

**CORPORATIONS ACT  
A COMPANY LIMITED BY SHARES**

---

**CONSTITUTION  
OF  
MOTOR TRADES ASSOCIATION OF AUSTRALIA  
SUPERANNUATION FUND PTY LIMITED**

ACN 008 650 628

Adopted with effect from 3 July 2023 as the Constitution of Motor Trades Association of Australia Superannuation Fund Pty Limited (ACN 008 650 628) (the Company) by Special Resolution of Shareholders on 3 July 2023.

## TABLE OF CONTENTS

1.	PRELIMINARY.....	1
2.	OBJECTS.....	3
3.	SHARE CAPITAL.....	3
4.	SHARE CERTIFICATE.....	4
5.	REDEMPTION OF SHARES.....	5
6.	MEETINGS OF SHAREHOLDERS.....	5
7.	REPRESENTATION AT MEETINGS.....	6
8.	PROCEEDINGS AT MEETINGS OF SHAREHOLDERS.....	7
9.	VOTING AT MEETINGS OF SHAREHOLDERS.....	8
10.	CIRCULATING RESOLUTIONS OF SHAREHOLDERS.....	10
11.	DIRECTORS.....	10
12.	REMUNERATION OF DIRECTORS.....	18
13.	POWERS AND DUTIES OF DIRECTORS.....	18
14.	MEETINGS OF DIRECTORS.....	19
15.	DIRECTORS' CONFLICTS OF INTEREST.....	20
16.	COMMITTEES.....	21
17.	ADMINISTRATION.....	22
18.	EXECUTION OF DOCUMENTS.....	22
19.	APPLICATION OF PROPERTY INCLUDING ON MERGER OR WINDING UP.....	22
20.	NOTICES.....	23
21.	INDEMNITY AND INSURANCE.....	24
	SCHEDULE 1.....	25

**MOTOR TRADES ASSOCIATION OF AUSTRALIA  
SUPERANNUATION FUND PTY LIMITED  
ACN 008 650 628**

**1. PRELIMINARY**

**1.1 Definitions**

In this Constitution:

**at any time** means at any time or times and from time to time.

**Business Day** means a day that is a business day in the principal place of business of the Company.

**Board** means the board of directors of the Company.

**Company** means Motor Trades Association of Australia Superannuation Fund Pty Limited ACN 008 650 628.

**Constitution** means the constitution of the Company in force for the time being.

**Corporations Act** means the *Corporations Act 2001* (Cth) and regulations, as applicable to the Company for the time being.

**Director** means a person who is a director for the time being of the Company.

**Directors** means the directors of the Company in office at the relevant time.

**Disqualified Person** has the meaning given in section 120 of SIS.

**Employer Nominating Organisation** means the entity or entities appointed from time to time under clause 11.12 as an Employer Nominating Organisation provided that the requirements of SIS in respect of who may appoint Employer Representative Directors must be satisfied.

Until varied by the Directors in accordance with clause 11.12, the Employer Nominating Organisation for MS Employer Directors is Motor Trades Association of Australia Ltd ACN 008 643 561 and the Employer Nominating Organisation for TP Employer Directors is the Tasmanian Chamber of Commerce and Industry Limited ACN 009 475 987.

**Employer Representative Director** means a director nominated by an Employer Nominating Organisation under clause 11.7.

**Fund** means Spirit Super (ABN 74 559 365 913) created by Trust Deed dated 31 May 1989 (as amended from time to time).

**Independent Director** has the meaning given under section 10 of SIS.

**meeting of shareholders** means a meeting of shareholders and any adjourned holding of it.

**Member Nominating Organisation** means the entity or entities appointed from time to time under clause 11.14 as a Member Nominating Organisation provided that the requirements of SIS in respect of who may appoint Member Representative Directors must be satisfied.

Until varied by the Directors in accordance with clause 11.14, the Member Nominating

Organisation for the MSO Member Director is the Australian Manufacturing Workers' Union or such other union as is nominated by the Australian Council of Trade Unions (including itself) and the Member Nominating Organisation for the TP Member Directors is Unions Tasmania.

**Member Representative Director** means a director nominated by a Member Nominating Organisation under clause 11.9 or by the MSM Member Director Nomination Committee under clause 11.8.

**MS Employer Director** means an Employer Representative Director nominated by Motor Trades Association of Australia Ltd ACN 008 643 561 in accordance with clause 11.7.

**MSM Member Director** means a Member Representative Director nominated by the MSM Member Director Nomination Committee in accordance with clause 11.8.

**MSM Member Director Nomination Committee** means a committee comprising the MSO Member Director and one of the independent directors who were nominated under clause 11.2(d)(i), whose role it is to review nominees for MSM Member Director and make recommendations to the Board.

**MSO Member Director** means a Member Representative Director nominated by the Australian Manufacturing Workers' Union in accordance with clause 11.9.

**proxy** means a person duly appointed under a proxy form by a shareholder who is entitled to attend and vote at a meeting of shareholders, to attend and vote instead of the shareholder at the meeting.

**proxy form** means an instrument for appointing a proxy that complies with this Constitution.

**redeemed or redemption**, for the avoidance of doubt, means forfeited or forfeiture for the purposes of clause 5.1 of this Constitution.

**register** means the register of shareholders kept under the Corporations Act.

**registered office** means the registered office for the time being of the Company.

**Regulator** has the meaning given under section 10 of SIS.

**Relevant Law** means SIS and the Corporations Act.

**Seal** means the common seal of the Company (if any).

**Secretary** means the secretary for the time being of the Company and if there are joint secretaries, any one or more of the joint secretaries.

