



Government of Western Australia
Department of Commerce

EXPLANATORY MEMORANDUM

Transfer of Incorporation (HBF and HIF) Bill 2009

TRANSFER OF INCORPORATION (HBF AND HIF) BILL 2009

Overview of Bill

The purpose of this Bill is to provide for the registration of HBF Health Fund Inc. (HBF) and Health Insurance Fund of W.A. (Inc.) (HIF) as companies limited by guarantee under the Commonwealth *Corporations Act 2001* (Corporations Act).

The Commonwealth Private Health Insurance Act 2007 (PHI Act) requires that all providers of health insurance in Australia be registered under that Act. HBF and HIF are both currently registered as not-for-profit insurers under the PHI Act.

In 2008 the PHI 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.

HBF and HIF are currently incorporated as associations under the *Associations Incorporation Act 1987 (WA)*. 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.

Section 5H of the Corporations Act provides, inter alia, that a body is taken to be registered under that Act as a corporation if a law of a 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 ASIC prior to the registration day.

This Bill provides that HBF and HIF are deemed registration companies for the purposes of section 5H of the Corporations Act.

Part 1 - Preliminary

- Clause 1 Sets out the name of the Act.
- Clause 2 Provides for the commencement of the Act on the day on which it receives Royal Assent.
- Clause 3 Sets out the terms used in the Act and clarifies how references to terms used in the Commonwealth *Corporations Act 2001* (Corporations Act) are to be interpreted.

Part 2 – HBF Health Funds Inc.

- Clause 4 Provides that HBF Health Funds Inc. is a deemed registration company for the purposes of section 5H of the Corporations Act and that, for the purposes of that section:
- the day on which HBF Health Funds Inc. is to be taken to be a deemed registration company is the registration day specified by the Minister in an order made under section 5;
 - the type of company that HBF Health Funds Inc. is to be registered as is a public company limited by guarantee; and
 - the company's proposed name is "HBF Health Limited".

Section 5H of the Corporations Act provides that a body is taken to be registered under that Act as a company of a particular type under section 118 of that Act if a law of a State or Territory provides that the body is a deemed registration company and specifies the registration day, the type of company the body is to be registered as and the company's proposed name.

- Clause 5 Provides that the Minister may, by order published in the Gazette, specify a registration day for HBF Health Funds Inc.

The Minister may only make such an order if:

- the Minister has approved of the constitution of the proposed company ; and
- is satisfied that HBF Health Funds Inc. has complied with section 5H(2) and (3) of the Corporations Act.

Section 5H(2) and (3) require that certain information and documents be lodged with ASIC (including the proposed constitution).

Clause 6 Provides that the HBF company is taken for all purposes to be a continuation of the same legal entity as HBF Health Funds Inc.

In particular, it provides that registration of HBF Health Funds Inc. as a company limited by guarantee under the Corporations Act does not:

- create a new legal entity;
- affect HBF Health Fund Inc.'s existing assets rights or liabilities;
- render defective any legal proceedings by or against HBF Health Funds Inc. or its members;
- affect the employment or entitlements of employees of HBF Health Funds Inc.; or
- affect matters arising under the *Associations Incorporation Act 1987* prior to the transfer of incorporation.

The provisions of this clause are declared to be displacement provisions for the purposes of section 5G in relation to the provisions of the Corporations Act generally. Section 5G of the Corporations Act provides that if a State law declares a provision of the State law to be a Corporations legislation provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

Clause 7 Provides that on the registration of HBF Health Funds Inc. as a public company limited by guarantee its incorporation under the *Associations Incorporation Act 1987* is automatically cancelled.

Part 3 – Health Insurance Fund of W.A. (Inc.)

Clause 8 Provides that Health Insurance Fund of W.A. (Inc.) is a deemed registration company for the purposes of section 5H of the Corporations Act and that, for the purposes of that section:

- the day on which Health Insurance Fund of W.A. (Inc.) is to be taken to be a deemed registration company is the registration day specified by the Minister in an order made under section 9;
- the type of company that Health Insurance Fund of W.A. (Inc.) is to be registered as is a public company limited by guarantee; and
- the company's proposed name is "Health Insurance Fund of W.A. Limited".

Section 5H of the Corporations Act provides that a body is taken to be registered under that Act as a company of a particular type under section 118 of that Act if a law of a State or Territory provides that the body is a deemed registration company and specifies the registration day, the type of company the body is to be registered as and the company's proposed name.

Clause 9 Provides that the Minister may, by order published in the Gazette, specify a registration day for Health Insurance Fund of W.A. (Inc.).

The Minister may only make such an order if:

- the Minister has approved of the constitution of the proposed company ; and
- is satisfied that Health Insurance Fund of W.A. (Inc.) has complied with section 5H(2) and (3) of the Corporations Act.

Section 5H(2) and (3) require that certain information and documents be lodged with ASIC (including the proposed constitution).

Clause 10 Provides that the HIF company is taken for all purposes to be a continuation of the same legal entity as Health Insurance Fund of W.A. (Inc.)

In particular, it provides that registration of Health Insurance Fund of W.A. (Inc.) as a company limited by guarantee under the Corporations Act does not:

- create a new legal entity;
- affect Health Insurance Fund of W.A. (Inc.)'s existing assets rights or liabilities;
- render defective any legal proceedings by or against Health Insurance Fund of W.A. (Inc.) or its members;
- affect the employment or entitlements of employees of Health Insurance Fund of W.A. (Inc.); or
- affect matters arising under the *Associations Incorporation Act 1987* prior to the transfer of incorporation.

The provisions of this clause are declared to be displacement provisions for the purposes of section 5G in relation to the provisions of the Corporations Act generally. Section 5G of the Corporations Act provides that if a State law declares a provision of the State law to be a Corporations legislation provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

Clause 11 Provides that on the registration of Health Insurance Fund of W.A. (Inc.) as a public company limited by guarantee its incorporation under the *Associations Incorporation Act 1987* is automatically cancelled.

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