

Constitution

Australian Automotive Dealer Association Limited
ACN 167 598 085

Corporations Act 2001 (Cth)
A public company limited by guarantee
Registered in Queensland

Level 41
600 Bourke Street
MELBOURNE VIC 3000
DX 564 MELBOURNE
ABN 37 246 549 189
Tel: (03) 8633 7500
Fax: 1300 365 323

www.hwlebsworth.com.au
Ref: TK:VG:299493

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Corporations Act 2001

Constitution of Australian Automotive Dealer Association Limited (ACN 167 598 085) adopted on 11 March 2014

A Company Limited by Guarantee

1. Definitions and Interpretation

1.1 Definitions

In this Constitution, unless a contrary intention appears:

Annual General Meeting means an annual General Meeting as required under the Corporations Act;

Associate Member has the meaning given to it under paragraph 5.4;

Auditor means the registered auditor of the Company, as appointed by the Board;

Board means the Company's board of Directors or the Directors present (personally or by their alternates) at any meeting of the Directors duly convened and held;

CEO means the person appointed to be the permanent chief administrator of the Company and shall include such officer under whatever title the officer is known from time to time;

Certificate means a certificate of membership issued in accordance with paragraph 10.2;

Chairman mean the chairman of Directors;

Common Seal means the common seal of the Company;

Company means the above company whatever its name may be from time to time;

Constitution means this Constitution and all supplementary substituted or amending constitution for the time being in force;

Corporations Act means the *Corporations Act* 2001 (Cth) including any amendment or re-enactment thereof for the time being in force;

Director means a director for the time being of the Company elected or appointed pursuant to this Constitution;

Foundation Members means the Principal Members listed in Schedule 1 and as determined by the Board from time to time;

General Meeting means a meeting convened in accordance with paragraph 6;

Independent Director means a Director appointed by the Board in accordance with paragraph 7.1(f).

Industry means the Australian automotive industry;

Insolvency Event means, in respect of a party, the happening of one or more of the following events:

- (a) except for the purpose of a solvent reconstruction or amalgamation which has the prior written consent of the other parties:

- (i) an order is made that it be wound up or that a controller be appointed to it or any of its assets; or
- (ii) a resolution that it be wound up is passed;
- (b) a liquidator, provisional liquidator, controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertaking;
- (c) an administrator is appointed to it;
- (d) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
- (e) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected;
- (f) it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
- (g) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;
- (h) it stops or suspends or threatens to stop or suspend:
 - (i) the payment of all or a class of its debts; or
 - (ii) the conduct of all or a substantial part of its business; or
- (i) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (h) happens to it under the law of any jurisdiction;

Member means member of the Company pursuant to this Constitution and includes Principal Members and Associate Members;

Membership Fee means the amount determined by the Board from time to time pursuant to paragraphs 5.1, 5.3 and 5.4;

Proxy is the person appointed by a Principal Member to act on its behalf at a General Meeting and who must also be a Principal Member or the Chief Executive Officer, Managing Director or Dealer Principal of an authorised new car dealership business;

Principal Member has the meaning given to it under paragraph 5.3;

Register means the register of Members to be kept pursuant to the Corporations Act;

Secretary means any person appointed to perform the duties of a secretary of the Company;

Special Majority means with respect to a resolution of the Board, where at least 75% of the votes able to be cast by the Directors present and entitled to vote, are cast in favour of the resolution;

Special Resolution has the meaning assigned thereto by the Corporations Act; and

Subsidiary has the same meaning under the Corporations Act.

1.2 Interpretation

In this Constitution:

- (a) unless a contrary intention is apparent words importing any gender include each other gender and the plural includes the singular and vice versa;
- (b) words importing persons include companies, corporations and public bodies;
- (c) writing includes typewriting, printing, lithography, photograph and other modes of representing or reproducing words in visible form and "written" has a corresponding meaning; and
- (d) if but only as between Members any doubt shall arise as to the proper meaning of any of this Constitution, or by-laws made hereunder, the interpretation of the Company shall be final and conclusive provided that such interpretation is reduced to writing and recorded in the minute book for meetings of the Company.

1.3 References to Corporations Act

Unless the context otherwise requires, a reference to:

- (a) the Corporations Act includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation; and
- (b) a section of the Corporations Act includes any corresponding section for the time being in force.

