

Western Australia

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

As at 08 Dec 2010

No. 55 of 2010

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Associations Incorporation Amendment (Transfer of Incorporation) Act 2010

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Associations Incorporation Amendment (Transfer of Incorporation) Act 2010

No. 55 of 2010

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

[Assented to 8 December 2010]

The Parliament of Western Australia enacts as follows:

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1. Short title

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

2. Commencement

This Act comes into operation as follows —

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

3. Act amended

This Act amends the *Associations Incorporation Act 1987*.

4. Section 3A amended

In section 3A(2):

- (a) after paragraph (b) insert:
 - (ca) provisions that relate to registration as a company under the Corporations Act Chapter 5B to the extent that an incorporated association is authorised or required under Part IIIA to become registered as a company under that Chapter; or
- (b) after each of paragraphs (a), (b) and (c) to (k) insert:

or

5. **Part IIIA inserted**

After Part II insert:

Part IIIA — Transfer of incorporation

10A. Terms used

In this Part —

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

prescribed body corporate means —

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

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

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

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- (b) the doing of the things that are reasonably necessary to obtain the registration or incorporation.
- (3) An application made to the Commissioner under subsection (2) must —
 - (a) be in a form approved by the Commissioner; and
 - (b) include a copy of the special resolution referred to in subsection (1); and
 - (c) include any information required by the regulations; and
 - (d) specify the period within which the application for registration or incorporation is expected to be made; and
 - (e) be accompanied by the fee prescribed.
- (4) The Commissioner is to approve an application for registration or incorporation being made if satisfied that the continued incorporation of the association under this Act would for any reason be inappropriate, including —
 - (a) on account of the incorporated association having, in the opinion of the Commissioner, ceased to be eligible to be incorporated under this Act; or
 - (b) because of —
 - (i) the scale or nature of the activities of the incorporated association; or
 - (ii) the value or nature of the property of the incorporated association; or
 - (iii) the extent or nature of the dealings which the incorporated association has with the public,as determined by the Commissioner; or

- (c) because any prescribed circumstances exist.
- (5) An incorporated association —
 - (a) in making an application for registration or incorporation; and
 - (b) in doing the things that are reasonably necessary to obtain it,

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

10C. Review of decision to refuse application

- (1) If the Commissioner refuses an application made to the Commissioner under section 10B(2) by an incorporated association, the association may apply to the State Administrative Tribunal for a review of the decision.
- (2) An application under subsection (1) must be made within —
 - (a) 28 days; or
 - (b) such other period as is prescribed,

after the incorporated association receives notice of the refusal.

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

- (1) This section applies if the Commissioner is satisfied that the continued incorporation of an association under this Act would for any reason be inappropriate, including —
 - (a) on account of the incorporated association having, in the opinion of the Commissioner, ceased to be eligible to be incorporated under this Act; or

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- (b) because of —
 - (i) the scale or nature of the activities of the incorporated association; or
 - (ii) the value or nature of the property of the incorporated association; or
 - (iii) the extent or nature of the dealings which the incorporated association has with the public,as determined by the Commissioner; or
 - (c) because any prescribed circumstances exist.
- (2) The Commissioner may in writing direct the incorporated association to apply for, and do all things that are reasonably necessary to obtain, registration or incorporation as a prescribed body corporate.
 - (3) A direction under subsection (2) —
 - (a) must specify the period within which the application is to be made; and
 - (b) may specify any terms and conditions that are to be observed in making the application for registration or incorporation or doing the things that are reasonably necessary to obtain it.
 - (4) The Commissioner may, by notice in writing to the incorporated association —
 - (a) from time to time extend the period referred to in subsection (3)(a); or
 - (b) revoke or amend a direction given under subsection (2).

10E. Commissioner to give notice of intention

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

Commissioner must give notice in writing to the association stating —

- (a) the Commissioner's intention to give the direction or make the amendment; and
 - (b) the grounds on which the Commissioner is proposing to act; and
 - (c) that written submissions on the proposed direction or amendment may be made to the Commissioner within a specified period.
- (2) The period specified under subsection (1)(c) is not to be less than 90 days after the notice is given but the Commissioner may, on application made by the association, extend the specified period for a further period not exceeding 90 days.
- (3) Before the Commissioner gives or amends a direction to an incorporated association under section 10D, the Commissioner must have regard to any submission made by the association in accordance with the notice.

10F. Review of proposed direction or amendment

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

10G. Association to comply with direction

- (1) Subject to section 10F, an incorporated association must comply with a direction given to the association under section 10D(2) or a direction as amended under section 10D(4)(b).
- (2) A contract to which an incorporated association is a party is not illegal, void or unenforceable by reason only of a failure by the association to comply with a direction or notice under section 10D.

10H. Cancellation of incorporation under this Act

- (1) The registration or incorporation of an incorporated association as a prescribed body corporate automatically cancels the incorporation of the association under this Act.
- (2) Where an incorporated association becomes registered or incorporated as a prescribed body corporate, the body must notify the Commissioner in writing of the registration or incorporation within 14 days after it occurs.

Penalty: a fine of \$5 000.

10I. Provisions about the transition to incorporation under another law

- (1) In this section, a reference to a transfer of incorporation by an incorporated association is a reference to an incorporated association becoming registered or incorporated as a prescribed body corporate (the *body corporate*).

- (2) The transfer of incorporation by an incorporated association does not affect —
- (a) the identity of the association which is to be taken to be the same body before and after the transfer of incorporation; or
 - (b) any act, matter or thing done or omitted to be done, or any circumstance subsisting, before the transfer to the extent that the act, matter, thing, omission or circumstance has any relevance to the association after the transfer.
- (3) Without limiting subsection (2) —
- (a) proceedings by or against an incorporated association subsisting immediately before the transfer of incorporation may be continued by or against the body corporate in the name of the incorporated association; and
 - (b) proceedings that might have been brought by or against an incorporated association immediately before the transfer of incorporation may be commenced by or against the body corporate.
- (4) Without limiting subsection (2), a transfer of incorporation does not affect —
- (a) any obligation or liability incurred under this Act; or
 - (b) any penalty or forfeiture incurred in respect of any offence committed against this Act; or
 - (c) any investigation, proceeding or remedy in respect of any such obligation, liability, penalty or forfeiture,

and any such investigation, proceeding or remedy may be instituted, continued or enforced and any such

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

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

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