

Aboriginal Legal Service
of Western Australia, Inc

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Notice of Annual General Meeting

Notice is hereby given that the annual general meeting of the Aboriginal Legal Service of Western Australia Inc. will be held at the registered office 7 Aberdeen Street, Perth WA 6000 on Thursday 24 November 2016 at 4:00 pm

Business of the meeting:

1. Financial statements

- To receive and discuss the financial statements and reports of the Executive Committee and of the Auditor for the year ended 30 June 2016.

2. Auditor

- To reappoint Deloitte Touche Tohmatsu as auditor for a further period.

3. Special Resolutions

To consider and if thought fit pass the following resolutions as special resolutions:

– Special Resolution 1 - Transfer of incorporation

That the Association transfer its incorporation from an association incorporated under the *Associations Incorporation Act 2015 (WA) (Associations Act)* to a public company limited by guarantee registered under the *Corporations Act 2001 (Cth) (Corporations Act)* in accordance with the provisions of Part 6 of the Associations Act.

– Special Resolution 2 - Adoption of new constitution

That, upon registration as a public company limited by guarantee registered under the Corporations Act, the Association adopt as its constitution the document in the form tabled at the meeting.

This resolution is conditional on special resolution 1 being passed.

– Special Resolution 3 - Initial Elected Directors

That, upon registration as a public company limited by guarantee registered under the Corporations Act, the following existing members of the Executive Committee be the initial Elected Directors of the company and hold office as Elected Directors until required to retire and seek re-election under the terms of the company's constitution

Mr Michael Blurton;

Mr Glen Colbung;

Mr Preston Thomas;

Ms Kathy Watson; and

Mr Donald Abdullah

This resolution is conditional on special resolution 1 being passed.

– **Special Resolution 4 - Appointment of auditor**

That, upon registration as a public company limited by guarantee registered under the Corporations Act, Deloitte Touche Tohmatsu is appointed as the company's auditor.

This resolution is conditional on special resolution 1 being passed.

If special resolution 1 is not passed, special resolutions 2 - 4 will not be put to the meeting.

The Executive Committee recommends that members vote in favour of each special resolution.

Notes and an explanatory memorandum are included below.



Dennis Eggington
Chief Executive Officer
20 October 2016

NOTES

These notes form part of the notice of annual general meeting.

Chairman

The chairman of the meeting will be the President of the Association.

Business

During each item of business, members will have a reasonable opportunity to ask questions and make comments.

Right to vote

In accordance with the Association's constitution:

- (a) only members registered as Ordinary Members are entitled to vote at the meeting;
- (b) Ex-officio Members and Life Members are only entitled to vote at the meeting if they are also registered as Ordinary Members; and
- (c) Associate Members will not be entitled to vote at the meeting.

Bodies corporate

A body corporate may appoint an individual as its representative to exercise any of the powers the body may exercise at the meeting. The appointment may be a standing one. Unless the appointment states otherwise, the representative may exercise all of the powers that the appointing body could exercise at a meeting or in voting on a resolution.

The representative should bring to the meeting evidence of his or her appointment, including any authority under which the appointment is signed, unless it has previously been given to the Association.

No proxies

In accordance with the Association's constitution, only those Members present in person and entitled to vote may vote at the meeting.

EXPLANATORY MEMORANDUM

This explanatory memorandum forms part of the notice of annual general meeting.

Explanation for special resolution 1 - Transfer of incorporation

The Association proposes to transfer its incorporation from an association incorporated under the Associations Act to a public company limited by guarantee registered under the Corporations Act, which will continue to be not-for-profit and a registered charity.

The Association proposes to do this for a number of reasons, including that:

- (a) the Association is required to be registered under the Corporations Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act) in accordance with the terms of the Association's Funding Agreement with the Commonwealth of Australia. For a number of reasons, the Association has determined that it would be preferable to register as a company under the Corporations Act rather than under the CATSI Act. These reasons include that the Association proposes to maintain its status as a registered charity and be regulated primarily by the ACNC under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (ACNC Act);
- (b) registration under the Corporations Act should better allow and reflect the proposed future activities of the Association, which include fund-raising and certain for-profit activities in support of the Association's charitable purposes.
- (c) registration under the Corporations Act might increase the Association's ability to obtain funding, and that many government bodies and private organisations that provide funding to not-for-profit organisations may prefer organisations that are registered under the Corporations Act.

As a not-for-profit organisation and registered charity, a public company limited by guarantee is the appropriate company type for registration under the Corporations Act. Being a company also imposes clearer governance obligations on the Association, with members having clearer rights and Directors having clearer duties.

The Association proposes to transfer to a public company limited by guarantee by following the processes set out in the Associations Act and the Corporations Act, which preserves the pre-existing property, rights and obligations of the Association and will not result in the creation of a new legal entity. This process requires the passing of a special resolution in the nature of special resolution 1.

If special resolution 1 is passed, the Association will act to register the Association as a public company limited by guarantee by following the processes set out in the Associations Act and the Corporations Act, including obtaining the necessary approvals from the Department of Commerce of Western Australia (DOC) and the Australian Securities and Investments Commission (ASIC), and notifying the Australian Charities and Not-for-profits Commission (ACNC), the Australian Taxation Office (ATO) and the Legal Practice Board of Western Australia (LPBWA). If members agree to the change, DOC must also approve it before the Association can apply to ASIC to register the company.

The Association has consulted with the Commonwealth Attorney-General's Department (AGD), DOC, ATO, LPBWA and other interested stakeholders about the proposed transfer.