1.4 Application of Corporations Act

Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.

1.5 Replaceable rules do not apply

The replaceable rules referred to in the Corporations Act do not apply to the Company unless they are repeated in this Constitution or specifically made to apply by this Constitution.

1.6 Headings

Headings do not affect the interpretation of this Constitution.

2. Objects and Powers of Company

2.1 Objects

The objects of the Company are to:

- (a) encourage, promote, protect and advance the interests of authorised motor vehicle dealers engaged in the retail sale of new cars in Australia;
- (b) to advocate for the interests of employers who are motor vehicle dealers and engaged in the retail sale of new cars in Australia;
- (c) establish and maintain contact with the legislatures of the Commonwealth of Australia and of the States and Territories and accredited representatives of those governments with a view to assisting in or contributing towards promoting, supporting, proposing, opposing or amending legislation or other measures affecting authorised motor vehicle dealers engaged in the retail sale of new cars ;

- (d) prosecute or defend any complaints, suits, applications and proceedings before any court, tribunal, mediator, small business commissioner or other arbitrator as may be deemed necessary or expedient in the interests of the Company or its members and for that purpose to employ legal or other representatives on behalf of any authorised motor vehicle dealer, member or members generally and to undertake the expense of any action on behalf of an authorised motor vehicle dealer or member either as plaintiff or defendant;
- (e) borrow any monies required for the purposes of the Company upon such terms and securities as may be determined;
- (f) purchase, lease, exchange, hire, license or otherwise acquire any real and personal property and any rights or privileges necessary or convenient for the purposes of the Company and to construct, alter and maintain any buildings required for the purposes of the Company;
- (g) acquire assets and funds and manage, administer and dispose of the same in the interests of the Company and in accordance with this Constitution;
- (h) sell, improve, manage, develop, lease, license, mortgage, dispose of, turn to account, or otherwise deal with all or any part of the property of the Company;
- (i) invest the monies of the Company not immediately required upon such securities or otherwise in such manner as may from time to time be determined;
- (j) conduct, promote and encourage conventions, seminars, educational programs, training or other meetings for the purpose of improving the knowledge and understanding of authorised motor vehicle dealers and their employees;
- (k) improve the community and media understanding of the role that licenced new car motor dealers play in the community in terms of economic and societal benefits; and
- (l) do all such lawful things as are incidental or conducive to the attainment of the above objects or any of them.

2.2 Powers

The powers set forth in section 124(1) of the Corporations Act apply to the Company.

3. Income of the Company

The income and property of the Company however derived, shall be applied solely towards the promotion of the objects of the Company as set forth in this Constitution and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to the Members of the Company. Provided that nothing herein shall prevent:

- (a) the payment in good faith of remuneration to any officers or servants of the Company;
- (b) the payment in good faith of remuneration or fee to any Member of the Company, in return for any goods or services actually rendered to the Company;
- (c) the payment of interest at a rate not exceeding the rate for the time being fixed for the purpose of this paragraph by this Constitution on money borrowed from any Members of the Company;
- (d) the payment of reasonable and proper rent for premises demised or let by any Member to the Company; or

- (e) the payment of moneys to Directors for out of pocket expenses.

4. Liability of Members

- (a) The liability of the Members is limited.
- (b) Every Member of the Company undertakes to contribute to the property of the Company in the event of the same being wound up while he, she or it is a member, or within one year after he, she or it ceases to be a member, for payment of the debts and liabilities of the Company (contracted before he, she or it ceases to be a member) and of the costs charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding \$10.00.

5. Membership

5.1 Members

The Foundation Members to this Constitution set out in **Schedule 1** and such other persons as the Board shall admit to membership in accordance with this Constitution, upon payment of the relevant Membership Fee based on the class of membership as determined by the Board from time to time, shall be Members of the Company.

5.2 Classes of Membership

The Company shall have the following classes of membership:

- (a) Principal Member; and
- (b) Associate Member.

5.3 Principal Member

- (a) A person shall be eligible to be a Principal Member if:
 - (i) it is an authorised motor vehicle dealership or light commercial vehicle dealership engaged in the retail sale of new cars or light commercial vehicles;
 - (ii) it pays the Membership Fee for Principal Members as determined by the Board from time to time;
 - (iii) it proposes to actively support the Company's objects through the provision of financial and/or in-kind support; and
 - (iv) the Board deems that person eligible to be a Principal Member.
- (b) Principal Members shall be eligible to:
 - (i) receive notices of all meetings of the Company;
 - (ii) receive copies of the accounts of the Company;
 - (iii) attend and vote at meetings of Members; and
 - (iv) sit on relevant Sub-Committees.

