

**Transfer of Incorporation (HBF and HIF)
Bill 2009**

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Western Australia

LEGISLATIVE ASSEMBLY

**Transfer of Incorporation (HBF and HIF)
Bill 2009**

A Bill for

An Act to provide for the registration of each of the following —

- **the HBF Health Funds Inc.;**
 - **the Health Insurance Fund of W.A. (Inc.),**
- as a public company limited by guarantee under the *Corporations Act 2001* (Commonwealth), and for related purposes.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Transfer of Incorporation (HBF and HIF) Act 2009*.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Terms used

(1) In this Act —

ASIC means the Australian Securities and Investments Commission referred to in the *Australian Securities and Investments Commission Act 2001* (Commonwealth) section 8;

assets means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money) and includes securities, choses in action and documents;

Corporations Act means the *Corporations Act 2001* (Commonwealth);

Corporations legislation means the Corporations legislation to which the Corporations Act Part 1.1A applies;

HBF company means HBF Health Funds Inc. on and after it is taken to be registered as a public company limited by guarantee under the Corporations Act section 5H(4);

HBF Health Funds Inc. means the association of that name incorporated under the *Associations Incorporation Act 1987*;

Health Insurance Fund of W.A. (Inc.) means the association of that name incorporated under the *Associations Incorporation Act 1987*;

1 **HIF company** means Health Insurance Fund of W.A. (Inc.) on
2 and after it is taken to be registered as a public company limited
3 by guarantee under the Corporations Act section 5H(4);

4 **liabilities** means any liabilities, debts and obligations (whether
5 present or future, whether vested or contingent and whether
6 personal or assignable);

7 **registration day**, in relation to HBF Health Funds Inc. or Health
8 Insurance Fund of W.A. (Inc.), means the day specified by the
9 Minister in a registration order as the day on which that body is
10 to be taken to be registered as a public company limited by
11 guarantee for the purposes of the Corporations Act section 5H;

12 **registration order** means an order made by the Minister
13 under —

14 (a) section 5 specifying a registration day in relation to HBF
15 Health Funds Inc.; or

16 (b) section 9 specifying a registration day in relation to
17 Health Insurance Fund of W.A. (Inc.);

18 **rights** means any rights, powers, privileges or immunities
19 (whether present or future, whether vested or contingent and
20 whether personal or assignable).

21 (2) A term has the same meaning in this Act as it has in the
22 Corporations Act unless the contrary intention appears in
23 this Act.

24 (3) Where this Act provides for an event or other thing to occur on
25 a particular day that event or thing is taken to occur at the
26 beginning of the day.

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Part 2 — HBF Health Funds Inc.

4. HBF is a deemed registration company under the Corporations Act

- (1) HBF Health Funds Inc. is a deemed registration company for the purposes of the Corporations Act section 5H.
- (2) For the purposes of that section —
 - (a) the day on which HBF Health Funds Inc. is to be taken to be registered as a company is the registration day specified by the Minister in an order made under section 5; and
 - (b) the type of company that HBF Health Funds Inc. is to be registered as is a public company limited by guarantee; and
 - (c) the company’s proposed name is “HBF Health Limited”.

5. Order specifying registration day for HBF

- (1) The Minister may, by order published in the *Gazette*, specify a day on which HBF Health Funds Inc. is to be taken to be registered as a public company limited by guarantee for the purposes of the Corporations Act section 5H.
- (2) The Minister may make an order under this section only if the Minister —
 - (a) approves of the constitution of the company lodged under the Corporations Act section 5H(3); and
 - (b) is satisfied that HBF Health Funds Inc. has complied with the Corporations Act section 5H(2) and (3).
- (3) The Minister is to provide ASIC with a copy of an order made under this section as soon as practicable after the order is made.
- (4) Failure to provide a copy of an order to ASIC under subsection (3) does not affect the validity of the order.

- 1 (5) An order under this section cannot be challenged, reviewed or
2 called into question in any proceedings before any court or
3 tribunal.
- 4 (6) An order under this section is conclusive evidence in any
5 proceedings before any court or tribunal that all of the
6 requirements of this Act have been complied with concerning
7 the registration of HBF Health Funds Inc. under the
8 Corporations Act as a public company limited by guarantee.
- 9 **6. HBF company is a continuation of HBF Health Funds Inc.**
- 10 (1) HBF company is taken for all purposes to be a continuation of
11 and the same legal entity as HBF Health Funds Inc..
- 12 (2) Without limiting subsection (1), the registration of HBF Health
13 Funds Inc. as a public company limited by guarantee under the
14 Corporations Act does not —
- 15 (a) create a new legal entity; or
- 16 (b) affect HBF Health Funds Inc.'s existing assets, rights or
17 liabilities (except as against the members of HBF Health
18 Funds Inc. in their capacity as members); or
- 19 (c) render defective any legal proceedings by or against
20 HBF Health Funds Inc. or its members and —
- 21 (i) any proceedings by or against HBF Health Funds
22 Inc. subsisting immediately before the
23 registration day may be continued by or against
24 the HBF company in the name of HBF Health
25 Funds Inc.; and
- 26 (ii) proceedings that might have been brought by or
27 against HBF Health Funds Inc. immediately
28 before the registration day may be commenced
29 by or against HBF company;
- 30 or
- 31 (d) affect the employment, or entitlements as an employee,
32 of a person who was a member of staff of HBF Health
33 Funds Inc. immediately before the registration day; or

