Government of **Western Australia**
Department of **Commerce**
Consumer Protection

TRAND

Application for approval to transfer incorporation under another law

IMPORTANT INFORMATION

Please ensure you read the following information before completing this application

About this form
This form must be lodged where an association intends to transfer its registration under the *Associations Incorporation Act 1987* (the Act) to a company under the *Corporations Act 2001* (Cth) (Corporations Act) or *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act).

The reporting requirements under the Corporations Act and the CATSI Act may better suit larger associations given they are designed to regulate large-scale corporate entities. Changes to the Act give the Commissioner for Consumer Protection authority to approve an incorporated association's transfer into a company limited by guarantee, or an indigenous corporation.

An application to transfer incorporation MUST be completed using this form.

Important Information about applying to transfer to a company limited by guarantee
It is recommended that associations seeking to transfer to the Corporations Act should first apply to Australian Securities and Investments Commission (ASIC) to reserve the name before submitting this form.

Once this form is approved, an application using the ASIC Form 202-Application for registration of a body corporate as an Australian company must be made.

You should ensure that the company limited by guarantee complies with the reporting and regulatory requirements of the Corporations Act. Detailed information on the requirements of setting up and running a company limited by guarantee can be found on www.asic.gov.au. ASIC should be contacted for further information.

Important Information about applying to transfer to an indigenous corporation
Once this form is approved, an application using ORIC Form – Application for registration (existing organisation) must be made.

You should ensure the indigenous corporation complies with the reporting and regulatory requirements of CATSI Act. Detailed information on the requirements of setting up and running an indigenous corporation in Australia can be found on www.oric.gov.au. ORIC should be contacted for further information.

Documents you need to provide with this form
You will need to provide a copy of the minutes of the meeting at which the special resolution to transfer the incorporation was passed.

How to complete this form
Before answering each question, read the instructions provided overleaf.

How to lodge and pay for this application:
Fee information is available from the Fees, forms and online transactions page of our website at www.commerce.wa.gov.au/associations.

The fee can be paid by cheque, money order or credit card. Do not send cash through the mail. Cash will be accepted if paying in person. Cheques and money orders are to be made payable to: "Department of Commerce". The application fee is not subject to GST.

When complete, you may either mail the form and the accompanying documents and fee, or lodge it over the counter. Applications may not be accepted by fax or email.

What happens when you return your form:
If you fill out the form correctly and the resolution has been passed in accordance with the Act, the department will send written confirmation as to whether approval to transfer has been granted by the Commissioner.

It is important to note that your form may not be processed if it is incomplete or the requirements of the Act have not been met. The contact person will be advised in writing of any additional information required to complete the application.

Please ensure you keep a copy of all the documents that are submitted to the department as we do not provide a final copy to the association

Further Information
If you need help completing this form, or you need further information

- call 1300 30 40 74 for country callers
- send an email to **associations@commerce.wa.gov.au**

DEPARTMENT OF COMMERCE
Associations & Charities
Registrations Section
Level 5 Westcentre,
1260 Hay Street
West Perth WA 6005

Postal Address:
Locked Bag 14
Cloisters Square
Perth WA 6850

Associations Information:
1300 30 40 74

Website:
www.commerce.wa.gov.au/associations

Email:
associations@commerce.wa.gov.au

Inc Guide:
www.commerce.wa.gov.au/associationsguide/

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INSTRUCTIONS FOR COMPLETING THIS FORM

Tear off and keep this instruction sheet

Item 1: State the association's registered name in full and registration number as shown on the certificate of incorporation.

Item 2: Insert the name the association intends to adopt on transfer and the date of the general meeting at which the **special resolution** was passed.

For a **special resolution** to be valid it must passed at a meeting where notice is given to ALL members. To pass, at least 75% of the members voting in person at the meeting (or by proxy or postal voting if proxies or postal voting are allowed under the rules of the association) must vote in favour of the resolution.

Information on the procedure to pass a special resolution is covered in detail within the departments publication *Inc. A Guide for Incorporated Associations in Western Australia* available online at www.commerce.wa.gov.au/associationsguide

Item 3: Attach a copy of minutes of the meeting at which the special resolution to transfer the incorporation was passed. Please ensure that the minutes are endorsed with the following annexure statement:

"This is the annexure of [insert number of pages] page marked "A" referred to in the "approval to transfer incorporation" application signed by me and dated [insert the date] [insert signature]"

Item 4: Insert the date when the application for registration as a prescribed body corporate is expected to be made.

IMPORTANT: Applications must be made to ASIC or ORIC by this nominated date. Therefore, please allow adequate time to submit your application as delays may occur.

However, if you require further time to lodge your application you will need to submit a request in writing for the Commissioner's consideration giving reasons why lodgement by the date specified at item 3 cannot be met. There may be ramifications on the transfer process if an alternative date is not approved. Should you require further information about this please contact the Associations Registration Section on 1300 30 40 74

Item 5: Read the **Additional Information** section to ensure the Association has met the required points and tick the relevant boxes. If the association has not met all of the necessary requirements please contact the department to discuss in detail.

Item 6: The committee member that presided over the general meeting where special resolution was passed must sign and date the declaration.

Item 7: Please list the name, contact details and preferred method of communication of the person who should be contacted by the department if further information is needed.

BEFORE YOU APPLY

Have you considered?

A change in corporate structure from the *Associations Incorporation Act 1987* to the *Corporations Act 2001* or to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* may affect any existing statutory or contractual obligations with government funding agencies, affiliated bodies or accreditation bodies.

Any existing property, rights or obligations may not be recognised despite section 10I(2) of the Act, which provides that transfer of incorporation 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.