If special resolution 1 is passed and the proposed transfer is approved by DOC and ASIC, the Association will cease to be an association incorporated under the Associations Act and will instead be a public company limited by guarantee, upon the company's registration under the Corporations Act.

If special resolution 1 is passed and the proposed transfer is approved by DOC and ASIC, members who are registered as members of the Association on the date the Association is registered under the Corporations Act, and who have consented to be a member of the company, will be the members of the company subject to, and in accordance with, the terms of this proposed new constitution, upon the company's registration under the Corporations Act. A member consent form is available on the Associations website at www.als.org.au.

Recommendation: The Executive Committee unanimously recommends that members vote in favour of special resolution 1.

Explanation for special resolution 2 - Adoption of new constitution

If special resolutions 1 and 2 are passed and the proposed transfer is approved by DOC and ASIC, the Association will adopt the proposed new not-for-profit constitution in the form tabled at the meeting, upon the company's registration under the Corporations Act. A copy of this is available on the Association's website at www.als.org.au.

The Association considers that this proposed new constitution will be appropriate for its charitable purposes and proposed future activities. It would not be appropriate to rely on the Association's constitution in its current form or the replaceable rules under the Corporations Act.

Much of the intent of the Association's current constitution remains intact, although this proposed new constitution includes and reflects the various requirements of the Corporations Act and other legislation such as the *Charities Act 2013* (Cth) and the *Income Tax Assessment Act 1997* (Cth) because of the Association's status as a registered charity.

Under rule 1.1 of this proposed new constitution, the company will be a not-for-profit public company limited by guarantee. Under rule 2.3 of this proposed new constitution the liability of each member will be limited to \$10 being the amount of the guarantee if the company is later wound up.

The objects in rule 1.2(a) of this proposed new constitution broadly follow the objects in the Association's current constitution. The objects in rules 1.2(a)(xx) and 1.2(b) are new objects in relation to the Association's proposed future activities. The objects in rule 1.2(b) may only be carried on for the purpose of supporting the objects in rule 1.2(a).

The categories and eligibility requirements of membership in rule 2 of this proposed new constitution are broadly the same as the ones in the Association's current constitution.

The eligibility and election requirements for Elected Directors in rule 3 of this proposed new constitution are also broadly the same as the ones for Executive Committee members in Association's current constitution. A new category of Director referred to as a Co-Opted Director has been added to permit the Board to appoint up to two Directors who bring required skills and experience to the Board (see rule 3.12). The proposed new constitution also includes the flexibility to appoint a Managing Director if the Board determines it is prudent or necessary to do so (see rule 7).

The Association has provided a copy of this proposed new constitution to the ACNC, AGD, ATO and LPBWA and has obtained advice from the ACNC and the ATO that the Association's status as a registered charity and access to tax concessions for which it is endorsed will continue after the transition. Based on its consultation with the AGD and the LPBWA, the Association expects that its Commonwealth funding and its status as a community legal centre should not be affected by the transition.

Recommendation: The Executive Committee unanimously recommends that members vote in favour of special resolution 2.

Explanation for special resolution 3 - Initial Elected Directors

If special resolutions 1 and 3 are passed and the proposed transfer is approved by DOC and ASIC, the existing members of the Executive Committee set out in special resolution 3 will be the initial Elected Directors of the company, upon the company's registration under the Corporations Act. They will hold office as Directors in accordance with the terms of the proposed new constitution, including that the initial Elected Directors will be required to retire and seek re-election under the terms of the proposed new constitution. Some biographical details for them are set out below.

Initial Elected Directors

Michael Blurton is the current President of the Association and has served as an Executive Committee member for 13 years. He is a Ballardong Noongar man from the wheat belt town of Quairading. His involvement with the Association spans back to the 1970s when he worked as a field/court officer. Michael supports and promotes the vital role that the Association plays in striving for justice and support for Aboriginal and Torres strait Islander people within the legal justice system.

Glen Colbung is the current Vice President of the Association and has been an Executive Committee member since 2015. He has been involved with the Association for more than 20 years. He is a Noongar man from Albany in the south west of the state. Glen is greatly committed to maintaining a strong legal service for our people and looks forward to contributing to the Association's future.

Preston Thomas has been a member of the Executive Committee since 2006. He is from Laverton and has lived in Kanpa Community for over 20 years. Preston has also had a long affiliation with the Association. Preston is deeply committed to the issues facing our people and will support the vital work undertaken by the Association for the benefit of the Aboriginal and Torres Strait people.

Kathy Watson is a past President of the Association and is now its Secretary. She has been an Executive Committee member since 2011. Kathy is from Broome in the west Kimberly. She is passionate about legal issues for our community, she would like to see more cultural input into court matters, particularly with in court districts.

Donald Abdullah has been an Executive Committee member since 2015. He is a Wongi man from Esperance on the south east coast of Western Australia. Donald is dedicated to supporting Aboriginal and Torres Strait Islander People and feels strongly about keeping our young people out of prison. He is also supportive of women who face domestic violence and providing guidance on legal matters.

Recommendation: The Executive Committee unanimously recommends that members vote in favour of special resolution 3.

Explanation for special resolution 4 - Appointment of auditor

If special resolutions 1 and 4 are passed and the proposed transfer is approved by DOC and ASIC, Deloitte Touche Tohmatsu will be the auditor of the company, upon registration under the Corporations Act.

Deloitte is the existing auditor of the Association.

Recommendation: The Executive Committee unanimously recommends that members vote in favour of special resolution 4.