5.4 Associate Member

- (a) A person shall be eligible to be an Associate Member if:
 - (i) it is an Australian Automotive Industry Organisation such as the current State and Territory Motor Trades Associations;
 - (ii) it pays the Membership Fee for Associate Members as determined by the Board from time to time;
 - (iii) it proposes to actively support the Company's objects through the provision of financial and/or in-kind support;
 - (iv) it does not qualify for membership as a Principal Member but proposes to participate directly or indirectly in the Company's objects as a supplier or as a stakeholder in the Industry; and
 - (v) the Board, unanimously, deems that person eligible to be an Associate Member.
- (b) A person that is eligible to be a Principal Member shall only be admitted as an Associate Member if the Board so resolves, and the Board may at any time direct an Associate Member that is eligible to be a Principal Member to become a Principal Member.
- (c) Associate Members shall be eligible to:
 - (i) receive notices of all meetings of the Company;
 - (ii) attend but not vote at meetings of Members;
 - (iii) sit on relevant Sub-Committees; and
 - (iv) have no other rights or privileges as such other than those determined by the Principal Members by Special Resolution.

5.5 Application for Membership

- (a) Except for the Foundation Members, an applicant for membership, Principal or Associate, shall complete, duly execute and deliver to the Secretary an Application for Membership in the form of Schedule 2 or Schedule 3 as applicable or in such other form as the Board from time to time prescribes and accompanied by payment of the relevant class Membership Fee.
- (b) At the next meeting of the Board after the receipt of any application for membership, such application shall be considered by the Board, who shall thereupon determine upon the admission or rejection of the applicant. In no case shall the Board be required to give any reason for the rejection of an application.
- (c) When an applicant has been accepted for membership the Secretary shall forthwith send to the applicant written notice of his, her or its acceptance and the applicant will be registered in the register of Members and will immediately become a Member of the relevant class.
- (d) Any Membership Fee paid in advance by an applicant that is rejected will be refunded in full.
- (e) An applicant may, at anytime, withdraw its application for membership.

5.6 Cessation of Membership

Subject to this Constitution a Member shall cease to be a member of the Company if the Member:

- (a) is no longer eligible to be a Member of the Company pursuant to the requirements of clauses 5.3 (a) in relation to Principal Members and 5.4(a) in relation to Associate Members;
- (b) resigns as a member by written notice to the Company;
- (c) dies, if a natural person;
- (d) becomes subject to an Insolvency Event; or
- (e) is expelled from the Company in accordance with paragraph 5.7.

5.7 Termination of Membership by Resolution of Board

- (a) Subject to this Constitution, the Board may at any time terminate the membership of a Member by Special Majority of the Directors, if the Member:
 - (i) refuses or neglects to comply with the provisions of this Constitution, or any applicable rules made by the Board; or
 - (ii) engages in conduct which in the opinion of the Board is inappropriate of the Member or prejudicial to the interests of the Company.
- (b) A decision of the Board under paragraph 5.7 is not effective unless:
 - (i) the Company has given the Member concerned notice of the resolution to be considered by the Board and a copy of any business papers circulated to Directors regarding the resolution not less than 7 days prior to the date of the meeting. If the business papers do not contain particulars of any allegations supporting the resolution that is to be considered, a statement setting out those allegations must be given;
 - (ii) the Member has been invited and permitted to attend that part of the meeting of the Board at which the resolution is considered and been permitted to make submissions to the meeting in writing and/or orally;
 - (iii) the Member has been given an opportunity to respond to any matters raised in the meeting. The Board may ask the Member to leave the meeting during its deliberations once submissions from all interested parties are complete;
 - (iv) notice of the decision of the Board has been given immediately to the Member; and
 - (v) the name of any person ceasing to be a Member has been removed from the register of Members.

6. General Meetings**6.1 Notice requirements**

- (a) An Annual General Meeting of the Company shall be held annually within 5 months of the end of the Company's financial year.

