

Title	Restructure to Company
Prepared by	Brenton Thomass - President
Date	6 October 2022
Action item	For approval

## Recommendation

That members resolve to:

1. approve the transfer of the registration of the Association to a company limited by guarantee (being a prescribed body corporate) in accordance with section 110 of the Associations Incorporation Reform Act 2012 (Vic).
2. authorise Norman Waterhouse Lawyers to make an application to the Australian Securities and Investments Commission (ASIC) to facilitate the transfer of registration.
3. subject to the Association receiving approval from ASIC to transfer its registration, to adopt the Constitution as the governing document of the Association on and from the date of the transfer of registration.

## Background

Australian Institute of Animal Management Inc (**Association**) is an association incorporated under the *Associations Incorporation Reform Act 2012 (Vic)* (**Associations Act**).

Throughout the history of the Association, being governed by the Associations Act has been sufficient for the Association's purposes. However, as the Association expands its operations and intends to provide a greater level of services outside of Victoria, it is no longer appropriate for the Association to be governed by the Associations Act.

The primary reason for this is that the Associations Act is Victorian legislation. The effect of this is that the Association may not be recognised at law outside of Victoria, which limits the ability of the Association to conduct activities outside of Victoria.

The Board proposes to restructure the Association to allow it to undertake activities nationwide. The restructure will involve the transfer of the registration of the Association to become a company limited by guarantee.

As a company limited by guarantee, the Association will become regulated by the *Corporations Act 2001 (Cth)* (**Corporations Act**), which in addition to the ability to be recognised outside of Victoria, will provide the Association with the following additional benefits when compared to the Associations Act:

- companies have broad powers under the Corporations Act that are equivalent to the legal capacity of an individual (see, section 124 of the Corporations Act), in comparison to the more limited and restrictive powers provided under the



Associations Act (see, sections 29 and 30 of the Associations Act); and

- the Corporations Act provides a more comprehensive and robust governance framework for the Association that will be more readily recognised and understood by Government agencies and businesses that may deal with the Association from time to time. This may be of particular relevance where the Association deals with Government agencies or businesses located outside Victoria.

The restructure will not create a new legal entity, there will be no change in those persons appointed to the Board and the Association's objects will remain derived from the current objects of the Association. The Association will also retain all relevant tax concessions available to the Association, most notably including income tax exemption.

The Board highlights that, as a result of the restructure, your membership will cease.

### **THE RESOLUTIONS**

The following resolutions will be proposed at the Special General Meeting to give effect to the proposed restructure.

To consider and if thought fit, to pass the following as a special resolution:

*It was resolved as a special resolution to approve the transfer of the registration of the Association to a company limited by guarantee (being a prescribed body corporate) in accordance with section 110 of the Associations Incorporation Reform Act 2012 (Vic).*

To consider and if thought fit, to pass the following as an ordinary resolution:

*It was resolved to authorise Norman Waterhouse Lawyers to make an application to the Australian Securities and Investments Commission (ASIC) to facilitate the transfer of registration.*

To consider and if thought fit, to pass the following as a special resolution:

*It was resolved as a special resolution, subject to the Association receiving approval from ASIC to transfer its registration, to adopt the Constitution as the governing document of the Association on and from the date of the transfer of registration.*

### **THE TRANSFER OF REGISTRATION**

The transfer of registration is recognised under both the Associations Act and the Corporations Act.

Section 110 of the Associations Act provides that an incorporated association may apply to be registered as a prescribed body corporate<sup>1</sup> if a special resolution of the association is passed approving the application.

Section 601BA(1)(d) of the Corporations Act provides that a body corporate may be registered under the Corporations Act as a company limited by guarantee.

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<sup>1</sup> Section 109(a) of the Associations Act provides that a company within the meaning of the Corporations Act is a prescribed body corporate.



Section 601BC(1) of the Corporations Act provides that an application must be lodged with the Australian Securities and Investments Commission (**ASIC**) to register a body corporate as a company.

Section 114 of the Associations Act provides that an association ceases to be incorporated under the Associations Act on the transfer of its incorporation.

The effect of registration under the Corporations Act:

- (1) does not:
  - (a) create a new legal entity; or
  - (b) affect the Association's existing property, rights or obligations (except as against the members of the Association in their capacity as members); or
  - (c) render defective any legal proceedings by or against the Association or its members.
- (2) treats the persons who cease to be members of the Association at the time of registration as a company as past members of the company in applying Division 2 of Part 5.6 of the Corporations Act to a winding up of the company. However, those person's liability to contribute to the company's property is further limited by this section to an amount sufficient for the following:
  - (a) payment of debts and liabilities contracted by the company before the day on which the company was registered under the Corporations Act; and
  - (b) payment of the costs, charges and expenses of winding up the company, so far as those costs, charges and expenses relate to those debts and liabilities; and
  - (c) the adjustment of the rights between the contributories, so far as the adjustment relates to those debts and liabilities.

The Association currently has 235 members, whose membership will cease when the transfer of registration takes effect.

Following the restructure, the company will have 9 members (being the members of the Board), each of whom agree to contribute an amount not exceeding \$10 to contribute to the costs of winding up of the Association.

Although the restructure has the effect of extinguishing the rights of the current members, those persons will remain liable to contribute as though they were still members if the Association is wound up within 12 months of the transfer of registration and the Association's cash resources are not sufficient to discharge the Association's costs of winding up.

The Association's current net assets are \$34,034. As a result, the Board is of the view that the Association has sufficient assets to pay the costs associated with its winding up without requiring contributions from any member.

The Board further notes that the Association has no intention of winding up in the foreseeable future.



## **THE CONSTITUTION**

Subject to the passing of the special resolution for the transfer of registration, the Association will become regulated by the Corporations Act as a company limited by guarantee. This will result in many of the provisions of the current constitution of the Association being inappropriate as that governing document has been prepared to comply with the requirements of the Associations Act.

Accordingly, as from the date of the transfer of registration, the Association intends to adopt the constitution set out as Annexure B to this notice of meeting as its governing document.

To the maximum extent possible, the updated constitution has been drafted to provide the same framework as the existing constitution for the Association, including the objects and purposes of the Association.

Upon registration of the Company the initial members are the persons listed on the Register of Members. Under a company, all the benefits and rights of a member will remain unchanged from the current association membership benefits as outlined in the constitution.

## **CONSEQUENCES OF THE RESTRUCTURE**

If passed, and the subsequent application approved by ASIC, the resolutions will result in the:

- Association ceasing to be an association registered under the Associations Act and becoming registered as a company limited by guarantee under the Corporations Act;
- membership of each current member of the Association ceasing;
- constitution of the Association being replaced by the constitution set out at Annexure B.

For these reasons, all of the directors of the Company recommend the resolutions to members.



## **Annexure B – Constitution**