**shareholder** means a person whose name is entered on the register as the holder of one or more shares.

**shareholding qualifications** means the eligibility conditions set out in clause 3.2.

**shares** means shares in the share capital of the Company.

**SIS** means the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Industry (Supervision) Regulations 1994* and any prudential standards made under that Act (and includes any other legislation that governs or relates to superannuation).

**special resolution** means a resolution of a meeting of shareholders:

(a) of which notice as set out in section 249L(c) of the Corporations Act has been given;

and

- (b) where at least seventy five percent (75%) of the total votes cast on the resolution are in favour of the resolution.

***TP Employer Director*** means an Employer Representative Director nominated by the Tasmanian Chamber of Commerce and Industry Limited ACN 009 475 987 in accordance with clause 11.7.

***TP Member Director*** means a Member Representative Director nominated by Unions Tasmania in accordance with clause 11.9.

***writing*** and ***written*** includes any form of reproducing words in a visible form.

## **1.2 Interpretation**

In the construction of this Constitution:

- (a) headings are disregarded; and
- (b) words importing persons include partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals; and
- (c) singular includes plural and vice versa and words importing any gender include all other genders; and
- (d) except where the context otherwise requires, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of SIS or the Corporations Act, the same meaning as in that provision of SIS or the Corporations Act; and
- (e) all references to statutory provisions are construed as references to any statutory modification, exemption or re-enactment for the time being in force.

## **1.3 Exclusion of replaceable rules**

All of the replaceable rules contained in the Corporations Act are displaced by this Constitution and do not apply to the Company.

## **2. OBJECTS**

The sole purpose of the Company is to be the trustee of the Fund and do all things that the Directors consider necessary or desirable for that purpose.

## **3. SHARE CAPITAL**

### **3.1 Rights attaching to Shares**

- (a) The capital of the Company is comprised solely of fully paid ordinary shares.

- (b) A shareholder has the right to attend and vote at all meetings of the Company.
- (c) A shareholder does not have the right to participate in any dividends declared on a share.
- (d) A shareholder does not have the right to participate in any surplus assets or profits of the Company on a winding up of the Company, but may be repaid the capital paid on a share.

### **3.2 Eligibility to hold shares**

No person shall be entitled to hold a share in the Company unless the person:

- (a) is a Director; and
- (b) consents to hold the share on behalf of the members of the Fund; and
- (c) is approved by the Regulator if required under SIS.

### **3.3 Issue at the discretion of the Directors**

The Directors may, on behalf of the Company, issue shares but only to persons who satisfy the shareholding qualifications.

### **3.4 Control of the Directors**

Subject to clause 3.1 and the other provisions of this Constitution and the Corporations Act, the shares in the Company are under the control of the Directors.

### **3.5 Recognition of third party interests**

The Company is entitled to treat a shareholder who is the registered holder of a share as the sole legal owner of that share. Except as required by law or this Constitution, the Company is not required to recognise any other interest of any other person in any share.

### **3.6 Limited liability**

The liability of each shareholder is limited to the amount unpaid (if any) on the share held by that shareholder.

## **4. SHARE CERTIFICATE**

### **4.1 Entitlement to certificate**

A person whose name is entered as a shareholder in the register is entitled, upon written request and without charge, to one (1) certificate for the share of the Company registered in the shareholder's name. Otherwise, the Company is not obliged to issue certificates of title to shares of the Company.

### **4.2 Return of certificate**

A person who ceases to be a shareholder must return any share certificate to the Company as soon as practicable (or if the certificate is lost, provide a statutory declaration to that effect).

## **5. REDEMPTION OF SHARES**

### **5.1 Ceasing to act as Director**

If a person ceases to act as a Director, including as a result of the death, mental incapacity or, subject to the *Bankruptcy Act 1966* (Cth), the bankruptcy of the person:

- (a) in the case of death or, subject to the *Bankruptcy Act 1966* (Cth), the bankruptcy of the person:
  - (i) that person's share in the Company will be redeemed with effect immediately before the date of death or bankruptcy (as applicable) and then cancelled by the Company; and -
  - (ii) that person will be removed from the register with effect from that date;
- (b) in any other case:
  - (i) that person's shares in the Company will be redeemed and then cancelled by the Company; and
  - (ii) that person will be removed from the register with effect from the date they cease to be a Director of the Company.

### **5.2 Authority of Secretary**

The Directors irrevocably appoint the Secretary as the Director's attorney to do all things necessary, including the execution of any documents, to give effect to any redemption as described in clause 5.1.

## **6. MEETINGS OF SHAREHOLDERS**

### **6.1 No annual general meetings**

The Company need not hold annual general meetings unless required by the Corporations Act.

### **6.2 Calling of meetings**

A Director may at any time call a meeting of shareholders.

### **6.3 Requisition of meetings**

Except as required by the Corporations Act, no shareholder or shareholders may call a meeting of shareholders.

### **6.4 Period of notice**

Subject to clause 6.5, at least twenty one (21) days' notice must be given of a meeting of shareholders.

### **6.5 Consent to short notice**

Subject to the Corporations Act, shorter notice of a meeting of shareholders may be given with the written consent of shareholders who, between them, hold at least ninety five percent (95%) of the votes that may be cast at the meeting (and any such meeting will be treated as having been duly convened).

## **6.6 Notice of meeting**

Every notice of a meeting of shareholders must:

- (a) set out the date, time and place (or places) of meeting (and if the meeting is to be held in two (2) or more places, the technology that will be used to give shareholders a reasonable opportunity to participate); and
- (b) state the general nature of the meeting's business; and
- (c) if a special resolution is to be proposed at the meeting, set out the intention to propose the special resolution and state the resolution; and
- (d) contain a statement of the right to appoint a proxy.

## **6.7 Cancellation or postponement of meeting**

The Directors may cancel or postpone the holding of a meeting of shareholders. The Directors must notify the shareholders of such cancellation or postponement by such means as they see fit.