- (b) Any Director may whenever he thinks fit convene a General Meeting and General Meetings shall also be convened on such requisition or in default may be convened by such requisitionists as provided by the Corporations Act.
- (c) Subject to the provisions of the Corporations Act relating to Special Resolutions and agreements for shorter notice, 21 days notice at least (exclusive of the day on which the notice is served or deemed to be served and exclusive of the day for which notice is given) specifying the place the day and the hour of meeting and in case of special business the general nature of that business shall be given to such persons as are entitled to receive such notices from the Company.
- (d) For the purpose of paragraph (c) all business shall be special that is transacted at a meeting and also all that is transacted at an Annual General Meeting, with the exception of the consideration of the accounts, balance-sheets and the reports of the Board and auditors, the election of officers and other Directors in the place of those retiring and the appointment of the auditors, if necessary.

6.2 Proceedings at General Meetings

- (a) Any Member may be represented at any meeting of the Company in person or by Proxy, attorney or a body corporate representative.
- (b) No business shall be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, 5 Principal Members present in person shall be a quorum.
- (c) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, must be dissolved; in any other case it shall stand adjourned to the same day, in the next week, at the same time and place, or to such other day and at such other time and place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Members present shall be a quorum.
- (d) The Chairman shall preside as Chairman at every General Meeting of the Company, or if the Chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act then the Members present shall elect one of their number to be Chairman of the meeting.
- (e) The Chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of any adjournment or of the business to be transacted at an adjourned meeting.
- (f) At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
 - (i) by the Chairman; or
 - (ii) by any Member present in person or by Proxy or representative and entitled to vote.
- (g) Unless a poll is so demanded a declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings

of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

- (h) If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith.
- (i) In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded, in addition to the vote or votes (if any) to which the Chairman may be entitled as a Member, proxy or representative, does not have a casting vote, except where the Membership of the Company comprises only 2 Members.
- (j) Each paid up Member entitled to vote may vote in person or by Proxy or by attorney and on a show of hands every person present who is a Member or a representative of a Member shall have one vote and on a poll every Member present in person or by Proxy or by attorney or other duly authorised representative shall have one vote per dealership business.
- (k) If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health then that Member's committee or trustee or such other person as properly has the management of the Member's estate may exercise any rights of that Member in relation to a General Meeting as if the committee, trustee or other person were the Member.
- (l) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairman of the meeting whose decision shall be final and conclusive.
- (m) The instrument appointing a Proxy shall:
 - (i) be in writing (in the common or usual form) under the hand of the appointer or of his attorney duly authorised in writing or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorised;
 - (ii) be deemed to confer authority to demand or join in demanding a poll; and
 - (iii) may be in the following form or any other form which the Directors shall approve:

**"Australian Automotive Dealer Association Limited ACN 167 598 085
(Company)**

I, [insert name] of [insert address] being a Member of the Company hereby appoint [insert name] of [insert address] or, failing him/her [insert name] of [insert address] as my proxy to vote for me on my behalf at the (annual general or general as the case may be) meeting of the Company to be held on [insert date] and at any adjournment thereof.

*My proxy is hereby authorised to vote *In favour of/*against the following resolutions:*

[insert resolutions]

Dated: [insert date]

[Insert duly authorised execution clause]

(Note: In the event of the member desiring to vote for or against any resolution he shall instruct his proxy accordingly. Unless otherwise instructed, the proxy may vote as he thinks fit).

Strike out whichever is not required.

- (n) The instrument appointing a Proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the Company or at such other place as is specified for that purpose in the notice convening the meeting not more than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of Proxy shall not be treated as valid.
- (o) A vote given in accordance with the terms of an instrument of Proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of such death, unsoundness of mind or revocation as aforesaid has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

7. Board of Directors

7.1 Composition of the Board

- (a) The number of Directors shall be a minimum of 12 and a maximum of 14 or such other number as the Company in General Meeting may from time to time resolve. At least 2 Directors must ordinarily reside in Australia.
- (b) A Director must be an owner or part owner, either directly or indirectly, of an authorised new car dealership business or the Chief Executive Officer or Managing Director of an authorised new car dealership business.
- (c) Each Foundation Member can nominate one Director and that Director shall be part of the first Board (**Foundation Director**).
- (d) The Principal Members in each State and Territory of Australia elect one Director each.
- (e) The 8 Directors elected pursuant to paragraph 7.1(c) or 7.1(d) shall elect 4 additional Directors.
- (f) The Board may by Special Majority, from time to time, appoint up to 2 Independent Directors (in addition to the 4 Directors elected under paragraph 7.1(e)) provided that the total number of Directors does not exceed the maximum specified in paragraph (a).
- (g) An Independent Director must have extensive commercial or government experience in the Industry.
- (h) The Directors may appoint one of their own from time to time to be Chairman of all meetings of the Board and the Company.

