

# Transfer to CATSI

Under the *Associations Incorporation Act 1987 (WA)*

**How to transfer a West Australian association (registered under the *Associations Incorporation Act 1987 (WA)*) to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act)*.**

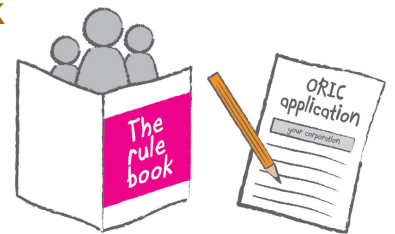
1

## Fill in an application form and draft a rule book

To transfer its incorporation to a corporation under the CATSI Act the association needs to:

- start to fill in an *ORIC Application for registration (existing organisation)* form (note: do not lodge this form until you reach step 5 of this guide)
- prepare a draft rule book that suits the corporation's needs and meets the CATSI Act. ORIC's model rule book can be used as a guide.

An ORIC officer can help with these.



2

## Call a general meeting

The association must call a general meeting for members to agree by special resolution to become a corporation under the CATSI Act.

At least 21 days notice of the meeting and the proposed special resolution must be given to the members.

Check the association's current rules to see how notice should be given for a general meeting. It might say that notice can be sent by mail, put on community notice boards, the radio or in the local newspaper.

Make sure everything possible has been done to let members know about the meeting.



3

## At the general meeting:

At least 75 per cent of association members entitled to vote and voting must:

- agree by special resolution to incorporate the association as a corporation registered under the CATSI Act
- approve the proposed application for registration of a corporation under the CATSI Act
- authorise a person to apply for registration on behalf of the members
- decide on the new corporation name to apply for
- agree to adopt the proposed rule book (including all replaceable rules in the CATSI Act that have not been included or changed in the rule book)
- nominate the people who will be the directors on registration
- nominate a person to be the contact person (or secretary if the corporation will be large) on registration.

Keep minutes of the meeting (the chairperson needs to sign them) and the resolution passed. ORIC's example minutes can be used.



## 4

### Send the following to the the WA Commissioner for Consumer Protection:

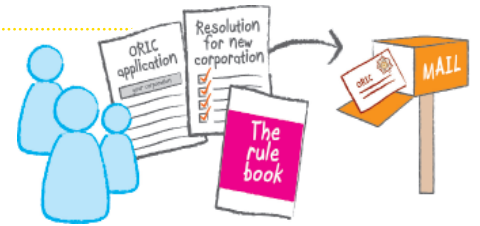
- a covering letter detailing the reasons why the association wishes to transfer its incorporation to the CATSI Act
- a completed *Application for approval to transfer incorporation under another law (TRAND)* form
- a copy of the signed minutes of the general meeting at which the special resolution to transfer the incorporation was passed by the members. Make sure you write on the copy of the minutes 'This is the annexure of <insert the number of pages> pages marked "A" referred to in the "TRAND" form signed by me and dated <insert date> <insert your signature>.'
- the required fee.

After the WA Commissioner decides that it would be more appropriate for incorporation of the association to transfer to a corporation, they will send the association a written notice approving the application for registration being made to ORIC.

## 5

### Send the following to ORIC:

- a completed *Application for registration (existing organisation)* form
- a copy of the signed minutes and the special resolution
- a copy of the proposed rule book
- a certified copy of the association's current constitution
- a certified copy of the association's current certificate of incorporation, or a similar document
- if applicable, any application for exemption under the CATSI Act
- a copy of the written notice of approval from the WA Commissioner of Consumer Protection.



ORIC will then register the corporation and send the applicant a certificate of registration.

## 6

### Write to the WA Commissioner of Consumer Protection

Within 14 days of registration under the CATSI Act the association must write to the WA Commissioner of Consumer Protection and tell them the association has transferred its incorporation. Please include a copy of the corporation's new certificate of incorporation.

## 7

### Final steps ...

- The WA Commissioner of Consumer Protection will remove the association from their register but the identity of the body is taken to be the same before and after the transfer.
- The corporation may be eligible for roll-over relief from capital gains tax under subdivisions 124-I and 620-A of the *Income Tax Assessment Act 1997*.
- The transfer may also be exempt from stamp duty.
- Ask ORIC for governance assistance and training.