## **6.8 Omission to give notice**

The accidental omission to give notice of a meeting of shareholders to, or the non-receipt of any such notice by, a person entitled to receive it, or the accidental omission to give notice of a postponement or cancellation of such meeting, does not invalidate the proceedings at, or any resolution passed at, any such meeting.

# **7. REPRESENTATION AT MEETINGS**

## **7.1 Proxy eligibility**

A shareholder may appoint a proxy to attend and vote for the shareholder at a meeting of shareholders. A proxy can only be a Director.

## **7.2 Proxy recognition**

- (a) A proxy is recognised as having been duly appointed by a shareholder and entitled to act as a proxy for that shareholder only if the proxy form complies with the requirements of this Constitution in relation to form, execution and lodgement.
- (b) A proxy may join in a demand for a poll.

## **7.3 Proxy form**

The proxy form:

- (a) must contain the shareholder's name and address; and
- (b) must contain the proxy's name and the office held by the proxy; and
- (c) may make provision for the chair of the meeting to act as the proxy either in the absence of any other appointment or if the proxy primarily appointed fails to attend the meeting; and
- (d) must contain the Company's name and either identify the meetings of shareholders at which the proxy form may be used or be identified as a standing one; and

- (e) may enable the shareholder to instruct the proxy to vote for or against each notified resolution; and
- (f) must be in the form set out in Schedule 1, or in any other form approved by the Directors.

#### **7.4 Chair as fall-back proxy**

If a proxy form is otherwise effective except that it does not specify the proxy, the shareholder is treated as validly appointing the chair of the meeting in respect of the share of that shareholder.

#### **7.5 Proxy execution**

A proxy form must be executed under the hand of the shareholder.

#### **7.6 Proxy lodgement**

A proxy form must be lodged at the registered office (or at such other place as is specified for that purpose in the notice calling the meeting of shareholders), not less than forty eight (48) hours before the start of the meeting.

#### **7.7 Validity of proxy vote**

A vote cast in accordance with a proxy form is valid if no notice in writing of:

- (a) the death of the appointing shareholder;
- (b) the mental incapacity of the appointing shareholder;
- (c) the revocation of the proxy's appointment;
- (d) the revocation of the authority under which the proxy was appointed; or
- (e) the redemption of the share in respect of which the proxy was given,

has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the proxy is to be used or exercised.

### **8. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**

#### **8.1 Quorum**

- (a) No business may be transacted at any meeting of shareholders unless a quorum of shareholders is present either in person or by proxy at the time when the meeting proceeds to business provided that at least two persons are physically present.
- (b) Three quarters of all shareholders are a quorum.

#### **8.2 Failure of quorum**

- (a) If a quorum is not present within half an hour of the time appointed for a meeting of shareholders the meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week following at the same time and place.

- (b) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is dissolved.

### **8.3 Chair of meeting**

- (a) The Board Chair will chair each meeting of shareholders, unless the Board Chair is not available in which case, the Directors will elect another Director to chair the meeting.
- (b) If the person who is to chair the meeting is not present within fifteen (15) minutes of the time appointed for the meeting or is not willing to take the chair, the Directors present may choose another person, whether a Director or not, to chair the meeting.

### **8.4 Adjournment of meeting**

The chair of a meeting of shareholders may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place as the chair determines.

### **8.5 Business at adjourned meeting**

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting, unless it is adjourned for thirty (30) days or more, in which event notice of the adjourned meeting must be given as required for an original meeting.

### **8.6 Use of technology**

A meeting of shareholders may be held at two or more venues using any technology that gives shareholders a reasonable opportunity to participate.

## **9. VOTING AT MEETINGS OF SHAREHOLDERS**

### **9.1 Entitlement to vote**

Subject to this Constitution, a person may vote at a meeting of shareholders if he or she is a shareholder or a recognised proxy of a shareholder.

### **9.2 Number of votes**

Each person who is, under clause 9.1, entitled to vote has:

- (a) on a show of hands (or on the voices) only one (1) vote, regardless of how many shareholders the person may represent; and
- (b) on a poll one (1) vote for each share held by the person or held by shareholders for whom the person is the recognised proxy.

### **9.3 Method of voting**

Every resolution put to a vote at a meeting of shareholders must be determined by the voices or a show of hands (as determined by the chair of the meeting) unless a poll is properly demanded.

#### **9.4 Who may demand a poll**

At a meeting of shareholders a demand for a poll may be made by:

- (a) the chair of the meeting; or
- (b) a shareholder or shareholders (present in person or by proxy) with at least five percent (5%) of the votes that may be cast on the resolution on a poll.

#### **9.5 When poll may be demanded**

A poll may be demanded:

- (a) before a vote is taken; or
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

#### **9.6 Declaring result of vote on show of hands**

At any meeting of shareholders (unless a poll is so demanded) a declaration by the chair of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority and an entry in the book containing the minutes of 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 such resolution.

#### **9.7 Conduct of poll**

- (a) The demand for a poll may be withdrawn.
- (b) If a poll is duly demanded (and the demand not withdrawn) it must be taken in such manner and at such time (either at once or after an interval or adjournment or otherwise) as the chair of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (c) A poll demanded on the election of a chair and any question of adjournment must be taken immediately. The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

#### **9.8 No casting vote of chair**

If, on a show of hands or on a poll, the votes are equal, the chair of the meeting does not have a casting vote in addition to his or her deliberative vote.

#### **9.9 Objections**

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered and every vote not disallowed at any such meeting or poll is treated as valid.

#### **9.10 Ruling on votes**

The chair of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the chair is final and conclusive.