7.2 Term of Office

- (a) A Foundation Director representing New South Wales, South Australia, Tasmania or Western Australia shall hold office for 3 years.
- (b) A Foundation Director representing Queensland, Victoria, ACT or Northern Territory shall hold office for 2 years.
- (c) Foundation Directors may stand for election as directors at the end of their 3 year or 2 year term as applicable under paragraphs 7.2(a) and 7.2(b) and if elected pursuant to paragraph 7.1(d), it will be regarded as the first term for the purposes of paragraph 7.2(d).
- (d) Each director elected pursuant to paragraph 7.1(d) shall hold office for a term of two years, commencing from the date of their appointment and concluding at the end of the second annual general meeting following their appointment. At the expiration of that time, the director may nominate himself or herself for re-election.
- (e) Each Director elected pursuant to paragraph 7.1 (e) shall hold office for a term of one year, commencing from the date of their appointment and concluding at the end of the first annual general meeting following their appointment. At the expiration of that time, the Director may nominate himself or herself for re-election.
- (f) Directors and Independent Directors appointed pursuant to paragraphs 7.1 (d) or 7.1 (f) having served three consecutive 2 year terms (but excluding a Foundation Director's initial term pursuant to paragraphs 7.1(c), 7.2(a) and 7.2(b) as applicable) must wait one year before seeking re-election.
- (g) Directors appointed pursuant to paragraph 7.1(e) having served for five consecutive one year terms must wait one year before seeking re-election.

7.3 Vacation of office

The office of director becomes vacant:

- (a) In the circumstances outlined in the Act;
- (b) If the director becomes of unsound mind or a director is, or their estate is, liable to be dealt with in any way under the law relating to mental health;
- (c) If the director is removed from office by resolution of the members in accordance with the Act;
- (d) Except to the extent of a leave of absence granted by the directors, if the director fails to attend at least 3 consecutive meetings of the directors;
- (e) If the director resigns by written notice to the company;
- (f) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (g) holds any office of profit under the Company; or
- (h) the Director is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of that interest in the manner required by the Corporations Act (or at the first meeting of the Board after the relevant facts have come to the Director's knowledge) and the Board determines that the Director should no longer be a Director.

7.4 Vacancy on Board and power to appoint additional Directors

- (a) If a Director dies, or any of the situations contemplated by paragraph 7.3 occur the Board may, by ordinary resolution, appoint a person to fill the vacancy, but there is no obligation on the Board to fill the vacancy so created.

7.5 Alternate Directors

- (a) With the approval of the majority of the Board, a Director may appoint an alternate director to exercise some or all of the Director's powers for a specified period.
- (b) If the appointing Director requests the Company to give the alternate director notice of meetings of the Board, the Company must do so.
- (c) When an alternate director exercises the powers of the Director, the exercise of the powers is just as effective as if the powers were exercised by the Director.
- (d) The appointing Director may terminate the alternate director's appointment at any time.
- (e) An appointment or its termination must be in writing. A copy must be given to the Company.

7.6 Disqualification of Directors

- (a) The office of Director shall become vacant if the Director:
 - (i) ceases to be a Director by operation of the Corporations Act;
 - (ii) becomes bankrupt or makes any arrangement or composition with his creditors generally;
 - (iii) becomes prohibited from being a Director of a company by reason of any order made under the Corporations Act;
 - (iv) holds any office of profit under the Company; or
 - (v) the Director is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of that interest in the manner required by the Corporations Act (or at the first meeting of the Board after the relevant facts have come to the Director's knowledge) and the Board determines that the Director should no longer be a Director.

7.7 Appointment of attorney

- (a) The Directors may at any time by power of attorney appoint any person or persons to be the attorney or attorneys of the Company for those purposes and with those powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for that period and subject to those conditions that the Directors think fit.
- (b) Without limiting paragraph (a), any appointment may be made in favour of any company or the Members, directors, nominees or managers of any company of firm or in favour of any fluctuating body of persons (where nominated by the Directors or otherwise).

