

## Associations Incorporation Amendment (Transfer of Incorporation) Bill 2010

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Western Australia

LEGISLATIVE COUNCIL

*(Introduced by the Hon. Sue Ellery, MLC)*

*(As amended in Committee)*

**Associations Incorporation Amendment  
(Transfer of Incorporation) Bill 2010**

**A Bill for**

**An Act to amend the *Associations Incorporation Act 1987*.**

The Parliament of Western Australia enacts as follows:

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1   **1.     Short title**

2           This is the *Associations Incorporation Amendment (Transfer of*  
3           *Incorporation) Act 2010*.

4   **2.     Commencement**

5           This Act comes into operation as follows —

- 6           (a)   sections 1 and 2 — on the day on which this Act  
7                receives the Royal Assent;
- 8           (b)   the rest of the Act — on a day fixed by proclamation,  
9                and different days may be fixed for different provisions.

10 **3.     Act amended**

11           This Act amends the *Associations Incorporation Act 1987*.

12 **4.     Section 3A amended**

13           In section 3A(2):

- 14           (a)   after paragraph (b) insert:
- 15
- 16                (ca)   provisions that relate to registration as a  
17                       company under the Corporations Act  
18                       Chapter 5B to the extent that an incorporated  
19                       association is authorised or required under  
20                       Part IIIA to become registered as a company  
21                       under that Chapter; or
- 22
- 23           (b)   after each of paragraphs (a), (b) and (c) to (k) insert:
- 24
- 25                or
- 26

1 **5. Part IIIA inserted**

2 After Part II insert:  
3

4 **Part IIIA — Transfer of incorporation**

5 **10A. Terms used**

6 In this Part —

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

9 *prescribed body corporate* means —

- 10 (a) a company within the meaning of the  
11 Corporations Act that is taken to be registered  
12 in Western Australia; or  
13 (b) an entity that is a body corporate under —  
14 (i) another Commonwealth Act; or  
15 (ii) a written law other than this Act,  
16 and is prescribed for the purposes of this  
17 definition.

18 **10B. Incorporated association may apply for  
19 incorporation under another law**

- 20 (1) An incorporated association may by special resolution  
21 decide to apply for registration or incorporation as a  
22 prescribed body corporate and, subject to this section,  
23 the association is authorised to give effect to that  
24 decision.  
25 (2) An incorporated association cannot make the  
26 application for registration or incorporation unless the  
27 Commissioner has, on application made to the  
28 Commissioner by the association, approved —  
29 (a) the application being made; and

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- 1                   (b) the doing of the things that are reasonably  
2                                   necessary to obtain the registration or  
3                                   incorporation.
- 4           (3) An application made to the Commissioner under  
5                   subsection (2) must —
- 6                   (a) be in a form approved by the Commissioner;  
7                                   and
- 8                   (b) include a copy of the special resolution referred  
9                                   to in subsection (1); and
- 10                  (c) include any information required by the  
11                                   regulations; and
- 12                  (d) specify the period within which the application  
13                                   for registration or incorporation is expected to  
14                                   be made; and
- 15                  (e) be accompanied by the fee prescribed.
- 16           (4) The Commissioner is to approve an application for  
17                   registration or incorporation being made if satisfied  
18                   that the continued incorporation of the association  
19                   under this Act would for any reason be inappropriate,  
20                   including —
- 21                   (a) on account of the incorporated association  
22                                   having, in the opinion of the Commissioner,  
23                                   ceased to be eligible to be incorporated under  
24                                   this Act; or
- 25                   (b) because of —
- 26                                   (i) the scale or nature of the activities of the  
27                                   incorporated association; or
- 28                                   (ii) the value or nature of the property of the  
29                                   incorporated association; or
- 30                                   (iii) the extent or nature of the dealings  
31                                   which the incorporated association has  
32                                   with the public,  
33                                   as determined by the Commissioner; or

1 (c) because any prescribed circumstances exist.

2 (5) An incorporated association —

3 (a) in making an application for registration or  
4 incorporation; and

5 (b) in doing the things that are reasonably  
6 necessary to obtain it,

7 must act in accordance with the terms and conditions of  
8 the Commissioner's approval.

9 **10C. Review of decision to refuse application**

10 (1) If the Commissioner refuses an application made to the  
11 Commissioner under section 10B(2) by an incorporated  
12 association, the association may apply to the State  
13 Administrative Tribunal for a review of the decision.

14 (2) An application under subsection (1) must be made  
15 within —

16 (a) 28 days; or

17 (b) such other period as is prescribed,

18 after the incorporated association receives notice of the  
19 refusal.