## **10. CIRCULATING RESOLUTIONS OF SHAREHOLDERS**

- (a) The Company may pass a resolution without a meeting of the Company's shareholders if all of the shareholders of the Company entitled to vote on the resolution have signed or electronically assented to a document (or counterparts of the same document) containing a statement that they are in favour of a resolution of shareholders in terms set out in the document.
- (b) The resolution is passed when the last shareholder required under this clause 10 signs or electronically assents to the document.

## **11. DIRECTORS**

### **11.1 Number of Directors**

- (a) The number of Directors must be not less than ten (10), all of whom must be ordinarily resident in Australia.
- (b) Subject to paragraph (a), the Company may, by special resolution, increase or reduce the number of Directors as long as the composition of the Board at all times complies with the relevant requirements of SIS.

### **11.2 Appointment of Directors**

- (a) The Board must be comprised as follows:
  - (i) four of the Directors must be Employer Representative Directors; and
  - (ii) four of the Directors must be Member Representative Directors; and
  - (iii) subject to SIS, at least one and not more than two of the Directors must be nominated by the other Directors as Independent Directors in accordance clause 11.2(d) or 11.17(b).
- (b) Of the Member Representative Directors:
  - (i) one Member Representative Director must be an MSO Member Director
  - (ii) one Member Representative Director must be an MSM Member Director; and
  - (iii) two Member Representative Directors must be TP Member Directors.
- (c) Of the Employer Representative Directors:
  - (i) two Employer Representative Directors must be MS Employer Directors; and
  - (ii) two Employer Representative Directors must be TP Employer Directors.
- (d) Of the Independent Directors, unless the Board otherwise resolves (subject to the required minimum number of Directors):
  - (i) one Independent Director must be nominated by the MS Employer Directors, the MSO Member Director and the MSM Member Director; and
  - (ii) one Independent Director must be nominated by the TP Member Directors and the TP Employer Directors.

### **11.3 Eligibility requirements for all Directors**

A Director must be a natural person who:

- (a) is not a Disqualified Person or disqualified from acting as a director under the Corporations Act;
- (b) is eligible under this Constitution to hold office as a Director, including meeting the shareholding qualification;
- (c) has consented to act as a Director; and
- (d) is able to satisfy the Company's and the Regulator's fit and proper standard.

### **11.4 Relevant connection for MS Directors**

To be nominated or appointed as an MSM Member Director, an MSO Member Director or an MS Employer Director, a person must be able to satisfy the Board that the person has:

- (a) a direct, substantial and relevant connection to the retail motor trades in Australia by virtue of either employment, business interest or membership of an organisation that represents the interests of Fund members in the retail motor trades; or
- (b) a direct, substantial and relevant connection to another industry in Australia that employs a significant number of Fund members by virtue of either employment, business interest or membership of an organisation that represents the interests of Fund members; or
- (c) other attributes that would enhance the governance of the Fund

but must not, in the opinion of the Board, be a person whose connections or interests might reasonably be considered to dilute the representative intent of clause 11.2(b).

### **11.5 Fund Membership requirements for MSM Member Director**

To be nominated or appointed as an MSM Member Director, a person must be a member of the Fund.

### **11.6 Term of appointment**

- (a) An Employer Representative Director is appointed for a term of three (3) years.
- (b) A Member Representative Director is appointed for a term of three (3) years.
- (c) An Independent Director is appointed for a term of three (3) years.
- (d) Subject to paragraph (e), upon completion of any three year term and subject to compliance with the Regulator's fit and proper standard, the Board may extend a Director's tenure for a further term.
- (e) A person may not serve as a Director for a total period of more than nine (9) years or, in exceptional circumstances approved by the Board, up to twelve (12) years. For the avoidance of doubt, the total period includes consecutive and non-consecutive terms.

### **11.7 Appointment and removal of Employer Representative Directors**

- (a) No later than six (6) months before the expiration of an Employer Representative Director's term of office, the Secretary must ask whether the Employer Representative Director remains eligible and is willing to serve another term.
- (b) If the Employer Representative Director is willing and eligible to serve another term, the Board may extend the tenure of that person as an Employer Representative Director for a further term, with effect from the date of expiration of the Director's previous term or from such other date as the Board determines.
- (c) If:
  - (i) the existing Employer Representative Director is not willing or eligible to serve a further term of office; or
  - (ii) a vacancy arises for the office of Employer Representative Director; or
  - (iii) the Board declines to appoint or extend the tenure of any person nominated by the Employer Nominating Organisation as an Employer Representative Director,

the Employer Nominating Organisation must seek and nominate an eligible person (or another eligible person, as the case may be) who is willing to serve as an Employer Representative Director and the relevant Employer Representative Directors must report the nominee to the Board.

- (d) The Board may appoint the nominee as an Employer Representative Director with effect from the date of appointment or expiration of the retiring Director's term (as the case may be) or from such other date as the Board determines. If the Board declines to appoint that person, the Board must ask the Employer Nominating Organisation to nominate another person in accordance with paragraph (c)(iii).
- (e) The Employer Nominating Organisation may request the removal of the Employer Representative Director nominated by it, by notice in writing given to the Secretary. Upon receipt of such notice, the Board may, but is not required to, consider the removal of the Employer Representative Director nominated by the Employer Nominating Organisation with effect from such date as the Board determines.