- (c) Any power of attorney given on behalf of the Company may contain provisions for the indemnification, protection or convenience of the attorney or attorneys and of persons dealing with the attorney or attorneys.

7.8 Sub-delegation of powers

Any delegate, manager, agent or attorney appointed by the Directors may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions given to them.

7.9 Powers and duties

- (a) Subject to this Constitution, the Corporations Act, the general law and any resolutions made by the Company in General Meeting, the Board has the general control and management of the administration of the affairs, property and funds of the Company.
- (b) Despite paragraph (a), a resolution passed by the Company in General Meeting shall not invalidate any prior act of the Board which would have been valid if that resolution had not been passed.
- (c) The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt, liability, or obligation of the Company.
- (d) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed drawn accepted endorsed or otherwise executed, as the case may be, by any 2 Directors or in such other manner as the Board from time to time determines.
- (e) The directors may delegate any of their powers in accordance with the Act.

7.10 Wholly-owned Subsidiaries

- (a) In respect of each of the Company's wholly-owned Subsidiaries (if any):
 - (i) the composition of its board is at all times the same as the composition of the Board; and
 - (ii) each of its directors acts, to the extent permitted by law, in their capacities as directors in accordance with the directions of the Board.
- (b) Paragraph 8 applies to each wholly-owned Subsidiary and to the directors thereof as if the board of directors of each wholly-owned Subsidiary was the Board and each director of each wholly-owned Subsidiary was a Director.

7.11 Seal

The Board shall provide for the safe custody of the Common Seal which Seal shall be applied, except in the case of Certificates, only pursuant to a resolution of the Board. Every document to which the Common Seal is affixed shall be signed by 2 Directors or a Director and Secretary.

7.12 Secretary

The Secretary shall, in accordance with the Corporations Act, be appointed by the Board for such terms and at such remuneration and upon such conditions as the Board thinks fit. Any Secretary so appointed may be removed by the Board.

7.13 CEO

- (a) The Board may from time to time appoint or remove a person to act as CEO of the Company.
- (b) The CEO will have authority to conduct all matters in the day to day course of running the Company except those matters which are specifically reserved for resolution by the Board or the Members.

8. Meetings of the Board

8.1 Requirements

- (a) **(Frequency)** The Board shall meet at least quarterly at such times and places as the Board determines.
- (b) **(Who may convene)** A Board meeting may be convened by any Director.
- (c) **(Timing of notice)** At least 48 hours notice shall be given of a meeting.
- (d) **(Content of notice)** A notice of a Board meeting shall specify the place, day and hour of convening and shall state the general nature of the business to be transacted and no other business shall be transacted at such meeting.
- (e) **(Items for agenda)** If a Director wishes to place an item on the agenda of a Board meeting and a request is made to the Secretary at least 24 hours prior to the Board meeting the item shall be so placed on the agenda.
- (f) **(Quorum)** No business shall be transacted at any Board meeting unless a quorum is present. The quorum shall be 5 Directors duly appointed under paragraphs 7.1 (c) or 7.1 (d) or such other number that a valid majority of all the Board members may from time to time determine.
- (g) **(Chairman)** All Board meetings shall be chaired by the Chairman. If the Chairman is unable to chair a particular Board meeting the Directors may appoint another Director to chair that meeting.
- (h) **(Entitlement to vote)** Each Director is entitled to one vote. Unless this Constitution or the Corporations Act provides otherwise all questions arising at a meeting shall be decided by majority vote of Directors present and entitled to vote on the resolution.
- (i) **(Voting procedure)** Questions arising at a meeting of the Board shall be determined on a show of hands or, if demanded by a Director, by a poll taken in such a manner as the person presiding at the meeting may determine.
- (j) **(Conflicts of interest)** A Director who has a material personal interest in a matter that is being considered at a meeting of Directors, unless specifically approved by a resolution of Directors:
 - (i) must not vote on the matter; and
 - (ii) must not be present while the matter is being considered by the other Directors.

For the purposes of this clause, a material personal interest of a Director includes a material interest of a Principal Member in respect of its Nominee Director (if any).

