



Western Australia

Transfer of Incorporation (HBF and HIF) Act 2009

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Transfer of Incorporation (HBF and HIF) Act 2009

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Defined terms

Western Australia

Transfer of Incorporation (HBF and HIF) Act 2009

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:

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*;

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

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

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

registration order means an order made by the Minister under —

- (a) section 5 specifying a registration day in relation to HBF Health Funds Inc.; or
- (b) section 9 specifying a registration day in relation to Health Insurance Fund of W.A. (Inc.);

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

- (2) A term has the same meaning in this Act as it has in the Corporations Act unless the contrary intention appears in this Act.
- (3) Where this Act provides for an event or other thing to occur on a particular day that event or thing is taken to occur at the beginning of the day.

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.

- (5) An order under this section cannot be challenged, reviewed or called into question in any proceedings before any court or tribunal.
- (6) An order under this section is conclusive evidence in any proceedings before any court or tribunal that all of the requirements of this Act have been complied with concerning the registration of HBF Health Funds Inc. under the Corporations Act as a public company limited by guarantee.

6. HBF company is a continuation of HBF Health Funds Inc.

- (1) HBF company is taken for all purposes to be a continuation of and the same legal entity as HBF Health Funds Inc..
 - (2) Without limiting subsection (1), the registration of HBF Health Funds Inc. as a public company limited by guarantee under the Corporations Act does not —
 - (a) create a new legal entity; or
 - (b) affect HBF Health Funds Inc.'s existing assets, rights or liabilities (except as against the members of HBF Health Funds Inc. in their capacity as members); or
 - (c) render defective any legal proceedings by or against HBF Health Funds Inc. or its members and —
 - (i) any proceedings by or against HBF Health Funds Inc. subsisting immediately before the registration day may be continued by or against the HBF company in the name of HBF Health Funds Inc.; and
 - (ii) proceedings that might have been brought by or against HBF Health Funds Inc. immediately before the registration day may be commenced by or against HBF company;
- or
- (d) affect the employment, or entitlements as an employee, of a person who was a member of staff of HBF Health Funds Inc. immediately before the registration day; or

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(e) affect —

- (i) any obligation or liability incurred under the *Associations Incorporation Act 1987*; or
- (ii) any penalty or forfeiture incurred in respect of any offence committed under the *Associations Incorporation Act 1987*; or
- (iii) any investigation, proceeding or remedy in respect of such obligation, liability, penalty or forfeiture,

and any such investigation, proceeding or remedy may be instituted, continued or enforced and any such penalty or forfeiture may be imposed as if section 7(1) had not come into operation.

- (3) Subsections (1) and (2) are declared to be Corporations legislation displacement provisions for the purposes of the Corporations Act section 5G in relation to the provisions of the Corporations legislation generally.

7. Effect of transfer of incorporation of HBF

- (1) On the registration of HBF Health Funds Inc. as a public company limited by guarantee under the Corporations Act the incorporation of HBF Health Funds Inc. under the *Associations Incorporation Act 1987* is automatically cancelled.
- (2) This section has effect despite anything to the contrary in the *Associations Incorporation Act 1987*.

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

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

- (1) Health Insurance Fund of W.A. (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 Health Insurance Fund of W.A. (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 9; and
 - (b) 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
 - (c) the company’s proposed name is “Health Insurance Fund of W.A. Limited”.

9. Order specifying registration day for HIF

- (1) The Minister may, by order published in the *Gazette*, specify a day on which Health Insurance Fund of W.A. (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 Health Insurance Fund of W.A. (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.

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- (4) Failure to provide a copy of an order to ASIC under subsection (3) does not affect the validity of the order.
- (5) An order under this section cannot be challenged, reviewed or called into question in any proceedings before any court or tribunal.
- (6) An order under this section is conclusive evidence in any proceedings before any court or tribunal that all of the requirements of this Act have been complied with concerning the registration of Health Insurance Fund of W.A. (Inc.) under the Corporations Act as a public company limited by guarantee.

10. HIF company is a continuation of Health Insurance Fund of W.A. (Inc.)

- (1) HIF company is taken for all purposes to be a continuation of and the same legal entity as Health Insurance Fund of W.A. (Inc.).
- (2) Without limiting subsection (1), the registration of Health Insurance Fund of W.A. (Inc.) as a public company limited by guarantee under the Corporations Act does not —
 - (a) create a new legal entity; or
 - (b) affect Health Insurance Fund of W.A. (Inc.)’s existing assets, rights or liabilities (except as against the members of Health Insurance Fund of W.A. (Inc.) in their capacity as members); or
 - (c) render defective any legal proceedings by or against Health Insurance Fund of W.A. (Inc.) or its members and —
 - (i) any proceedings by or against Health Insurance Fund of W.A. (Inc.) subsisting immediately before the registration day may be continued by or against the HIF company in the name of Health Insurance Fund of W.A. (Inc.); and

- (ii) proceedings that might have been brought by or against Health Insurance Fund of W.A. (Inc.) immediately before the registration day may be commenced by or against HIF company;
- or
- (d) affect the employment, or entitlements as an employee, of a person who was a member of staff of Health Insurance Fund of W.A. (Inc.) immediately before the registration day; or
 - (e) affect —
 - (i) any obligation or liability incurred under the *Associations Incorporation Act 1987*; or
 - (ii) any penalty or forfeiture incurred in respect of any offence committed under the *Associations Incorporation Act 1987*; or
 - (iii) any investigation, proceeding or remedy in respect of such obligation, liability, penalty or forfeiture,and any such investigation, proceeding or remedy may be instituted, continued or enforced and any such penalty or forfeiture may be imposed as if section 11(1) had not come into operation.
- (3) Subsections (1) and (2) are declared to be Corporations legislation displacement provisions for the purposes of the Corporations Act section 5G in relation to the provisions of the Corporations legislation generally.

11. Effect of transfer of incorporation of HIF

- (1) On the registration of Health Insurance Fund of W.A. (Inc.) as a public company limited by guarantee under the Corporations Act the incorporation of Health Insurance Fund of W.A. (Inc.) under the *Associations Incorporation Act 1987* is automatically cancelled.

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

Notes

- ¹ This is a compilation of the *Transfer of Incorporation (HBF and HIF) Act 2009*. The following table contains information about that Act.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Transfer of Incorporation (HBF and HIF) Act 2009</i>	11 of 2009	29 Jun 2009	29 Jun 2009 (see s. 2)

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
ASIC	3(1)
assets	3(1)
Corporations Act.....	3(1)
Corporations legislation	3(1)
HBF company	3(1)
HBF Health Funds Inc.	3(1)
Health Insurance Fund of W.A. (Inc.)	3(1)
HIF company	3(1)
liabilities	3(1)
registration day	3(1)
registration order.....	3(1)
rights	3(1)