

CORPORATIONS ACT
A COMPANY LIMITED BY SHARES

CONSTITUTION
OF
MOTOR TRADES ASSOCIATION OF AUSTRALIA
SUPERANNUATION FUND PTY LIMITED

ACN 008 650 628

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**CONSTITUTION
OF
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) as it applies 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 10 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 is Motor Trades Association of Australia Ltd ACN 008 643 561.

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

Fund means the MTA Superannuation Fund created by Trust Deed dated 31 May 1989.

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 is the Vehicle Division of the Australian Manufacturing Workers' Union or such other union as is nominated by the Australian Council of Trade Unions (including itself).

Member Representative Director means a director nominated by the Member Nominating Organisation under clause 11.9 or by the Member Representative Directors under clause 11.8.

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.

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.

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 a person meeting the following criteria:

- (a) is a Director; and
- (b) consents in writing to holding a share on trust for members of the Fund.

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.

transfer means dispose of in any way and includes, without limitation, assign, assure, declare a trust (other than for Fund members) transfer or sell and also includes agreeing to do any of those things.

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) executes a declaration of trust to hold the share on behalf of the members of the Fund.

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 and other eligibility 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. TRANSFER OF SHARES

5.1 Transfer subject to Directors' approval

- (a) A share in the Company may only be transferred to a person who satisfies the eligibility qualifications.
- (b) Subject to paragraph (a), all transfers of shares are subject to the approval of the Directors.

5.2 Form of transfer

- (a) Subject to the Corporations Act and this Constitution, a shareholder may transfer his or her share by instrument in writing in the form approved by the Directors.
- (b) The instrument of transfer must be executed by or on behalf of both the transferor and the transferee and submitted for registration with any certificate issued to the transferor.
- (c) The Directors may refuse to register a transfer of shares without giving any reason for its refusal. Notice must be given to the transferee within two months of the date

the instrument of transfer was submitted for registration if the Directors refuse to register a transfer of shares.

- (d) The transferor of a share remains the holder of the share until the transfer is registered and the name of the transferee is entered in the register.
- (e) Subject to the approval of the Directors, the Secretary will register the transferee as a shareholder.

5.3 Transmission of shares

- (a) On the death of a shareholder, the shares held by the deceased are transferred to another person who is eligible to hold shares under this Constitution with effect immediately before the date of death.
- (b) Subject to the Bankruptcy Act 1966, on the bankruptcy of a shareholder the shares held by the shareholder are transferred to another person who is eligible to hold shares under this Constitution with effect immediately before the date of bankruptcy.

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 reasonably 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:

- (c) must contain the shareholder's name and address; and
- (d) must contain the proxy's name and the office held by the proxy; and
- (e) 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
- (f) 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
- (g) may enable the shareholder to instruct the proxy to vote for or against each notified resolution; and
- (h) 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 members), not less than forty eight (48) hours before the start of the meeting.

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.

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 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 the document.

11. DIRECTORS

11.1 Number of Directors

- (a) The number of Directors must be not less than five (5), 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

The Board must be comprised as follows:

- (a) One third of the Directors must be Employer Representative Directors; and
- (b) One third of the Directors must be Member Representative Directors; and

- (c) subject to SIS, one third of the Directors may be appointed by the other Directors as Independent Directors.

Of the Member Representative Directors, at least one Member Representative Director must be nominated by the Member Nominating Organisation in accordance with clause 11.9 (or more if determined by the Directors under clause 11.11) and the remainder may be nominated by the other Member Representative Directors then in office in accordance with clause 11.8.

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 all Directors

To be nominated or appointed as a 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; 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.

11.5 Fund Membership requirements for Employer Representative Directors and certain Member Representative Directors

To be nominated or appointed as an Employer Representative Director or a Member Representative Director (other than a Member Representative Director nominated by the Member Nominating Organisation), 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 (other than a Member Representative Director nominated by the Member Nominating Organisation) is appointed for a term of three (3) years.
- (c) The Independent Directors are appointed for a term of three (3) years.

- (d) A Member Representative Director nominated by the Member Nominating Organisation is appointed for a term of three (3) years.
- (e) Upon completion of a three year term, a Director may be re-appointed for a further term.

