

SECOND READING SPEECH

Associations Incorporation Amendment Bill 2011

Mr Speaker, I move that the *Associations Incorporation Amendment Bill 2011* be read a second time.

The *Associations Incorporation Amendment Bill 2011* clarifies the legal standing of not-for-profit companies when transferring registration, as a company under the *Commonwealth Corporations Act 2001*, to an association under the *Tasmanian Associations Incorporation Act 1964*.

When not-for-profit organisations initially set up they choose a corporate structure which fits their operations at that time (eg. a company limited by guarantee under the *Corporations Act* or an incorporated association under the *Associations Incorporation Act*). The corporate structure chosen reflects the size, turnover and complexity of proposed operations.

Generally speaking, the reporting regime for associations under the *Associations Incorporation Act* is less complex than the regime for companies under the *Commonwealth Corporations Act*.

The *Associations Incorporation Act* was never intended to apply to organisations operating for profit and therefore the level of supervision and scrutiny applied to the administrative and financial practices of incorporated associations is limited.

The *Associations Incorporation Act* is designed to provide a simple and inexpensive means of incorporating not-for-profit groups. In contrast, the *Corporations Act* is a much more complex and lengthy piece of legislation which governs both for profit companies, as well as not-for-profit companies limited by guarantee.

However, over time circumstances can change, which in turn may cause the organisation to seek to amend its corporate structure.

In 2001, section 25B of the Associations Incorporation Act was amended to allow not-for-profit companies to transfer registration to an association under the Associations Incorporation Act.

Under this arrangement, applications for transfer are made in the first instance to the Australian Securities and Investments Commission (ASIC), and subsequently to the Tasmanian Commissioner for Corporate Affairs.

The Act was amended again in 2006 to enable incorporated associations to voluntarily transfer from the Associations Incorporation Act to a more appropriate structure under the Commonwealth Corporations Act, where necessitated by their size, turnover or complexity.

However, ASIC recently expressed concern about the drafting of the relevant section 25B in the Associations Incorporation Act.

The concern is that the section, as drafted, does not guarantee the full continuity of a company's legal identity after the transfer, or fully preserve rights and claims against the company as required by the Corporations Act. As a consequence of this legal doubt, ASIC has indicated that it would not approve an application for transfer or deregistration of a company from the Commonwealth regime to the State.

The Amendment Bill removes that legal doubt by ensuring the full continuity of a company's legal identity after the transfer.

This amendment will allow not-for-profit companies to gain the benefits of less onerous reporting requirements through transferring to state law, as an incorporated association, where that transfer is appropriate.

The drafting mirrors similar provisions in all other States.

Mr Speaker, I commend the *Associations Incorporation Amendment Bill 2011* to the House.