

Explanatory Statement

Item 9: Special Resolution: Conversion to a company limited by guarantee

The RAC Council unanimously believes that converting RAC's legal structure to a company limited by guarantee and adopting a new constitution is in the best interest of members, and asks Voting Members to consider and, if thought fit, to pass the following resolution as a special resolution at the AGM:

"That:

- (a) subject to the approval of the Commissioner under the Associations Incorporation Act 2015 (WA), The Royal Automobile Club of W.A. (Incorporated) apply for registration as a prescribed body corporate in the form of a public company limited by guarantee within the meaning of, and under section 601BC of, the Corporations Act 2001 (Cth); and*
- (b) the Constitution, as annexed to the Notice of Annual General Meeting and as tabled at the Annual General Meeting, be approved and adopted for the governance of the public company limited by guarantee upon registration under the Corporations Act 2001 (Cth)."*

Legal requirements for voting on Item 9

The special resolution to approve the conversion to a public company limited by guarantee is a special resolution. This means that the resolution must be passed by not less than three quarters (75%) of the Voting Members present in person, entitled to vote and who cast a vote at the AGM in accordance with the requirements of the RAC's current Rules (rules 2.1, 7.1(a) and 24) and sections 30 and 51 of the *Associations Incorporation Act 2015 (WA)* (**Associations Act**).

Your future RAC: what you need to know

Explanatory Notes – summary

The following notes have been prepared to assist members to better understand the proposed special resolution. Council recommends that members read these Explanatory Notes before determining how to vote on the special resolution in Item 9.

The below is a summary and more detailed explanatory notes are contained in **Schedule 1** and **Schedule 2. Annexure A** sets out the proposed new constitution for the company (**New Constitution**).

Background

Since 2017, RAC has been taking steps to modernise its corporate governance. As the next important step in this journey, RAC is proposing to move from a legal structure that is designed for small Western Australian clubs and community organisations, to one that is suitable for much larger membership organisations, and one that remains strong and adaptable to the changes in the years ahead.

At this year's AGM, we're asking you to support the next step in this journey and seek approval of the Voting Members by special resolution to convert RAC's legal structure from an incorporated association to a public company limited by guarantee, which also requires approval of the New Constitution.

Why should we change to a company limited by guarantee?

The incorporated association model under the Associations Act is most appropriate for small not-for-profit organisations operating at a community level. While it has been appropriate for much of RAC's 120 year history, RAC has outgrown this form of corporate structure.

Now with over 1.3 million members, RAC's operations and activities have become much more diverse and complex than they were historically.

Becoming a company limited by guarantee will modernise RAC's governance rules and structure (while retaining our existing identity) by making RAC subject to the *Corporations Act 2001* (Cth) (**Corporations Act**), and therefore subject to more stringent governance requirements, responsible to the Australian Securities and Investments Commission (**ASIC**) as the regulator, whilst maintaining best practice in RAC's governance.

This change will align RAC's legal structure with other leading not-for-profit and mutual organisations with a large membership base, in particular, motoring bodies in Queensland (RACQ), Tasmania (RACT), Victoria (RACV), South Australia (RAA) and NSW (NRMA), which are already companies limited by guarantee. Just like these organisations, RAC will have greater flexibility to take advantage of a broader range of funding options. This will enable us to remain competitive and invest in our people, products and services to advance the interests of our members, the community and other objects of RAC.

The move would also allow RAC to align all of its business activities under the same legislation – as the companies owned by RAC are already operating under the Corporations Act and are regulated by ASIC.

Importantly RAC's assets, liabilities, property, contracts will **not be** affected by the conversion.

What does converting to a company limited by guarantee mean for members?

Continued membership and purpose of RAC

The conversion will not impact members' reasons for being with RAC - RAC will remain Western Australia's largest and most trusted mutual organisation with the same purpose it has today.. Importantly, RAC will still be doing everything it currently does for its members, and RAC's members will become members of the company limited by guarantee on conversion (refer to **Schedule 1** for further information).

The rights of members of each membership class are not changing and their respective rights and privileges and entitlement to receive notice of, attend and vote at general meetings of RAC remain the same.

Members will:

- retain the same voting rights at general meetings;
- continue to be able to nominate as a candidate for election to the Board (subject to satisfying the eligibility requirements);
- have the right to elect and re-elect all Elected Directors at general meetings;
- continue to have access to the same RAC products and services;
- have the sole power to remove a director from office by an ordinary resolution passed by Voting Members at a general meeting (unlike the current arrangement where the Council has this power); and
- have additional rights to request and propose motions at a general meeting of members and other provisions available under the Corporations Act to members of companies.

Members are not required to do anything to become a member of the company. As an existing member of RAC, you will automatically become a member of the company on the date of conversion, on the same terms of your current membership.

