companies within the meaning of the Corporations Act by 1 January 2010. The purpose of this amendment was to make certain that all insurers will be subject to similar accountability standards and governance requirements, thus improving equity in the regulation of the industry. Under the Corporations Act, the insurers will be subject to a more stringent regulatory regime. HBF and HIF are currently incorporated associations under this state's Associations Incorporation Act. In order to avoid cancellation of their registration as private health insurers, HBF and HIF must become registered companies under the Corporations Act before 1 January 2010.

Both HBF and HIF have strong roots in Western Australia. HBF was established in 1941 and is the largest not-for-profit provider of health insurance in Western Australia, with more than 900 000 policyholders. HIF was established in 1954 as a health fund for certain employees of Western Australian Government Railways. It is now an open access fund and the third-largest not-for-profit provider of health insurance in Western Australia, with approximately 50 000 policyholders. Together HBF and HIF provide private health insurance to more than 60 per cent of the market in Western Australia, with more than 95 per cent of the policyholders from each organisation being Western Australian. It is therefore essential that HBF and HIF maintain their registration as private health insurers and are able to continue providing health insurance to Western Australians.

There are two ways for HBF and HIF to become registered companies and thereby continue to provide private health insurance. At present the Associations Incorporation Act does not authorise the transfer of the incorporation of an association to registration as a company under the Corporations Act. Proposed amendments to the Associations Incorporation Act are intended to permit such a transfer administratively; however, these arrangements have not yet been finalised. It is unlikely that the proposed amendments will be developed and passed in time for HBF and HIF to transfer their incorporation prior to 1 January 2010. Accordingly, the transfer of incorporation of HBF and HIF cannot be done administratively at this time.

It would be possible for HBF and HIF to transfer their health benefit funds to a newly incorporated company limited by guarantee. Section 34 of the Associations Incorporation Act will facilitate this transfer, although there are additional steps to be taken to achieve this outcome. These further steps include: establishing a new company under the Corporations Act; making an application to the Private Health Insurance Administration Council for registration of the new company as a private health insurer, although the council has advised that such an application would need to be lodged before 1 September 2009 in order to be considered prior to the 1 January 2010 deadline; seeking an order from the Commissioner for Consumer Protection under section 34; and obtaining any necessary taxation rulings.

Although this option is available, there is concern that there will not be sufficient time to obtain the necessary rulings from third parties to enable HBF and HIF to comply with the deadline. As a result, the government has chosen to assist HBF and HIF to use another mechanism to transfer their incorporation legislatively. Section 5H of the Corporations Act provides inter alia that a body is taken to be registered under the act as a corporation if a law of the state provides that the body is a deemed registration company and specifies the registration day, the type of company that the body is to be registered as, and the company's proposed name. Section 5H also provides that certain notices and other documents must be lodged with the Australian Securities and Investments Commission prior to the registration day. Section 5H of the Corporations Act has been used at various times in New South Wales to provide that the Cancer Council, the FSS Trustee Corporation and Westpac Banking Corporation are deemed registration companies.

This bill will deem HBF and HIF to be registration companies under section 5H of the Corporations Act. It will facilitate HBF and HIF changing from incorporated associations to public companies limited by guarantee and remaining registered as insurers under the Private Health Insurance Act. HBF and HIF have each advised that they will remain registered as not-for-profit health insurers under that act.

HBF and HIF have also advised that there will be no impact on the rights of policyholders in relation to their health insurance as a result of the changes in incorporation and that there will be no impact on health insurance premiums or benefit payments. The changeover from an incorporated association to a registered company will involve some changes to the governance arrangements of each association.

Currently, HBF policyholders are not automatically members of HBF Health Funds Inc. However, certain policyholders have the right to nominate to become members of the incorporated association and to vote for members of the association, known as the council. The proposed corporate structure for HBF as a company limited by guarantee is similar to HBF's current constitution as an incorporated association, with the same number of members or councillors, who will be required to provide a guarantee in relation to the liabilities of the company. Policyholders will have the same voting rights.

HIF's policyholders automatically are members of the association, the Health Insurance Fund of WA (Inc). The proposed structure for HIF as a company limited by guarantee will involve some change to the rights of policyholders as members of the organisation. Under the proposed structure, policyholders will be entitled to vote for members of the company. They will also be entitled to attend meetings of company members and be heard, but will not have the right to vote at those meetings. Only the policyholders who are company members will have the right to vote at meetings and will be required to provide a guarantee in relation to the liabilities of the company. HIF has advised that this change to the rights of members is necessary to make the structure of a company limited by guarantee workable.

I now turn to the key provisions of the bill. The Transfer of Incorporation (HBF and HIF) Bill 2009 provides that HBF and HIF are to be deemed registration companies for the purposes of section 5H of the Corporations Act; HBF and HIF are to be registered as companies limited by guarantee; the proposed names of the companies are to be HBF Health Limited and Health Insurance Fund of WA Limited; and the registration day is to be a date specified by the Minister for Commerce by order published in the *Government Gazette*. The bill also provides that the minister will make an order specifying the registration day for HBF or HIF only if the minister is satisfied that each insurer has complied with section 5H(2) and (3) of the Corporations Act and the minister has approved the proposed constitution provided by the insurer. In addition, the bill provides that the HBF and HIF companies are to be taken to be a continuation of the same legal entities as the respective associations. The registration of HBF and HIF as companies is not to affect any rights, obligations, liabilities or legal proceedings.

The bill provides a cost-effective and certain means of enabling HBF and HIF to become incorporated under the Corporations Act and comply with the requirements of the commonwealth private health insurance legislation by 1 January 2010. The bill will enable HBF and HIF to maintain their registration as private health insurers. This will mean that Western Australians will continue to have access to health insurance provided by these two insurers. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.