### The main benefits of registering under the CATSI Act

- The rule book that governs how the corporation is run can take into account Aboriginal and Torres Strait Islander customs and traditions.
- It is free to register as an Aboriginal and Torres Strait Islander corporation—unlike other regulators that may charge a fee.
- The Registrar of Indigenous Corporations offers client assistance, support, information and training programs.
- Aboriginal and Torres Strait Islander corporations can operate nationally—they are not limited to the state or territory in which they are registered.
- When registering their corporation, members can choose not to be liable for the debts of the corporation.
- Profits of the corporation can be distributed to members if the rule book allows for this.

For more information

freecall 1800 622 431 (not free from mobiles)  
email [info@oric.gov.au](mailto:info@oric.gov.au)  
website [www.oric.gov.au](http://www.oric.gov.au)

# Example minutes

## AGREEMENT TO TRANSFER—PASSING OF A SPECIAL RESOLUTION

This is the annexure of <insert number of pages> pages marked "A" referred to in the "TRAND" form signed by me and dated <insert date>. *Joe Bloggs*

Association's name: \_\_\_\_\_

Incorporated under the *Associations Incorporation Act 1987* (WA)

### Minutes of general meeting of members

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**Date:** \_\_\_\_\_

**Location:** \_\_\_\_\_

**Time:** \_\_\_\_\_

**Present:** see attached attendance list

**Apologies:** see attached list of apologies

**Chair:** \_\_\_\_\_

**Quorum:** A quorum of members entitled to vote on the resolution was present at all times during the meeting.

**Notice of meeting:** The notice of the meeting of members was, with the permission of the members, taken as being read.

**Resolution:** The following special resolution was passed by at least 75 per cent of members entitled to vote and voting.

THE MEMBERS RESOLVED for the purposes of section 10B of the *Associations Incorporation Act 1987* (WA) to:

- apply for registration of the association as an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

THE MEMBERS RESOLVED for the purposes of the CATSI Act:

- that [ \_\_\_\_\_ ] is authorised to apply for the registration
- that the proposed rule book attached to the notice of the meeting be adopted by the association when it becomes registered as an Aboriginal and Torres Strait Islander corporation
- that the attached list of replaceable rules from the CATSI Act will apply to the association when it becomes registered as an Aboriginal and Torres Strait Islander corporation, except if it is changed or replaced in the proposed rule book
- that the persons specified in the application will become directors on registration
- that the person/s specified will become contact persons or secretaries [delete whichever does not apply] on registration.

**Closure:** There being no further business the meeting was declared closed at \_\_\_\_\_.

**Confirmed** \_\_\_\_\_ (Signature of president/chairperson)

\_\_\_\_\_ (Name of president/chairperson)

## Attachment—Table of replaceable rules

This table indicates all the replaceable rules in the CATSI Act.

SUBJECT OF PROVISION	PROVISION
<b>Chapter 4—Members and observers</b>	
Application to corporation	section 144-5 <i>subsection (2) is a replaceable rule</i>
Determination of applications for membership	section 144-10 <i>subsection (7) is a replaceable rule</i>
Resignation	section 150-10 <i>subsection (2) is a replaceable rule</i>
Member not eligible for membership etc.	section 150-20 <i>this section is a replaceable rule</i>
Observers	section 158-5 <i>subsection (2) is a replaceable rule</i>
Corporation or directors may allow member to inspect books	section 175-15 <i>this section is a replaceable rule</i>
<b>Chapter 5—Meetings</b>	
Director may call meetings	section 201-1 <i>this section is a replaceable rule</i>
Notice of general meeting to members, officers and observers	section 201-25 <i>subsections (2), (5) and (6) are replaceable rules</i>
Quorum	section 201-70 <i>subsections (1), (2), (5) and (6) are replaceable rules</i>
Chairing general meeting	section 201-75 <i>this section is a replaceable rule</i>
Adjourned meetings	section 201-85 <i>subsection (2) is a replaceable rule</i>
Who may appoint a proxy	section 201-90 <i>this section is a replaceable rule</i>
How many votes a member has	section 201-115 <i>this section is a replaceable rule</i>
Objections to right to vote	section 201-120 <i>this section is a replaceable rule</i>
How voting is carried out	section 201-125 <i>this section is a replaceable rule</i>