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 and the Employer Nominating Organisation re-nominates the Employer Representative Director, the Directors may re-appoint that person as an Employer Representative Director with effect from the date of expiration of the Director's previous term or from such other date as the Directors determine.
- (c) If:
 - (i) the existing Employer Representative Director is not willing or eligible to serve another term of office; or
 - (ii) the Employer Nominating Organisation does not re-nominate the existing Employer Representative Director; or
 - (iii) the Directors decline to appoint any person nominated or re-nominated by the Employer Nominating Organisation as an Employer Representative Director,the Employer Nominating Organisation must seek and nominate another eligible person who is willing to serve as an Employer Representative Director and the Employer Representative Directors must report the nominee to the Board.
- (d) The Directors may appoint the nominee as an Employer Representative Director with effect from the date of expiration of the retiring Director's term or from such other date as the Directors determine. If the Directors decline to appoint that person, the Directors must ask the Employer Nominating Organisation to nominate another person in accordance with paragraph (c).
- (e) If the Employer Nominating Organisation wishes to remove the Employer Representative Director nominated by it, notice in writing must be given to the Secretary not less than one (1) month before the removal is to become effective. Upon receipt of such notice, the Board may remove the Employer Representative Director nominated by the Employer Nominating Organisation with effect from the expiration of the one month notice period.

11.8 Appointment and removal of a Member Representative Director (other than one nominated by the Member Nominating Organisation)

- (a) No later than six (6) months before the expiration of the term of office of a Member Representative Director (other than one nominated by the Member Nominating Organisation), the Secretary must ask whether the Member Representative Director remains eligible and is willing to serve another term.
- (b) 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 (including that the existing Member Representative Director is eligible and willing to serve another term, if applicable); and
 - (ii) request all interested parties to notify the Secretary in writing of their willingness to serve as a Member Representative Director, including a brief history and evidence that they can satisfy the eligibility requirements in clauses 11.3(d) – 11.5.
- (c) The Secretary must arrange for all candidates, including the existing Member Representative Director, if applicable, to be independently assessed according to their ability to satisfy the eligibility requirements in clauses 11.3(d) – 11.5 and any other skills and experience they may bring to the Board.
- (d) The remaining Member Representative Directors shall determine a recommended nominee for the vacant position as a Member Representative Director taking into account the independent assessment under paragraph (c). Their recommendation must be reported to the Board.
- (e) The Directors may appoint the nominee as a Member Representative 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 Directors decline to appoint that person, the Directors must ask the remaining Member Representative Directors to nominate another person in accordance with paragraph (d).
- (f) A majority of the Member Representative Directors may by notice in writing to the Secretary inform the Board that they wish to remove a Member Representative Director (other than one nominated by the Member Nominating Organisation), with a copy of such notice to be given to the affected Member Representative Director. Upon receipt of such notice, the Board may remove the Member Representative Director.

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

- (a) The Member Nominating Organisation is entitled to nominate at least one person as a Member Representative Director and must notify the Secretary in writing of its nomination.
- (b) The Member Representative Director nominated by the Member Nominating Organisation must satisfy the provisions of clauses 11.3(d) and 11.4.
- (c) The Directors may appoint the nominee as a Member Representative Director. If the Directors decline to appoint that person, the Directors must ask the Member Nominating Organisation to nominate another person in accordance with paragraphs (a) and (b).
- (d) If the Member Nominating Organisation wishes to remove the Member Representative Director nominated by it, notice in writing must be given to the Secretary not less than one (1) month before the removal is to become effective. Subject to paragraph (e), upon receipt of such notice, the Board may remove the Member Representative Director nominated by the Member Nominating Organisation with effect from the expiration of the one month notice period.
- (e) 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) An Independent Director 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(d) and 11.4.
- (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 of 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; or
 - (vii) being an Employer Representative Director or a Member Representative Director is not reappointed following the expiration of the Director's term of office.
- (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 Amendment of Clause 11

- (a) Clauses 11.7 – 11.10 cannot be amended unless:
- (i) the amendment is required in order for the Company or the Fund to comply with SIS; or
 - (ii) the amendment is merely procedural and is not inconsistent with SIS.
- (b) One (1) month's notice of any proposed amendment of this clause 11.18 must be given to all members of the Fund.

11.19 Notification to Members

The Company must, in accordance with SIS, publish the rules for appointing and removing Member Representative 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 two thirds majority 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 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 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 in respect of any contract or arrangement in which the Director is interested;
- (b) be counted in a quorum at any meeting of Directors in which such contract or arrangements is considered; and
- (c) attest the affixing of the Seal to any document entered into by the Company relating to any such contract or arrangement.

15.4 Other offices

Subject to SIS, 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 two thirds 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; and
 - (iii) indemnification of any officer, auditor or agent of the Company to the extent permitted 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 given or transferred to some other corporation or corporations chosen by the shareholders at or before the time of the commencement of the merger, winding up or dissolution of the Company:

- (a) having objects generally similar to one or more of the objects of the Company; and
- (b) whose constituent document prohibits the distribution of its or their income and property among its or their shareholders or members to an extent at least as great as is imposed on the Company under or by virtue of clauses 19.1 and 19.2.

If effect cannot be given to paragraphs (a) and (b), then the surplus shall be given or transferred to some charitable object.

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 and 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.

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).

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

SIGNATURE

.....

.....