In addition, these reforms increase member protection and ensure that any proposed change to RAC's mutual status (i.e. if RAC were to cease being a mutual organisation) would require member approval with a special majority. Importantly, RAC is not demutualising and has no intention to do so.

Members' limited guarantee

One important, but minor change, is that in a company limited by guarantee, members have limited liability in the unlikely scenario where the company is wound up. If this were to happen, each member (and each person who was a member in the 12 months prior to the company being wound up) would have to contribute a nominal amount, being a maximum of \$1.00, towards the payment of any of the company's unpaid debts (if the company is unable to pay those debts). That is the members' limited guarantee.

New Constitution for the company limited by guarantee

The conversion of RAC's legal structure from an incorporated association to a company limited by guarantee will require a change of constitution, which Voting Members will need to approve at the AGM as part of approving the conversion itself.

Given the nature, size and complexity of RAC and its controlled entities' operations, the governance structure of RAC is fundamentally important. The New Constitution adopts the recent governance changes approved by members at the Special General Meeting held on 23 June 2025 and has been drafted to ensure compliance with the Corporations Act.

Importantly, the New Constitution will not affect the fundamental rights of members, and in fact ensures best practice governance while providing members with enhanced powers.

The New Constitution is annexed to this Notice at **Annexure A**.

If the special resolution in Item 9 is passed at the AGM, the New Constitution will apply to RAC upon converting its legal structure to a company limited by guarantee, which is anticipated to occur on or around 1 July 2026.

Summary of key differences between RAC's existing Rules and the New Constitution

In summary, the following will stay the same:

- RAC's mutual status, services and activities;
- the existing membership categories (with the flexibility to change the name or add to the existing categories);
- members' voting rights (with flexibility to designate other classes of membership with voting rights in the future);
- the directors' powers and duties;
- the term for Elected and Appointed Directors, including the maximum tenure requirements, however the term for an Elected Director may be *up to* three years, as determined by the Board, to allow Directors to retire in different years to ensure an even spread of retirements each year; and
- directors are entitled to be paid remuneration, up to the maximum aggregate amount approved by members in a general meeting.

In summary, the key changes will be:

- RAC's legal structure will change from an incorporated association to a company limited by guarantee;
- RAC's name will change from "The Royal Automobile Club of W.A. (Incorporated)" to "The Royal Automobile Club of W.A. Limited";
- the New Constitution will apply to RAC upon conversion;
- some terms will change to align with companies operating under the Corporations Act, for example the "Council" will be known as the "Board", a "Councillor" will be known as a "Director", the "President" will be the "Chairperson" and the "Vice President" will be the "Deputy Chairperson";
- the composition of and the minimum number of Elected Directors versus Appointed Directors has been clarified from the existing Rules, so that there is a minimum of four and a maximum of six Elected Directors, and there may be up to three Appointed Directors, which enables the current Council to transition to a Board under the new structure, however the maximum number of Directors will remain at nine which is the same as under the existing Rules;
- RAC will be able to raise funds by issuing financial instruments known as mutual capital instruments in the future, as explained in **Schedule 2**; and
- by becoming a member of the company limited by guarantee, members will agree to "guarantee" the property of the company up to a nominal amount of \$1.00 per member.

A summary of the key differences between the existing RAC Rules and the New Constitution is set out in **Schedule 2**.

When would the change take effect?

If at least 75% of Voting Members support this change at the AGM, it is anticipated that the conversion will occur on or around 1 July 2026, subject to the approval of the Commissioner under the Associations Act and ASIC.

More detail about the process associated with converting RAC's legal structure from an incorporated association to a company limited by guarantee is set out in **Schedule 1**.

Council recommendation for Item 9

The Council unanimously believes that converting RAC's legal structure from an incorporated association to a company limited by guarantee and adopting the New Constitution is in the best interests of members and recommends that the Voting Members vote in favour of the special resolution set out in Item 9.

Schedule 1

Summary of Process of Conversion

Section 93 of the Associations Act provides that, subject to the approval of the Commissioner under the Associations Act, an incorporated association may by special resolution of its voting members decide to apply for registration as a company within the meaning of the Corporations Act, which includes a company limited by guarantee.

In preparing for the conversion to a company limited by guarantee, the New Constitution has been prepared and approved by the Council of the RAC.

If the Voting Members pass the special resolution approving the conversion at the AGM, the key steps in the conversion process will involve:

- lodging an application to seek the Commissioner's approval – in that application RAC will note it intends to apply for registration as a company limited by guarantee by 1 July 2026;
- the Commissioner providing written confirmation of their approval to the conversion;
- lodging an application with ASIC under section 601BC of the Corporations Act; and
- ASIC's registration of the RAC as a company limited by guarantee and issuing a Certificate of Registration with an Australian Company Number.