### **11.8 Appointment and removal of MSM Member Director**

- (a) No later than six (6) months before the expiration of the term of office of the MSM Member Director, the Secretary must ask whether the MSM Member Director remains eligible and is willing to serve another term.
- (b) If the MSM Member Director is willing and eligible to serve another term, the Board may extend the tenure of that person as the MSM Member Director for a further term, with effect from the date of expiration of the Director's previous term or from such other date as the Board determines
- (c) If the existing MSM Member Director is not willing or eligible to serve another term of office, the Board declines to extend the tenure of that person or a vacancy otherwise arises for the office of MSM Member Director, the Secretary must:
  - (i) cause notice to be posted on the Fund's website (or otherwise given to all Fund members) of the impending vacancy; and

- (ii) request all interested parties to notify the Secretary in writing of their willingness to serve as an MSM Member Director, including a brief history and evidence that they can satisfy the eligibility requirements in clauses 11.3 – 11.5.
- (d) The Secretary must arrange for all candidates to be assessed according to their ability to satisfy the eligibility requirements in clauses 11.3 – 11.5 and any other skills and experience they may bring to the Board. All eligible candidates will then be referred to the MSM Director Nomination Committee.
- (e) The MSM Director Nomination Committee shall determine a recommended nominee for the vacant position as an MSM Member Director taking into account the assessment under paragraph (d). The Committee's recommendation must be reported to the Board.
- (f) The Board may appoint the nominee as an MSM Member Director with effect from the date of expiration of the retiring Director's previous term or from such other date as the Directors determine. If the Board declines to appoint that person, the Board must ask the MSM Member Director Nomination Committee to recommend another person in accordance with paragraph (e).
- (g) The MSM Director Nomination Committee may by notice in writing to the Secretary request the Board to remove the MSM Member Director, with a copy of such notice to be given to the MSM Member Director. Upon receipt of such notice, the Board may, but is not required to, consider the removal of the MSM Member Director, with effect from such date as the Board determines.

#### **11.9 Appointment and removal of a Member Representative Director nominated by a Member Nominating Organisation**

- (a) The Member Nominating Organisation must notify the Secretary in writing of its nomination.
- (b) The Member Representative Director nominated by a Member Nominating Organisation must satisfy the provisions of clause 11.3 and, in the case of the MSO Member Director, clause 11.4.
- (c) In the case of a Member Representative Director nominated by a Member Nominating Organisation, no later than six (6) months before the expiration of the Member Representative Director's term of office, the Secretary must ask whether the Member Representative Director remains eligible and is willing to serve another term.
- (d) If a Member Representative Director is willing and eligible to serve another term, the Board may extend the tenure of that person as a Member Representative Director for a further term, with effect from the date of expiration of the Director's previous term or from such other date as the Board determines.
- (e) If:
  - (i) the existing Member Representative Director is not willing or eligible to serve another term of office; or
  - (ii) a vacancy arises for the office of Member Representative Director; or
  - (iii) the Board declines to extend the tenure of any person nominated by a Member Nominating Organisation as a Member Representative Director,

the Member Nominating Organisation must seek and nominate an eligible person (or another eligible person, as the case may be) who is willing to serve as a Member Representative Director and the relevant Member Representative Directors must report the nominee to the Board.

- (f) The Board may appoint the nominee as a Member Representative Director. If the Board declines to appoint that person, the Board must ask the Member Nominating Organisation to nominate another person in accordance with paragraphs (a) and (b).
- (g) The Member Nominating Organisation may request the removal of the Member Representative Director nominated by it, by notice in writing given to the Secretary. Upon receipt of such notice, the Board may, but is not required to, consider the removal of the Member Representative Director nominated by the Member Nominating Organisation with effect from such date as the Board determines.
- (h) The removal of a Member Representative Director nominated by the Member Nominating Organisation cannot become effective unless and until:
  - (i) a replacement Member Representative Director has been nominated by the Member Nominating Organisation;
  - (ii) written consent to act from the replacement Member Representative Director has been given to the Secretary; and
  - (iii) the Board has resolved to appoint the replacement Member Representative Director.

#### **11.10 Appointment and Removal of Independent Directors**

- (a) The Independent Directors may be appointed by the Directors and shall be independent of the Employer Representative Directors and the Member Representative Directors.
- (b) An Independent Director must satisfy the requirements of clauses 11.3.
- (c) An Independent Director may be removed from office by a resolution passed by the Directors (other than the Independent Director in question) and notified in writing to that Independent Director by the Secretary.

#### **11.11 Review of Employer Nominating Organisation and Member Nominating Organisation**

At any time the Directors think fit, but at least once every five (5) years, and promptly following the retirement or removal of an Employer Nominating Organisation or a Member Nominating Organisation, the Directors must consider the characteristics of the membership of the Fund and determine the entity or entities that, having regard to the purposes of the Fund as a whole:

- (a) represent the interests of employers of members of the Fund and are appropriate to be appointed as an Employer Nominating Organisation; and
- (b) represent the interests of members of the Fund and are appropriate to be appointed as a Member Nominating Organisation.

In making the determination, the Directors must take into account the views of the Employer Nominating Organisations and Member Nominating Organisations then in office.

### **11.12 Appointment of Employer Nominating Organisations**

As soon as practicable after any of the following events:

- (a) the retirement or removal of an Employer Nominating Organisation; or
- (b) whenever a review under clause 11.11 requires,

the Directors must appoint such entity or entities determined under clause 11.11 to be appropriate to be the Employer Nominating Organisation or Employer Nominating Organisations. If there is more than one (1) Employer Nominating Organisation appointed, the Directors must specify the basis on which each such entity is to appoint Employer Representative Directors (including without limitation, the number of Employer Representative Directors to be appointed by that Employer Nominating Organisation and any class of employers or members of the Fund to which they relate).

### **11.13 Termination of Employer Nominating Organisations**

Each Employer Nominating Organisation continues to hold its position until:

- (a) the Employer Nominating Organisation retires from that position by giving the Company ninety (90) days prior written notice of retirement (or such shorter period of notice allowed by the Directors);
- (b) the Employer Nominating Organisation fails to nominate a replacement Employer Representative Director for the Employer Representative Director nominated by the Employer Nominating Organisation (or a predecessor Employer Nominating Organisation) within forty five (45) days (or such longer period allowed by the Directors) of the Employer Representative Director vacating office, in which case the Employer Nominating Organisation will be removed as an Employer Nominating Organisation, except where the Employer Nominating Organisation is entitled to appoint more than one (1) Employer Representative Director, in which case the Employer Nominating Organisation will only be removed in respect of the number of Employer Representative Directors that it fails to replace; or
- (c) the Employer Nominating Organisation is replaced by an appointment made under clause 11.12.