- (k) **(Regulation of meetings)** The Board may meet and adjourn and otherwise regulate the procedure of its meetings as the Board thinks fit.
- (l) **(Minutes)** The Secretary shall cause a true and proper record of the proceedings of all Board meetings to be produced and distributed to Board members within 30 days of the meeting.
- (m) **(Resolutions)** A resolution in writing signed by all the Directors for the time being entitled to receive notice a meeting of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Directors.
- (n) **(Meetings not in person)** The Board may meet either in person or by telephone or by other means of communication by which all persons participating in the meeting are able to hear and be heard by all other participants. A meeting conducted by telephone or other means of communication is deemed to be held at the place agreed upon by the Directors attending the meeting, provided that at least one of the Directors present at the meeting was at that place for the duration of the meeting.
- (o) **(Notice at meetings not in person)** In the case of a meeting which is not held in person, the fact that a Director is taking part in the meeting must be made known to all the other Directors taking part, and no Director may disconnect or cease to take part in the meeting unless he makes known to all other Directors taking part that he is ceasing to take part in the meeting. Until a Director makes it known that he is ceasing to take part in the meeting, he is deemed to continue to form part of the quorum.

8.2 Contracts with Directors

- (a) A Director and any firm, body or entity in which a Director has a direct or indirect material interest may in any capacity enter into any contract or arrangement with the Company.
- (b) A Director must disclose his interest in accordance with the Corporations Act and the Secretary must record all declarations in the minutes of the relevant meeting.
- (c) The Board shall, at its absolute discretion, determine whether the interest of a Director is material.
- (d) Where such interest is material no payment or benefit shall be paid by the Company for such services other than for the recovery of fair and reasonable out of pocket expenses, unless the Board gives specific approval for such additional payments and benefits.
- (e) A Director's failure to make disclosure under this clause does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- (f) No Director shall vote as a Director in respect of any contract or arrangement in which he has a material interest and if he does purport to vote his vote shall not be counted.
- (g) A Director may not attest the affixing of the Common Seal of the Company to any document relating to a contract or arrangement or proposed contract or arrangement in which the Director has an interest.

8.3 Sub-Committees

- (a) The Board may delegate any of its powers and/or functions (not being duties imposed on the Board as the directors of the Company by the Corporations Act or the general

law) to one or more committees consisting of such Director or Directors and such Member or Members as the Board thinks fit. Any committee so formed shall conform to any regulations that may be given by the Board and subject thereto shall have power to co-opt any Member or Members and all members of such committees shall have one vote at the committee meetings.

- (b) The Board may appoint one or more advisory committees consisting of such Director or Directors and such other Member or Members as the Board thinks fit. Such advisory committees shall act in an advisory capacity only. They shall conform to any regulations which may be given by the Board and, subject thereto, shall have power to co-opt any other Member or Members and all members of such advisory committees shall have one vote at the advisory committee meetings.
- (c) Every committee or advisory committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the Members present, and in the case of an equality of votes the Chairman shall not have a second or casting vote.
- (d) All acts done by any meeting of the Board or of a committee or by any Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Board, committee or Director or that the Directors or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director or committee member.

9. Financial Management

9.1 Funding of Company

The funds of the Company shall be derived from subscriptions, fees, government grants, donations, loans and such other sources as the Board determines from time to time.

9.2 Budgets

- (a) The Company shall be administered and expend money in accordance with the budget set by the Board. The Board shall establish appropriate procedures for budgeting and administering the Company's funds.
- (b) The Board may by ordinary resolution halt any expenditure notwithstanding the expenditure is authorised by the budget to avoid a deficit.

9.3 Accounts

The Board shall cause proper accounting and other records to be kept and shall distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) accompanied by a copy of the Auditor's report thereon as required by the Corporations Act provided, however, that the Board shall cause to be made out and laid before each Annual General Meeting a balance sheet and profit and loss account made up to date not more than 5 months before the date of the meeting.

9.4 Audit

A properly qualified auditor or auditors shall be appointed and his or their duties regulated in accordance with the Corporations Act.

9.5 Receipt of funds

All money received by the Company including, without limitation, subscriptions, donations, grants and non-subscription income, shall be paid forthwith into an account in the name of the

Company with such bank or other financial institution as the Board may from time to time nominate.

