

TASMANIA

**ASSOCIATIONS INCORPORATION AMENDMENT
BILL 2005**

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 2 amended (Interpretation)
5. Sections 25C, 25D, 25E, 25F, 25G, 25H and 25I inserted
 - 25C. Voluntary transfer of incorporation
 - 25D. Direction to transfer incorporation
 - 25E. Failure to comply with direction of Commissioner
 - 25F. Notice to Commissioner
 - 25G. Validity of contracts
 - 25H. Effect of transfer of incorporation
 - 25I. Duty and other charges not payable

**ASSOCIATIONS INCORPORATION AMENDMENT
BILL 2005**

*(Brought in by the Minister for Justice and Industrial
Relations, the Honourable Judith Louise Jackson)*

A BILL FOR

An Act to amend the *Associations Incorporation Act 1964*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Associations Incorporation Amendment Act 2005*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Associations Incorporation Act 1964** is referred to as the Principal Act.

*No. 64 of 1964

4. Section 2 amended (Interpretation)

Section 2(1) of the Principal Act is amended by inserting after the definition of “model rules” the following definition:

“prescribed body corporate” means –

- (a) a company within the meaning of the Corporations Act that is taken to be registered in Tasmania; or
- (b) a cooperative under the *Cooperatives Act 1999*; or
- (c) any body corporate that is registered, incorporated or otherwise established under a law applying in Tasmania or in any place outside Tasmania and that is prescribed for the purposes of this definition;

5. Sections 25C, 25D, 25E, 25F, 25G, 25H and 25I inserted

After section 25B of the Principal Act, the following sections are inserted:

25C. Voluntary transfer of incorporation

- (1) An incorporated association may apply to the Commissioner, in a form approved by the Commissioner, to become registered or incorporated as a prescribed body corporate.
- (2) Before an incorporated association can apply to become registered or

incorporated as a prescribed body corporate –

- (a) the proposal to become registered or incorporated as a prescribed body corporate must have been approved by a special resolution of the incorporated association; and
 - (b) the special resolution must have been registered by the Commissioner under section 23.
- (3) The Commissioner must approve an application made under subsection (1) if satisfied that subsection (2) has been complied with.

25D. Direction to transfer incorporation

- (1) Subject to subsection (2), the Commissioner may, by notice to an incorporated association, direct the incorporated association to apply to become registered or incorporated as a prescribed body corporate within the period (being not less than 3 months) specified in the notice and subject to any conditions specified in the notice.
- (2) The Commissioner may only give a direction under subsection (1) if the Commissioner is satisfied that the continued incorporation of the incorporated association under this Act would be inappropriate or inconvenient –

- (a) by reason of the Commissioner's assessment 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; or
 - (b) for any other prescribed reason.
- (3) Before giving a direction under subsection (1), the Commissioner must give a notice to the incorporated association stating –
- (a) the Commissioner's intention to direct the incorporated association to apply for registration or incorporation as a prescribed body corporate; and
 - (b) the grounds for the proposed direction; and
 - (c) that the incorporated association may make representations to the Commissioner, within 2 months after the date of the notice, as to why the direction should not be given.

- (4) The Commissioner must consider any representations made under subsection (3)(c) and notify the incorporated association who made the representations of the Commissioner's decision.
- (5) An incorporated association that is aggrieved by the direction of the Commissioner under subsection (1) may apply to the Magistrates Court (Administrative Appeals Division) for a review of the direction.

25E. Failure to comply with direction of Commissioner

If an incorporated association that has been directed by the Commissioner to apply to become registered or incorporated as a prescribed body corporate fails to comply with the direction within the period specified in the notice referred to in section 25D(1), the Commissioner may by notice to the incorporated association cancel the incorporation of the association under this Act.

25F. Notice to Commissioner

An incorporated association must notify the Commissioner in writing of its transfer of incorporation within 14 days after it is registered or incorporated as a prescribed body corporate.

Penalty: Fine not exceeding 10 penalty units.

25G. Validity of contracts

A contract to which an incorporated association is a party is not illegal, void or unenforceable by reason only that the incorporated association fails to comply with a direction of the Commissioner under this Part.

25H. Effect of transfer of incorporation

- (1) In this section, a reference to a transfer of incorporation by an incorporated association is a reference to the registration or incorporation of the incorporated association as a prescribed body corporate.
- (2) Subject to this section, on a transfer of incorporation by an incorporated association, the incorporated association ceases to be incorporated under this Act.
- (3) The transfer of incorporation by an incorporated association does not affect the identity of the association, which is to be taken to be the same body before and after the transfer of incorporation, and no act, matter or thing is to be affected or abated by the transfer of incorporation and, in particular, any claim by or against the incorporated association subsisting immediately before the transfer of incorporation may be continued by or against the prescribed body corporate, formed by the transfer of incorporation, in the name of the incorporated association or commenced by or against the prescribed body corporate, so formed,

in the name of the prescribed body corporate.

- (4) Without limiting the generality of subsection (3), nothing in subsection (2) –
- (a) affects any right, privilege, obligation or liability acquired or incurred under this Act; or
 - (b) affects any penalty, forfeiture or punishment incurred in respect of any offence committed against this Act; or
 - (c) affects any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment –

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if subsection (2) had not been enacted.

25I. Duty and other charges not payable

A duty, tax, fee or charge which is otherwise payable under a law relating to the transfer of assets is not payable in respect of the transfer of any asset of an incorporated association from the name of that association to the name of the prescribed body corporate into which the

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No.

Associations Incorporation Amendment

2005

association is transformed under the provisions of this Act.