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- 1 (e) affect —
- 2 (i) any obligation or liability incurred under the
- 3 *Associations Incorporation Act 1987*; or
- 4 (ii) any penalty or forfeiture incurred in respect of
- 5 any offence committed under the *Associations*
- 6 *Incorporation Act 1987*; or
- 7 (iii) any investigation, proceeding or remedy in
- 8 respect of such obligation, liability, penalty or
- 9 forfeiture,
- 10 and any such investigation, proceeding or remedy may
- 11 be instituted, continued or enforced and any such
- 12 penalty or forfeiture may be imposed as if section 7(1)
- 13 had not come into operation.
- 14 (3) Subsections (1) and (2) are declared to be Corporations
- 15 legislation displacement provisions for the purposes of the
- 16 Corporations Act section 5G in relation to the provisions of the
- 17 Corporations legislation generally.
- 18 **7. Effect of transfer of incorporation of HBF**
- 19 (1) On the registration of HBF Health Funds Inc. as a public
- 20 company limited by guarantee under the Corporations Act the
- 21 incorporation of HBF Health Funds Inc. under the *Associations*
- 22 *Incorporation Act 1987* is automatically cancelled.
- 23 (2) This section has effect despite anything to the contrary in the
- 24 *Associations Incorporation Act 1987*.

1 **Part 3 — Health Insurance Fund of W.A. (Inc.)**

2 **8. HIF is a deemed registration company under the**
3 **Corporations Act**

4 (1) Health Insurance Fund of W.A. (Inc.) is a deemed registration
5 company for the purposes of the Corporations Act section 5H.

6 (2) For the purposes of that section —

7 (a) the day on which Health Insurance Fund of W.A. (Inc.)
8 is to be taken to be registered as a company is the
9 registration day specified by the Minister in an order
10 made under section 9; and

11 (b) the type of company that Health Insurance Fund of
12 W.A. (Inc.) is to be registered as is a public company
13 limited by guarantee; and

14 (c) the company’s proposed name is “Health Insurance
15 Fund of W.A. Limited”.

16 **9. Order specifying registration day for HIF**

17 (1) The Minister may, by order published in the *Gazette*, specify a
18 day on which Health Insurance Fund of W.A. (Inc.) is to be
19 taken to be registered as a public company limited by guarantee
20 for the purposes of the Corporations Act section 5H.

21 (2) The Minister may make an order under this section only if the
22 Minister —

23 (a) approves of the constitution of the company lodged
24 under the Corporations Act section 5H(3); and

25 (b) is satisfied that Health Insurance Fund of W.A. (Inc.)
26 has complied with the Corporations Act section 5H(2)
27 and (3).

28 (3) The Minister is to provide ASIC with a copy of an order made
29 under this section as soon as practicable after the order is made.

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- 1 (4) Failure to provide a copy of an order to ASIC under
2 subsection (3) does not affect the validity of the order.
- 3 (5) An order under this section cannot be challenged, reviewed or
4 called into question in any proceedings before any court or
5 tribunal.
- 6 (6) An order under this section is conclusive evidence in any
7 proceedings before any court or tribunal that all of the
8 requirements of this Act have been complied with concerning
9 the registration of Health Insurance Fund of W.A. (Inc.) under
10 the Corporations Act as a public company limited by guarantee.
- 11 **10. HIF company is a continuation of Health Insurance Fund of**
12 **W.A. (Inc.)**
- 13 (1) HIF company is taken for all purposes to be a continuation of
14 and the same legal entity as Health Insurance Fund of W.A.
15 (Inc.).
- 16 (2) Without limiting subsection (1), the registration of Health
17 Insurance Fund of W.A. (Inc.) as a public company limited by
18 guarantee under the Corporations Act does not —
- 19 (a) create a new legal entity; or
- 20 (b) affect Health Insurance Fund of W.A. (Inc.)’s existing
21 assets, rights or liabilities (except as against the
22 members of Health Insurance Fund of W.A. (Inc.) in
23 their capacity as members); or
- 24 (c) render defective any legal proceedings by or against
25 Health Insurance Fund of W.A. (Inc.) or its members
26 and —
- 27 (i) any proceedings by or against Health Insurance
28 Fund of W.A. (Inc.) subsisting immediately
29 before the registration day may be continued by
30 or against the HIF company in the name of
31 Health Insurance Fund of W.A. (Inc.); and

- 1 (ii) proceedings that might have been brought by or
2 against Health Insurance Fund of W.A. (Inc.)
3 immediately before the registration day may be
4 commenced by or against HIF company;
- 5 or
- 6 (d) affect the employment, or entitlements as an employee,
7 of a person who was a member of staff of Health
8 Insurance Fund of W.A. (Inc.) immediately before the
9 registration day; or
- 10 (e) affect —
- 11 (i) any obligation or liability incurred under the
12 *Associations Incorporation Act 1987*; or
- 13 (ii) any penalty or forfeiture incurred in respect of
14 any offence committed under the *Associations*
15 *Incorporation Act 1987*; or
- 16 (iii) any investigation, proceeding or remedy in
17 respect of such obligation, liability, penalty or
18 forfeiture,
- 19 and any such investigation, proceeding or remedy may
20 be instituted, continued or enforced and any such
21 penalty or forfeiture may be imposed as if section 11(1)
22 had not come into operation.
- 23 (3) Subsections (1) and (2) are declared to be Corporations
24 legislation displacement provisions for the purposes of the
25 Corporations Act section 5G in relation to the provisions of the
26 Corporations legislation generally.
- 27 **11. Effect of transfer of incorporation of HIF**
- 28 (1) On the registration of Health Insurance Fund of W.A. (Inc.) as a
29 public company limited by guarantee under the Corporations
30 Act the incorporation of Health Insurance Fund of W.A. (Inc.)
31 under the *Associations Incorporation Act 1987* is automatically
32 cancelled.

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1 (2) This section has effect despite anything to the contrary in the
2 *Associations Incorporation Act 1987*.

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