20 **10D. Commissioner may direct an incorporated  
21 association to apply for incorporation under  
22 another law**

23 (1) This section applies if the Commissioner is satisfied  
24 that the continued incorporation of an association under  
25 this Act would for any reason be inappropriate,  
26 including —

27 (a) on account of the incorporated association  
28 having, in the opinion of the Commissioner,  
29 ceased to be eligible to be incorporated under  
30 this Act; or

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- 1 (b) because of —  
2 (i) the scale or nature of the activities of the  
3 incorporated association; or  
4 (ii) the value or nature of the property of the  
5 incorporated association; or  
6 (iii) the extent or nature of the dealings  
7 which the incorporated association has  
8 with the public,  
9 as determined by the Commissioner; or  
10 (c) because any prescribed circumstances exist.
- 11 (2) The Commissioner may in writing direct the  
12 incorporated association to apply for, and do all things  
13 that are reasonably necessary to obtain, registration or  
14 incorporation as a prescribed body corporate.
- 15 (3) A direction under subsection (2) —  
16 (a) must specify the period within which the  
17 application is to be made; and  
18 (b) may specify any terms and conditions that are  
19 to be observed in making the application for  
20 registration or incorporation or doing the things  
21 that are reasonably necessary to obtain it.
- 22 (4) The Commissioner may, by notice in writing to the  
23 incorporated association —  
24 (a) from time to time extend the period referred to  
25 in subsection (3)(a); or  
26 (b) revoke or amend a direction given under  
27 subsection (2).

28 **10E. Commissioner to give notice of intention**

- 29 (1) Before the Commissioner gives a direction to an  
30 incorporated association under section 10D(2) or notice  
31 of an amendment under section 10D(4)(b), the



- 1 Commissioner must give notice in writing to the  
2 association stating —
- 3 (a) the Commissioner’s intention to give the  
4 direction or make the amendment; and
- 5 (b) the grounds on which the Commissioner is  
6 proposing to act; and
- 7 (c) that written submissions on the proposed  
8 direction or amendment may be made to the  
9 Commissioner within a specified period.
- 10 (2) The period specified under subsection (1)(c) is not to  
11 be less than 90 days after the notice is given but the  
12 Commissioner may, on application made by the  
13 association, extend the specified period for a further  
14 period not exceeding 90 days.
- 15 (3) Before the Commissioner gives or amends a direction  
16 to an incorporated association under section 10D, the  
17 Commissioner must have regard to any submission  
18 made by the association in accordance with the notice.

19 **10F. Review of proposed direction or amendment**

- 20 (1) An incorporated association to which a notice is given  
21 under section 10E may, not later than the end of the  
22 period specified under section 10E(1)(c) or any  
23 extension of that period, apply to the State  
24 Administrative Tribunal for a review of the proposed  
25 direction or amendment.
- 26 (2) If an application is so made, the Commissioner cannot  
27 give the direction or make the amendment unless —
- 28 (a) the application results in the Commissioner’s  
29 proposed action being confirmed; or
- 30 (b) the application is dismissed or struck out.

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- 1           **10G. Association to comply with direction**
- 2           (1) Subject to section 10F, an incorporated association  
3           must comply with a direction given to the association  
4           under section 10D(2) or a direction as amended under  
5           section 10D(4)(b).
- 6           (2) A contract to which an incorporated association is a  
7           party is not illegal, void or unenforceable by reason  
8           only of a failure by the association to comply with a  
9           direction or notice under section 10D.
- 10          **10H. Cancellation of incorporation under this Act**
- 11          (1) The registration or incorporation of an incorporated  
12          association as a prescribed body corporate  
13          automatically cancels the incorporation of the  
14          association under this Act.
- 15          (2) Where an incorporated association becomes registered  
16          or incorporated as a prescribed body corporate, the  
17          body must notify the Commissioner in writing of the  
18          registration or incorporation within 14 days after it  
19          occurs.
- 20          Penalty: a fine of \$5 000.
- 21          **10I. Provisions about the transition to incorporation  
22          under another law**
- 23          (1) In this section, a reference to a transfer of incorporation  
24          by an incorporated association is a reference to an  
25          incorporated association becoming registered or  
26          incorporated as a prescribed body corporate (the *body*  
27          *corporate*).

- 1           (2) The transfer of incorporation by an incorporated  
2           association does not affect —
- 3               (a) the identity of the association which is to be  
4               taken to be the same body before and after the  
5               transfer of incorporation; or
- 6               (b) any act, matter or thing done or omitted to be  
7               done, or any circumstance subsisting, before  
8               the transfer to the extent that the act, matter,  
9               thing, omission or circumstance has any  
10              relevance to the association after the transfer.
- 11           (3) Without limiting subsection (2) —
- 12               (a) proceedings by or against an incorporated  
13               association subsisting immediately before the  
14               transfer of incorporation may be continued by  
15               or against the body corporate in the name of the  
16               incorporated association; and
- 17               (b) proceedings that might have been brought by or  
18               against an incorporated association  
19               immediately before the transfer of  
20               incorporation may be commenced by or against  
21               the body corporate.
- 22           (4) Without limiting subsection (2), a transfer of  
23           incorporation does not affect —
- 24               (a) any obligation or liability incurred under this  
25               Act; or
- 26               (b) any penalty or forfeiture incurred in respect of  
27               any offence committed against this Act; or
- 28               (c) any investigation, proceeding or remedy in  
29               respect of any such obligation, liability, penalty  
30               or forfeiture,
- 31           and any such investigation, proceeding or remedy may  
32           be instituted, continued or enforced and any such

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1                   penalty or forfeiture may be imposed as if section 10H  
2                   had not been enacted.

3                   (5) This section has effect in relation to a matter  
4                   concerning an incorporated association that is  
5                   registered as a company under the Corporations Act  
6                   only to the extent that the matter is not dealt with by  
7                   that Act.

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