### **11.14 Appointment of Member Nominating Organisations**

As soon as practicable after any of the following events:

- (a) the retirement or removal of a Member Nominating Organisation; or
- (b) whenever a review under clause 11.11 requires,

the Directors must appoint such entity or entities determined under clause 11.11 to be appropriate to be the Member Nominating Organisation or Member Nominating Organisations. If there is more than one (1) Member Nominating Organisation appointed, the Directors must specify the basis on which each such entity is to appoint Member Representative Directors (including, without limitation, the number of Member Representative Directors to be appointed by that Member Nominating Organisation and any class of members of the Fund to which they relate).

### **11.15 Termination of Member Nominating Organisations**

Each Member Nominating Organisation continues to hold its position until:

- (a) the Member Nominating Organisation retires from that position by giving the Company ninety (90) days prior written notice of retirement (or such shorter period of notice allowed by the Directors); or
- (b) the Member Nominating Organisation fails to nominate a Member Representative Director for the Member Representative Director nominated by the Member Nominating Organisation (or a predecessor Member Nominating Organisation) within forty five (45) days (or such longer period allowed by the Directors) of the Member Representative Director vacating office, in which case the Member Nominating Organisation will be removed as a Member Nominating Organisation, except where the Member Nominating Organisation is entitled to appoint more than one (1) Member Representative Director, in which case the Member Nominating Organisation will only be removed in respect of the number of Member Representative Directors that it fails to replace; or
- (c) the Member Nominating Organisation is replaced by an appointment made under clause 11.14.

### **11.16 Loss of office**

- (a) In addition to the circumstances in which the office of Director becomes vacant by virtue of this Constitution, SIS or the Corporations Act, the office of Director becomes vacant if the Director:
  - (i) dies;
  - (ii) is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
  - (iii) resigns as a Director by notice in writing to the Company;
  - (iv) is or becomes a Disqualified Person;
  - (v) is removed from office by a Regulator;
  - (vi) is removed by the Board (or in the case of an Independent Director, by the other Directors) in accordance with a relevant provision of this Constitution;
  - (vii) is absent from three consecutive Board meetings without the consent of the other Directors; or
  - (viii) on the expiration of the Director's term of office, unless the Board extends the Director's tenure.
- (b) Without limiting paragraph (a), the Board may declare the office of a Director to be vacant if, in the reasonable opinion of the Board, the Director:
  - (i) is directly or indirectly interested in a contract or proposed contract with the Company and fails to declare the nature of the interest as required by law; or
  - (ii) ceases to satisfy the Company's or the Regulator's fit and proper standard.

### **11.17 Casual vacancies**

- (a) If there is a vacancy in the office of a Director, the remaining Directors may act, but if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, the remaining Directors may only act for the purpose of:
  - (i) increasing the number of Directors to a number sufficient to constitute a quorum;
  - (ii) if there is no Employer Nominating Organisation, to appoint an interim Employer Nominating Organisation; or
  - (iii) if there is no Member Nominating Organisation, to appoint an interim Member Nominating Organisation; or
  - (iv) if an Employer Nominating Organisation fails to nominate a replacement Employer Representative Director for the Employer Representative Director nominated by the Employer Nominating Organisation (or a predecessor Employer Nominating Organisation) within forty five (45) days (or such longer period allowed by the Directors) of the Employer Representative Director vacating office, to replace the Employer Nominating Organisation; or
  - (v) if a Member Nominating Organisation fails to nominate a Member Representative Director for the Member Representative Director nominated by the Member Nominating Organisation (or a predecessor Member Nominating Organisation) within forty five (45) days (or such longer period allowed by the Directors) of the Member Representative Director vacating office, to replace the Member Nominating Organisation; or
  - (vi) in any other circumstances which the Directors determine are emergencies.
- (b) The Board may fill any casual vacancy and must do so within ninety (90) days or within such time and in such manner as is required to ensure compliance with SIS. The term of a Director filling the casual vacancy shall be determined by the Board and notified in writing to that Director.

### **11.18 Notification to Members**

The Company must, in accordance with SIS, publish the rules for appointing and removing Member Representative Directors and Independent Directors under this Constitution in a way that will make Fund members aware of them.

## **12. REMUNERATION OF DIRECTORS**

### **12.1 Remuneration**

- (a) The Directors shall be paid such remuneration for their services as directors, and in such manner, as the Board shall determine.
- (b) The remuneration of Directors shall accrue from day to day.

### **12.2 Expenses**

In addition to any remuneration payable under clause 12.1, a Director is entitled to be paid all reasonable travelling and other expenses properly incurred, or to be incurred, in connection with attendance at Board meetings, Committee meetings and meetings of shareholders or otherwise in connection with the business of the Company.

## **13. POWERS AND DUTIES OF DIRECTORS**

### **13.1 Powers generally**

Subject to the Corporations Act and to any other provision of this Constitution, the business of the Company shall be managed by the Directors. The Directors may pay all expenses incurred in forming, running and promoting the Company and may exercise all such powers of the Company as are not expressly required, under this Constitution or the Corporations Act, to be exercised by a meeting of shareholders.

### **13.2 Borrowing**

Without limiting clause 13.1, the Directors have the power to borrow or otherwise raise money, to charge any property of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, obligation or liability of the Company or of any other person.