Consequently associations should consider what approvals, if any, they should obtain **before** calling a general meeting of members to consider a change in corporate structure. Associations are responsible for making their own enquiries as the Department of Commerce will not do so on their behalf. Associations should strongly consider obtaining legal advice before embarking on this process.

Examples of arrangements which may be affected by a change of corporate structure are:

1. Associations that have been appointed as trustee of trust land or hold a lease should contact the relevant regulatory body to ensure that their tenancy arrangements will not be affected by their proposed change of corporate structure.
2. Associations that own land should make enquiries as to the process of updating the Certificate of Title to reflect the change of corporate structure.
3. Associations that have gaming or liquor licences should contact the Department of Racing, Gaming and Liquor to ascertain if their licences will be affected by their proposed change of corporate structure.
4. An association legislated under the *School Education Act 1999* (WA) (for example, school councils, non-government schools, parents and citizens') may require approval from the Minister of Education prior to passing the special resolution to transfer.

Government of **Western Australia**
Department of **Commerce**

Associations Branch
Date Lodged Only

TRAND

OFFICE USE ONLY

Date Received:

Job No.

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Associations Incorporation Act 1987 s. 10B (This form is not prescribed)

IMPORTANT – The Department of Commerce is collecting and holding the supplied in this form for the purposes of the *Associations Incorporation Act 1987*. A copy of this form and the information it contains can be inspected or purchased by the public upon payment of a prescribed fee.

Association Details

1. Insert the full name of Association of association applying for approval to transfer incorporation:

Incorporated Association Registration Number (IARN):

Details of application

2. Application is hereby made for approval to transfer incorporation to a prescribed body corporate under section 10B of the *Associations Incorporation Act 1987*:

The name the association intends to adopt on transfer will be:

Date of the general meeting at which the Special Resolution to become a prescribed body corporate was duly passed: ☐☐/☐☐/☐☐☐☐

3. ☐ In accordance with section 10B(3) of the Act a copy of the special resolution is attached

You must write the following statement on the copy special resolution attached to this form and sign below the statement

This is the annexure of [insert the number of pages] marked "A" referred to in the "TRAND" form signed by me and dated [insert the date] [insert your signature]

4. Date the application for registration is expected to be made: ☐☐/☐☐/☐☐☐☐

Additional Information

5. It is necessary to confirm each of the following points (*please tick ☑ the boxes*):

☐ the body to which the association intends to transfer is subject to rules or a constitution that prohibits the distribution of profits to its members;

☐ The association does/does not* receive funding and the funding bodies (if applicable) have been advised of the proposal to transfer; and

☐ the public record is up to date and no outstanding documents are required to be lodged with the Commissioner.

**Please ensure that your cross out whichever is not applicable*

Declaration

6. I hereby certify that:
   a) I presided over the meeting at which the special resolution was passed;
   b) the Association has complied with the requirements of the Associations Incorporation Act 1987 and the associations rules in relation to the calling and holding of the general meeting for the special resolution and the passing of the special resolution;
   c) any consent required under the association's rules to be obtained before passing of the special resolution has been obtained; and
   d) the information set out in this application and its accompanying documents are true and correct

Signature _____ Date _____

Title ☐ Mr ☐ Mrs ☐ Ms ☐ Miss ☐ Other: ▶ _____

Full Name: _____

Address: _____

Post Code

Telephone: _____ Mobile: _____

Fax: _____ Email: _____

Contact Person

Please provide the details of the person we should contact if there are any questions about this form. ☐ *Tick if same as declarant.*

7. Title: ☐ Mr ☐ Mrs ☐ Ms ☐ Miss ☐ Other: ▶ _____

Full Name: _____

Address: _____

Post Code

Telephone: _____ Mobile: _____

Fax: _____ Email: _____

Preferred method of communication ☐ Email ☐ Post

Information about transfer of incorporation

Under the *Associations Incorporation Act 1987* an Association must resolve by **special resolution** to apply to the Commissioner for registration as a **prescribed body corporate**. Section 10A defines Prescribed Body Corporate as either a company within the meaning of the Corporations Act that is taken to be registered in Western Australia, or an entity that is a body corporate registered under another Commonwealth Act and prescribed for the purposes of this definition.

A ***prescribed body corporate*** for the purposes of this definition is set out in the *Associations Incorporation Regulations 1988* to be a body corporate under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

For a Special Resolution to be valid:

- The meeting at which the resolution is to be discussed must be properly called in accordance with the rules of the association.
- Notice must be given to **all** members in accordance with the rules and must state that it is intended that the resolution to change the rules will be proposed as a **special resolution.**
- The **special resolution** must be passed by at least 75% of the members present and eligible to vote at the meeting (or by proxy or postal voting if proxies or postal voting are allowed under the rules of the Association).

Payment Details

Payments can be made in person at Department of Commerce, Level 2, Gordon Stephenson House 140 William Street Perth WA 6000

Please debit:

☐ $308.00 for an application for approval to transfer incorporation

Amount Authorised: _____

Payment Method: ☐ CHEQUE ☐ CASH ☐ MONEY ORDER ☐ VISA ☐ MASTERCARD

Credit Card Details:

Card Number: ☐☐☐☐/☐☐☐☐/☐☐☐☐/☐☐☐☐

Expiry: ☐☐/☐☐

Cardholders Name: _____

Cardholder Signature: _____Card Holders Contact Telephone:_____

IMPORTANT: Please do not send cash through the mail. Cheques and money orders are to be made payable to 'Department of Commerce'. The application fee is not subject to GST.