Upon RAC's registration with ASIC, RAC's legal structure will have been converted to a company limited by guarantee and it will be governed by the New Constitution from that date. If you are a member of the RAC on the date that the RAC becomes a company, you will continue to be a member in the same membership class, and will be a member of the company 'The Royal Automobile Club of W.A. Limited'.

If the special resolution in Item 9 is not passed at the AGM, RAC will remain an incorporated association and continue to operate under the Associations Act and its existing Rules.

Schedule 2

Summary of key differences between RAC's current Rules and the New Constitution

A summary of the key differences between RAC's existing Rules and the New Constitution is set out below.

	Rule	Difference
Structure of the company		
1	Name	Under the New Constitution RAC's name will be 'The Royal Automobile Club of W.A. Limited'.
2	Objects	Although the objects have been streamlined in the New Constitution, they continue to reflect RAC's existing operations, activities and purpose. The object " <i>To benefit motorists, motoring and mobility generally</i> " is more broadly reflected in the other objects that are listed. To confirm RAC's ongoing mutual status, the objects include a reference to being a mutual.
3	Mutual capital instruments	<p>RAC is a mutual service organisation (also referred to as a 'mutual entity'). To overcome the difficulties that mutual entities have previously faced with raising new capital, the Corporations Act was amended in 2019 to create a new type of share called an 'MCI' (short for mutual capital instrument), which can be issued by certain eligible mutual entities. MCIs were created to allow mutual entities to raise capital from outside their members while retaining their status as mutuals.</p> <p>While the RAC has no current intention to raise capital in this way, RAC considers it prudent to ensure that the company has the ability to take advantage of all possible fundraising mechanisms. This provides flexibility for the future. As a result, the New Constitution contains provisions to give the company flexibility to issue MCIs in the future and pay dividends in respect of the MCIs. This is consistent with constitutions of other large mutual companies limited by guarantee and consistent with the other motoring clubs that have changed their status to become a company.</p>
4.	Demutualisation	The New Constitution contains greater protection for members by ensuring that any future demutualisation of the company would require approval by a special resolution passed at a general meeting of members. This is consistent with constitutions of other large mutual companies limited by guarantee. Note, RAC is not demutualising and has no intention to do so.

	Rule	Difference
Membership		
5.	Member guarantee	<p>In a company limited by guarantee, members have limited liability if the company is wound up.</p> <p>Accordingly, the New Constitution provides that, if the company is wound up, each member of the company (and each person who was a member in the previous 12 months before being wound up) would have to contribute a nominal amount, being a maximum of \$1.00, towards the payment of any of the company's unpaid debts.</p>
6.	Member classes and rights	<p>The current Rules specify the name of certain membership classes and that Council may create new classes of membership with such rights as Council determines, excluding the right to vote or hold office.</p> <p>The New Constitution provides more flexibility for the Board to change the name of the membership classes in the future or determine new classes, with such rights as the Board determines, including voting rights. This provides more flexibility to respond to member needs and changing circumstances. This includes providing flexibility for which members are designated as voting members.</p> <p>However, the New Constitution also states that subject to the requirements of the New Constitution, any membership class which exists as at the date the company is registered, continues, and any member of the RAC continues in the same membership class. The RAC has no present intention to change any membership classes.</p>
7.	Fees	<p>The current Rules provide that if a member fails to pay their membership subscription when due, they cease being a member in accordance with the relevant policy.</p> <p>In addition to this, and to provide more flexibility, under the New Constitution if a member fails to pay amounts when due, then unless the Board determines otherwise, the member is not entitled to receive the relevant member services until such amounts are paid. This reflects that members pay a fee to receive services from the RAC as well as being a member.</p>
8.	Notice of general meetings	<p>The current Rules require all members to receive notice of a general meeting, even if they cannot vote. The New Constitution provides, in accordance with the Corporations Act, that notice must be given to all Voting Members. Non-voting members will still be able to attend general meetings.</p>