### **13.3 Appointment of attorney**

The Directors may, by power of attorney, appoint any person or persons (either by name or by reference to a position or office held) to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors) for such period and subject to such conditions as they think fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

### **13.4 Execution of negotiable instruments**

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company may be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors determine.

### **13.5 Delegation**

The Directors may delegate any of their powers to any Director, committee of Directors, employee or other person as they may select, for such time and upon such terms and with such restrictions as they think expedient.

### **13.6 Validity of acts**

Subject to SIS, all acts done in good faith at any meeting of the Directors or of a committee of Directors are valid even if it is afterwards discovered that there was some defect in the appointment of the person or some disqualification to hold office or to vote.

## **14. MEETINGS OF DIRECTORS**

### **14.1 Mode of meeting**

- (a) The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit.
- (b) The Directors may conduct their meetings using any form of technology agreed by all the Directors, which may be a standing agreement. A Director may only withdraw agreement within a reasonable time before the meeting.

## **14.2 Quorum**

A quorum for a meeting of the Directors is three quarters of all Directors then in office unless there are fewer than seven (7) Directors in office, in which case a quorum is all Directors then in office.

## **14.3 Calling a meeting**

- (a) The Chair may at any time call a meeting of the Directors.
- (b) The Secretary, upon the request of any Director, must call a meeting of the Directors.

## **14.4 Appointment of Chair**

- (a) The Directors must elect an Independent Director to be the Chair of their meetings.
- (b) The Chair has the conduct of Board meetings and of the procedures to be adopted at Board meetings.
- (c) If at any meeting of the Directors the Chair is not present within ten (10) minutes of the time appointed for holding the meeting or is unwilling to act for all or part of the meeting, the Directors present must choose another Independent Director to chair that meeting or part of it.
- (d) The Directors may remove a Chair and appoint another Chair by a majority of three quarters of all votes that could be cast by Directors where each Director has one (1) vote.

## **14.5 Voting at Directors' meetings**

- (a) Resolutions at any meeting of the Directors must be decided by a majority of three quarters of all votes that could be cast by Directors where each Director has one (1) vote.
- (b) The Chair of the meeting does not have a casting vote in addition to their deliberative vote.

## **14.6 Circulating resolution of Directors**

- (a) If at least three quarters of all Directors entitled to vote have signed or electronically assented to a document (or counterparts of the same document) containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms is taken to have been passed.
- (b) The resolution is passed when the last Director required under this clause 14.6 signs or electronically assents to the document.

## **15. DIRECTORS' CONFLICTS OF INTEREST**

### **15.1 Director's duty to notify material personal interests**

- (a) Subject to paragraph (b), a Director is not, by virtue of the fiduciary nature of the Director's office, precluded from contracting or entering into any arrangement with the Company as vendor, purchaser or otherwise and any such contract or arrangement entered into by or on behalf of the Company in which a Director is in any way interested is not avoided and a Director so contracting or being interested is not liable to account to the Company for any profit realised by any such contract or arrangement.

- (b) Each Director must give the other Directors notice of any contract, arrangement, interest, office or property held or proposed to be held by the Director that might create duties or interests in conflict with their duties or interests as a Director.

## **15.2 Standing notice about an interest**

- (a) A Director may give the other Directors standing notice of the nature and extent of a matter required to be disclosed in accordance with clause 15.1(b).
- (b) A standing notice is of no effect unless:
  - (i) it is given at a meeting of Directors; or
  - (ii) brought to the attention of the Directors at the next meeting after it is given.
- (c) The Secretary must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or disclosed.

## **15.3 Voting**

A Director may

- (a) vote; and
- (b) be counted in a quorum at any meeting of Directors,

if it is consistent with the Relevant Law and the Company's policies relating to conflicts of interest.

## **15.4 Other offices**

Subject to Relevant Law, a Director may hold any other office or place of profit with the Company (except as auditor) on such terms as to remuneration and otherwise as the shareholders in general meeting may approve.

## **16. COMMITTEES**

### **16.1 Delegation to committee**

The Directors may:

- (a) delegate any of their powers to a committee of Directors; and
- (b) establish advisory committees (or other committees not having delegated power of Directors) consisting of such person or persons as they think fit.

### **16.2 Committee powers**

- (a) Any committee so formed must, in the exercise of the powers delegated or functions entrusted to it, act in accordance with any directions that may at any time be given or imposed by the Directors.
- (b) A power exercised by a committee of Directors under delegated authority is taken to be exercised by the Directors.

### **16.3 Committee Chair**

- (a) The members of a committee may elect one of their number to be Chair of their meetings.

- (b) If at any committee meeting the Chair is not present within ten (10) minutes of the time appointed for holding the meeting or is unwilling to act for all or part of the meeting, the members present must choose one of their number to chair that meeting or part of it.

#### **16.4 Committee meetings**

- (a) A committee may meet and adjourn as it thinks fit.
- (b) Resolutions at a committee meeting must be decided by a majority of three quarters of the total number of votes of the committee members present and voting.
- (c) The chairman of the meeting does not have a casting vote in addition to their deliberative vote.

### **17. ADMINISTRATION**

#### **17.1 Appointment of Secretary**

- (a) The Secretary must be appointed by the Directors and holds office on such terms and conditions, as to remuneration or otherwise, as the Directors determine.
- (b) The office of Secretary is vacated if the Secretary becomes a Disqualified Person.

#### **17.2 Minutes**

- (a) The Directors will cause minutes to be recorded of all meetings and resolutions of:
  - (i) the Directors;
  - (ii) a committee of the Directors; and
  - (iii) the shareholders.
- (b) A minute recorded and signed in accordance with the Corporations Act is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

### **18. EXECUTION OF DOCUMENTS**

#### **18.1 Company Seal**

- (a) The Company may at any time have a Seal (but is not obliged to have one).
- (b) If the Company has a Seal, the Directors must provide for its safe custody and the Seal must not be affixed to any document unless it is done by the authority of the Directors or the authority of a committee of Directors with delegated authority in that respect.

