

# Adoption of a New Constitution for RACT

Members are being asked to consider the adoption of a new constitution for RACT (New Constitution) at this year's AGM.

The existing constitution was originally drafted more than 15 years ago and has been amended on several occasions since its adoption, but in order to take advantage of, and accommodate, changes to the Corporations Act and also 'best practices' in corporate governance a more comprehensive approach to the drafting of the document is needed.

RACT has also recently concluded a review of its membership and wishes to have the capability to consolidate the rights and benefits of membership into a single class of member and separate, within the constitution at least, membership from the provision of roadside assistance or service rights. The potential separation of service rights within the New Constitution does not however mean that RACT is any less focused on providing services to its members, but the changes would allow a more flexible and individually tailored approach to the services we provide each of our members as well as an equality within our membership base that is more representative of our values than the current approach.

Accordingly, the Board has undertaken a review of the existing constitution and recommend the adoption of the New Constitution.

The New Constitution is available to members via the RACT website at [ract.com.au/agm](http://ract.com.au/agm) and members may also request a hard copy of the New Constitution from RACT by telephone 13 27 22, email via [returningofficer@ract.com.au](mailto:returningofficer@ract.com.au), in writing to RACT House, 179-191 Murray Street, Hobart, TAS 7000, or in person at any of our branches.

As it is driven by the requirements of the Corporations Act, in many respects the New Constitution is on similar terms to the existing constitution, but with modernised terminology and wherever possible, increased flexibility to reflect changes to legislation and what the Board considers to be current best practices.

It is believed that the New Constitution provides a clearer and more understandable governance document for RACT and its members. To assist members in understanding certain key differences between the New Constitution and RACT's existing constitution a summary of the key aspects of the New Constitution and how it differs and/or retains elements of the existing constitution can be found in the summary below:

Purpose	RACT's purpose remains the same in the new Constitution.
<b>Application of Income and Change of Ownership Constraints</b>	<p>The New Constitution retains the intent in relation to the application of RACT's income solely being used to promote its purpose with no dividend being allowed.</p> <p>In addition the new Constitution makes it harder for this position to change in the future with specific provisions to require at least 15% of members to vote on any attempt to demutualise (change ownership of) RACT. This is because the</p>

	<p>Corporations Act provides limited protection in the event of a proposed demutualisation for a company limited by guarantee like RACT.</p> <p>As only a simple majority of members present would otherwise be required under the Corporations Act to approve a demutualisation, the board, having regard to the best interests of RACT and good corporate governance practices, considers it appropriate that special protections are made to ensure that a sufficient number of members approve any future demutualisation for it to be effective.</p>
<b>Mutual Capital Instruments</b>	<p>Legislation allowing mutual organisations like the RACT to raise capital from outside their members or via loans was enabled in 2019.</p> <p>While RACT has no current intention to raise capital in this way it is prudent to ensure that the company has the ability to take advantage of all possible fund raising mechanisms and so provisions in relation to Mutual Capital Instruments have been included within the New Constitution.</p>
<b>Event of Winding Up</b>	<p>The New Constitution removes the relationship between members guarantee and their annual subscription rate to a fixed \$2 per member in the event that RACT ceases to operate and cannot pay all of its debts. At current rates this represents a reduction in the level of guarantee.</p> <p>In the event that RACT ceases to operate and has surplus property the new constitution has an additional requirement that the recipient organisation is similarly restricted from distributing its profits to its members.</p>
<b>Membership</b>	<p>To the extent allowable under law, categories of Membership remain a matter of decision for the Board and continue to be articulated in Membership By-laws as amended from time to time.</p> <p>Other than through any By-law to the contrary, Membership rights have been separated from the right to receive Roadside Assistance services within the Constitution. Existing Service Members, Honorary Life Members, Paid Life Members will continue to have the same rights under the New Constitution and will be classed as Eligible Members under Membership By-laws to be adopted under the New Constitution.</p> <p>These changes have been made to allow, but not require, RACT to have a single membership class, with equal legal rights under the Constitution. This includes those members who have received honorary life recognition, or who receive such an honour in the future.</p>
<b>Applications, Admission and Cessation of Members</b>	<p>The process required to become a member of RACT, including any application or annual subscription fees, remains under the control of the Board.</p> <p>Likewise both the Members and the Board retain their rights to terminate membership within the new Constitution and Membership remains non-transferable.</p>
<b>Patron, Officeholders of the Board and Executive Officers</b>	<p>The powers of the Board to appoint a Patron, Officeholders of the Board and Executive Officers remain in the new constitution.</p> <p>The new constitution however increases the flexibility that the Board has in both determining the number and titles of any officeholders within the Board, as well as how and when any such roles are filled and the term of such roles.</p>