	Rule	Difference
9.	Quorum at general meetings	The existing Rules provide a different quorum requirement of 50 Voting Members, if the meeting has been called by members. The New Constitution retains the quorum of 10 Voting Members for any general meeting of members.
10.	Proxies	<p>The current Rules do not allow members to appoint a proxy to attend general meetings and vote on their behalf.</p> <p>Under the Corporations Act, a public company must allow members that are entitled to attend and vote at general meetings of members to appoint a person as their proxy. This person is not required to be a member of the company.</p> <p>Accordingly, the New Constitution sets out provisions for the appointment of proxies.</p>
Directors		
11.	Composition of the Board	<p>Under the existing Rules there may be both Elected and Appointed Councilors, provided that there is a majority of Elected Councillors and a minimum of five and a maximum of nine Councillors.</p> <p>The New Constitution provides more clarity as to composition of Directors, as subject to the Corporations Act, it states that the Board must consist of a minimum of four and a maximum of six Elected Directors, and may consist of up to three Appointed Directors, which enables the current Council to transition to a Board under the new structure. The maximum number of Directors will remain at nine, and the composition provides that there will be a majority of Elected Directors, which is the same as under the existing Rules.</p> <p>Under the Corporations Act, the minimum number of directors that must be in office is three.</p> <p>The New Constitution provides that the Councillors in office on the date that the company is registered under the Corporations Act, become the initial Directors of the company and they continue in office for the duration of their then current term (subject to the terms of the New Constitution).</p>
12.	Election of Elected Directors	<p>The existing Rules require a returning officer to be appointed to conduct the nomination and election process for Elected Directors.</p> <p>To provide flexibility for how elections may be conducted in the future, this detail is not included in the New Constitution. The Board will determine the regulations and any policy regarding the nomination</p>

	Rule	Difference
		and election of Elected Directors, similar to the By-Laws that exist under the current Rules.
13.	Term of Elected Directors	The overall term for Elected and Appointed Directors, including the maximum tenure requirements, remain the same, however each term for an Elected Director may be <i>up to</i> three years, as determined by the Board, to allow Directors to retire in different years to ensure an even spread of retirements each year.
14.	Removal of Directors	<p>Under the existing Rules, a Councillor may be removed by resolution of the Council. However, under the Corporations Act, a director of a public company cannot be removed by other directors.</p> <p>Accordingly, the New Constitution provides that only members of the company may remove a director by ordinary resolution passed by the Voting Members at a general meeting.</p>
15.	Office bearers	<p>There will continue to be a President and Vice President, however they will also be known by the more contemporary titles – Chairperson and Deputy Chairperson.</p> <p>The Councillors holding these positions on the date that the company is registered under the Corporations Act, continue in office in these positions (subject to the terms of the New Constitution).</p>
16	Director remuneration	<p>The remuneration provisions in the existing Rules are substantially the same in the New Constitution, where the directors cannot be paid more than the aggregate annual cap determined by the Voting Members at a general meeting of the company.</p> <p>This means that the annual aggregate fee cap for the company will initially be the same as has been approved by members under the Rules.</p>
17.	Directors' interests	The New Constitution contains provisions consistent with the Corporations Act, and the existing practice adopted by the Board, in relation to a director's obligations relating to disclosure and voting where that director has a material personal interest in a matter considered by the Board.
18.	Secretary	Under the Corporations Act, a company limited by guarantee must have an appointed company secretary. The Board has the power to appoint and terminate the secretary. These provisions have been included in the New Constitution.
19.	Committees	Like the existing Rules, the New Constitution gives the Board power to establish committees of the Board to assist the directors in the performance of their duties. However, the New Constitution requires

	Rule	Difference
		that a remuneration and nominations committee be established, which will assist the Board in assessing any nominations for Elected Directors and in assessing people for the role of Appointed Directors.
Other general requirements		
20.	Corporations Act requirements	<p>The existing Rules contains a number of provisions that are already set out in the Corporations Act, such as the requisition of general meetings by members, members' resolutions, notice of meetings, inspection of books and records, members register, appointment of the auditor. As the company will be governed by the Corporations Act, those provisions are not required in the New Constitution and have not been included.</p> <p>This ensures that the New Constitution will not need to be amended if those provisions in the Corporations Act change over time.</p> <p>Terminology has been updated in the New Constitution to refer to Corporations Act requirements.</p>
21.	Dispute resolution	<p>The Associations Act requires the current Rules to contain a dispute resolution clause.</p> <p>The Corporations Act does not require a company limited by guarantee to include a dispute resolution procedure in its constitution.</p> <p>RAC's dispute resolution procedure will instead be reflected in a policy. This provides more flexibility to adapt any dispute procedure for the relevant complaint.</p>
22.	Indemnity of officers	The provisions relating to the indemnification of and insurance for RAC's officers have been updated in the New Constitution to comply with the Corporations Act.
23.	Winding up	<p>Under the existing Rules, if the Association was wound up, the surplus assets of the Association would be distributed to a similar entity nominated by the members.</p> <p>In the unlikely event of the company being wound up, RAC considers that the Board is best placed to determine which entity receives the surplus assets, which it can do so quickly without having to wait for a general meeting to be held.</p> <p>Accordingly, the New Constitution provides that the Board determines which entity will receive the company's surplus assets if it was ever wound up.</p>

Annexure A

New Constitution