10. Membership Records

10.1 Maintenance of Membership Records

- (a) The Board shall ensure that the Register is maintained.
- (b) The Register shall be available for inspection by Members at the Company's registered address.
- (c) An entry in the Register shall, in the absence of evidence to the contrary, be evidence of membership.
- (d) The Board shall include in its records detail on whether a Member has paid any sums due to the Company.

10.2 Membership Certificate

- (a) The Company may issue a Certificate to Members evidencing their membership of the Company.
- (b) The Certificate shall remain the property of the Company. The Board may at any time call for and compel the production or delivery to it of the Certificate.
- (c) A person or company that ceases to be a Member shall if required to do so by the Board return the Certificate to the Company.
- (d) Any person or company that fails or refuses to deliver up a Certificate when required to do so in accordance with paragraph (c) shall, without prejudice to any rights of the Company to recover the same by legal process, be liable to pay for the Certificate an amount fixed by the Board.
- (e) A Member shall not make or permit to be made any copy or facsimile of the Certificate.

11. Inspection of Records

- (a) Subject to the Corporations Act, the Directors will determine whether, to what extent, at what times and places and under what conditions the accounting and other records of the Company or any of them will be open to the inspection of the Members.
- (b) A Member who is not a Director will not have any right to inspect any account, book or document of the Company or receive any information concerning the business, trading or customers of the Company or any trade secret or secret process of the Company except as provided by the Corporations Act or as authorised by the Directors or a resolution of the Company in general meeting.

12. Amendment of Constitution

This Constitution may be amended by Special Resolution of the Principal Members and in accordance with the Corporations Act.

13. Notices

- (a) A notice may be served upon a Member personally or by post, facsimile or email to the address, facsimile number or email address shown in the Register.
- (b) A notice served by post shall be deemed to have been served on the day 2 business days after the date of posting and, in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post as a prepaid letter.
- (c) A notice served by facsimile or email shall be deemed to be received immediately if no error message is received by the sender.

14. Indemnity and Insurance

14.1 Indemnity

Every Director, Secretary and executive officer of the Company is indemnified out of the assets of the Company against any liability arising out of the execution of the duties of his office, which is incurred by him in defending any proceedings, whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation thereto in which relief is granted to him by the Court.

14.2 Insurance

The Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company and its related bodies corporate against:

- (a) any liability incurred by that person as such an officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of the Corporations Act; and
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal, and whatever their outcome.

15. Dissolution or Winding Up

- (a) The Company may be wound up or dissolved in the manner provided in the Corporations Act.
- (b) If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever the same shall not be paid to or distributed among the Members of the Company but shall be given or transferred to some other institution or company having objects similar to the objects of the Company and whose constitution shall prohibit the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Company under or by virtue of paragraph 3 hereof, such institution or institutions to be determined by the Members of the Company at or before the time of dissolution and in default thereof by application to the appropriate court for determination.

**Schedule 1
Foundation Members**

Item 1: Principal Members

Member	Representative	Contact Details
Q. Automotive Group Pty Ltd	Ian Field	
Motors Group Tasmania Pty Ltd	Marcus Birrell	
Claridge Motors Pty Ltd	Michael Claridge	
Pickering Auto Group	Geoff Pickering	
Collinswood Investments Pty Ltd	Hillar Puvi	
Richard Rolfe Motors No.1 Pty Ltd	Richard Rolfe	
Garry and Warren Smith Pty Ltd	Leigh Smith	
Tynan Motors Pty Ltd	Michael Tynan	
A.P.Eagers Limited	Martin Ward	

**Schedule 2
Application For Principal Membership**

Australian Automotive Dealer Association Limited ACN 167 598 085

NAME (Block Letters):

ACN (if applicable):

ADDRESS FOR NOTICES: _____

I/We apply for Principal Membership in the Company.

I/We agree to abide by the Constitution of the Australian Automotive Dealer Association Limited
for as long as I/We remain a Principal Member.

Date of application: _____

Signed: _____

**Schedule 3
Application For Associate Membership**

Australian Automotive Dealer Association Limited ACN 167 598 085

NAME (Block Letters):

ACN (if applicable):

ADDRESS FOR NOTICES: _____

I/We apply for Associate Membership in the Company.

I/We agree to abide by the Constitution of the Australian Automotive Dealer Association Limited
for as long as I/We remain an Associate Member.

Date of application: _____

Signed: _____