<b>Board</b>	<p>No change has been made to the size and make-up of the Board.</p> <p>It should be noted that the RACT was and continues to be in a transitional mode from a Board of 12 Member Elected Directors to one of 9 Member Elected Directors and 3 Board Appointed Directors. The transitional provisions to accomplish this within the existing constitution have been duplicated in the New Constitution.</p>
<b>Board Election and Terms</b>	<p>No change has been made to the qualification requirements for nominees in relation to any RACT Board Election except that the duration of a member’s membership prior to standing for election within the Constitution itself has been reduced from one year to three months, in line with a new voting restriction in respect to the same period, and the Board will have the capability to be flexible in relation to qualification requirements through determination via By-laws.</p> <p>The nomination process remains the same under the New Constitution except that in order that the Board can determine whether a prospective nominee would be considered an appropriate member of the Board by any regulatory body to which RACT is bound, each nominee will in future be required to participate in an interview with a committee of the Board. The Board will have the capability to vary the nomination process through By-laws.</p> <p>The Constitutional requirements in relation to the operation of any Board election that is required continue and elections will largely be administered under Election By-laws, as amended from time to time, except that in future for the election of any Member Elected Director to be effective, 2% of Eligible Members must have voted.</p> <p>The term of each Member Elected Director shall remain three years under the New Constitution and eligibility to stand for re-election shall continue to be determined by the Board via By-laws.</p> <p>The Boards ability to make casual vacancy appointments in relation to Member Elected Directors and appoint Board Appointed Directors remains unchanged within the New Constitution.</p>
<b>Directors Fees</b>	<p>Directors’ remuneration remains the same under the New Constitution with members being required to pass a resolution to set the total aggregate fees that the Board may allocate. In the New Constitution however that aggregate amount is anticipated to be the maximum that can be allocated rather than an amount that will be allocated as in the current Constitution.</p> <p>The New Constitution therefore allows more flexibility in the amount of fees paid and the Board are able to reduce fees without requiring member approval.</p>
<b>Powers and Interests of Directors</b>	<p>The Directors’ powers in relation to the management of RACT remain unchanged.</p> <p>They are empowered to make all decisions that are not required to be made by members and specific reference is made to the Board’s ability to make, alter and repeal By-laws and rules consistent with the New Constitution.</p> <p>The treatment of Directors’ Interests continue to be as per the Corporations Act in both the current and New Constitution.</p>

<b>Board Meetings</b>	<p>The New Constitution provides some additional guidance to directors in relation to the management of Board meetings in certain circumstances, such as the absence of the Chairperson, but in terms of voting, quorum and rules with respect to resolutions considered outside of meetings the New Constitution is the same as the current constitution.</p> <p>The New Constitution allows any three directors to call a meeting of directors rather than only the Chairperson in the current constitution and there is no stipulated minimum number of meetings that now need to be held, although this is largely because it is felt to be unnecessary to set a minimum than any change to the number of meetings below the minimum being anticipated.</p>
<b>Board and Advisory Committees</b>	<p>The Board retain the capability to form committees and delegate powers to those committees. As in the current constitution Board Committees in addition to the Board have such powers in relation to Advisory Committees.</p> <p>The New Constitution does however allow a greater amount of flexibility in the members of such committees and how the committees are managed.</p>
<b>General Meetings</b>	<p>In respect to General Meetings provisions have been amended within the New Constitution to take advantage of recent changes within the Corporations Act and future proof the Constitution with potential future changes such as:</p> <ul style="list-style-type: none"> <li>• Direct voting (in addition to proxy voting) has been accommodated;</li> <li>• Multiple venues and virtual meeting provisions (when and if the current temporary provisions within the Corporations Act are made permanent) have been included;</li> <li>• Requisition of meeting requirements and requirements in relation to the nature of business to be considered at general meetings has been aligned to the Corporations Act requirements;</li> <li>• The quorum for a general meeting has been reduced to ten; and</li> <li>• Greater clarity of procedural matters in relation to general meetings has been included to aid both the efficient running of such meetings and member expectations.</li> </ul>
<b>Seal</b>	<p>All reference to a company seal has been removed from the New Constitution as RACT has no adopted seal and is not required to have one.</p>
<b>Corporations Act Requirements</b>	<p>A number of Corporations Act requirements, such as appointing an auditor and producing annual accounts of the organisation are duplicated in the current constitution, but given such provisions are unnecessary it has been decided to omit them from the New Constitution. This ensures that RACT's constitution will never contradict the Corporations Act on such matters and will remain current as legislation is amended.</p>
<b>Notices</b>	<p>There is no change to the range of methods available to RACT to provide notice to members in the New Constitution, however the New Constitution does not require a separate declaration by members in terms of a preferred mode of communication for notices as opposed to other member communications of RACT.</p>
<b>Indemnity and Insurance</b>	<p>The requirement to indemnify officers of RACT and ability to take out insurance to cover such indemnity remains the same in the New Constitution.</p>