SUBJECT OF PROVISION	PROVISION
<b>Chapter 5—Meetings (continued)</b>	
When and how polls must be taken	section 201-140 <i>this section is a replaceable rule</i>
Calling directors' meetings	section 212-5 <i>this section is a replaceable rule</i>
Chairing directors' meetings	section 212-15 <i>this section is a replaceable rule</i>
Passing of directors' resolutions	section 212-25 <i>this section is a replaceable rule</i>
Circulating resolutions of corporation with more than 1 director	section 215-1 <i>this section is a replaceable rule</i>
<b>Chapter 6—Officers</b>	
Corporation may appoint a director	section 246-15 <i>this section is a replaceable rule</i>
Directors may appoint other directors to make up a quorum	section 246-20 <i>this section is a replaceable rule</i>
Term of appointment	section 246-25 <i>subsections (1) and (3) are replaceable rules</i>
Alternate directors	section 246-30 <i>this section is a replaceable rule</i>
Director may resign	section 249-5 <i>subsection (2) is a replaceable rule</i>
Terms and conditions of office for secretaries	section 257-45 <i>this section is a replaceable rule</i>
Terms and conditions of contact person's appointment	section 257-50 <i>this section is a replaceable rule</i>
Powers of directors	section 274-1 <i>this section is a replaceable rule</i>
Negotiable instruments	section 274-5 <i>this section is a replaceable rule</i>

# Example meeting notice

## AGREEMENT TO TRANSFER—PASSING OF A SPECIAL RESOLUTION

Association's name: .....

Incorporated under the *Associations Incorporation Act 1987* (WA)

### Notice of general meeting

---

All members of [insert association name] are invited to the general meeting of the association.

**Date:** \_\_\_\_\_

**Location:** \_\_\_\_\_

**Time:** \_\_\_\_\_

- Agenda:**
- Apologies
  - Quorum
  - Notice of meeting
  - Passing of a special resolution to transfer incorporation of the association from the *Associations Incorporation Act 1987* (WA) to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

**Proposed resolution:** THE MEMBERS RESOLVED for the purposes of section 10B of the *Associations Incorporation Act 1987* (WA) to:

- apply for registration of the association as an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

THE MEMBERS RESOLVED for the purposes of the CATSI Act:

- that [ ] is authorised to apply for the registration
- that the proposed rule book attached to the notice of the meeting be adopted by the association when it becomes registered as an Aboriginal and Torres Strait Islander corporation
- that the attached list of replaceable rules from the CATSI Act will apply to the association when it becomes registered as an Aboriginal and Torres Strait Islander corporation, except if it is changed or replaced in the proposed rule book
- that the persons specified in the application will become directors on registration
- that the person/s specified will become contact persons or secretaries [delete whichever does not apply] on registration.

**Proxies:** If the association's constitution allows proxies, there also needs to be a statement saying that the member has a right to appoint a proxy and whether the proxy needs to be a member of the association.



## Related documents

### For Western Australia associations registered under the *Associations Incorporation Act 1987 (WA)*

As well as this guide about transferring to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act)*, the following may be helpful:

- The rule book—condensed
- Form: *Application for registration (existing organisation)* under the CATSI Act
- WA Department of Commerce form: *Application for approval to transfer incorporation under another law (TRAND)*

### Plus a range of other ORIC publications:

The ORIC Oracle newsletter

ORIC fact sheets:

- What's in the corporation's rule book?
- Meetings
- Duties of directors and other officers
- Secretaries and contact persons
- Corporation size and financial reporting
- Disqualification from managing a corporation under the CATSI Act
- Related party financial benefits

All documents are available on ORIC's website, [www.oric.gov.au](http://www.oric.gov.au), or by contacting ORIC.

For more information

freecall 1800 622 431 (not free from mobiles)  
email [info@oric.gov.au](mailto:info@oric.gov.au)  
website [www.oric.gov.au](http://www.oric.gov.au)



## 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](http://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](http://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](http://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](mailto: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](http://www.commerce.wa.gov.au/associations)

### Email:

[associations@commerce.wa.gov.au](mailto:associations@commerce.wa.gov.au)

### Inc Guide:

[www.commerce.wa.gov.au/associationsguide/](http://www.commerce.wa.gov.au/associationsguide/)





## 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 be 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 department's publication *Inc. A Guide for Incorporated Associations in Western Australia* available online at [www.commerce.wa.gov.au/associationsguide](http://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 101(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.





TRAND

OFFICE USE ONLY

Date received:

\_\_\_\_\_

Job No.

\_\_\_\_\_

# Application for approval to transfer incorporation under another law

*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:

\$293.00 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.**