#### **18.2 Mode of execution by common seal**

Every document to which the Seal is fixed must be signed by two (2) persons to witness the fixing of the Seal. One (1) must be a Director. The other may be the Secretary or a second Director.

#### **18.3 Mode of execution without seal**

The Company may execute a document without using the Seal if the document is signed by two Directors, by a Director and the Secretary or by a person with delegated authority to execute documents on behalf of the Company.

## 19. APPLICATION OF PROPERTY INCLUDING ON MERGER OR WINDING UP

### 19.1 Application of Company property

- (a) All income and property of the Company must be applied solely towards the promotion of the objects of the Company as set out in clause 2. No portion of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit or return of capital to shareholders.
- (b) For the avoidance of doubt, paragraph (a) does not prevent payment in good faith of:
  - (i) remuneration to any Director, officer or employee of the Company or to any shareholder of the Company in return for services rendered to the Company or for goods supplied in the ordinary and usual course of business;
  - (ii) payment to a shareholder by way of reimbursement for costs and expenses incurred in the maintenance and administration of the Company or the Fund;
  - (iii) payment of any amount of the Company's personal capital to the Fund if the Directors, at their discretion, determine in accordance with clauses 14.5 or 14.6;
  - (iv) payment of any civil, administrative or criminal penalty incurred in relation to a contravention of a law of the Commonwealth by the Company or one or more of its Directors or officers to the full extent permitted by the Corporations Act;
  - (v) payment of any amount payable by the Company or one or more of its Directors or officers under an infringement notice (however described) given under a law of the Commonwealth to the full extent permitted by the Corporations Act;
  - (vi) payment of any insurance premium in connection with any insurance policy in relation to the Company or its Directors or officers to the full extent permitted by the Corporations Act; and
  - (vii) indemnification of any officer, auditor or agent of the Company to the full extent permitted by the Corporations Act or otherwise by law.

### 19.2 Surplus

If, on the merger, winding up or dissolution of the Company, after the satisfaction of all its debts and liabilities, any property of the Company remains (**surplus**), the surplus must not be paid or distributed among the shareholders.

### 19.3 Transfer of surplus

The surplus under clause 19.2 (if any) must be paid or applied to:

- (a) the Fund or its successor fund (as defined by SIS); or
- (b) a company that replaces the Company as trustee of the Fund; or
- (c) a trustee of the Fund's successor fund (as defined by SIS),

as the shareholders or the liquidator determine.

## **20. NOTICES**

### **20.1 Service of notices**

A notice may be given by the Company either:

- (a) by delivering it to a person personally; or
- (b) by sending it by post to the address supplied by the person to the Company for the purpose of giving notices or, in the case of a shareholder, to the address of the shareholder entered in the register; or
- (c) by sending it by electronic transmission to a facsimile number or email address supplied by the person to the Company for the giving of notices to the person.

### **20.2 Date of deemed service**

A notice given under clause 20.1 is treated as having been served, irrespective of whether it is actually received:

- (a) where clause 20.1(b) applies – if to a shareholder on the day following the day it was posted and if to another person when it would be delivered in the ordinary course of the post; and
- (b) where clause 20.1(c) applies - on transmission, unless the Company is notified of unsuccessful transmission.

## **21. INDEMNITY AND INSURANCE**

### **21.1 Indemnity for officers**

To the maximum extent that SIS or the Corporations Act allows, each officer of the Company must be indemnified by the Company against any liability incurred by that person in that capacity (whether the liability relates to the Company or the Fund) and the cost of defending such claims against that person.

### **21.2 Insurance premiums**

The Directors may, at any time, cause the Company to pay premiums in respect of a contract insuring a person (whether with others or not) who is an officer of the Company against a liability incurred by the person as such an officer (whether the liability relates to the Company or the Fund) and the cost of defending such claims against that person except for a liability which SIS or the Corporations Act prohibits the Company to insure. Any such premium in relation to a Director is in addition to, and not regarded as part of, the remuneration of Directors.

### **21.3 Contract**

The Company may contract with any officer of the Company in relation to the matters referred to in clauses 21.1 and 21.2 not only during that person's period of office but also after that person has ceased to be an officer.

## **22. ALTERATION TO CONSTITUTION**

- (a) The shareholders may, by special resolution, alter this constitution but not so as to breach the Relevant Law.
- (b) A special resolution made pursuant to Rule 22(a) that alters the dividend rights attaching to any class of shares and/or Rule 19.2 in any way will be effective only if the Board has unanimously approved the particular alteration.

**SCHEDULE 1**

**Proxy Form**

**Motor Trades Association of Australia Superannuation Fund Pty Limited  
ACN 008 650 628**

**PROXY FORM**

I,

\_\_\_\_\_ *(full name of shareholder – please print)*

\_\_\_\_\_ *(address)*

**Appoint**

\_\_\_\_\_ *(name, or office held, of Proxy – please print)*

*Please note that a proxy must be a Director of the Company.*

\_\_\_\_\_ *(address)*

or failing such appointment or the absence of that person, **the Chair of the Meeting**, as my Proxy to vote for me on my behalf (with discretion as to any business not referred to below) at the annual general meeting/meeting of shareholders of the Company to be held on *insert date*, and at any adjournment of that meeting.

(Voting instructions to be indicated by a tick  in the appropriate box. If no instruction is given the Proxy may vote as that person thinks fit, or abstain).

	<b>Business</b>	<b>For</b>	<b>Against</b>	<b>Abstain</b>
1.	[caption]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	[caption]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SIGNATURE