



# Explanatory Memorandum

## Proposed amendments to the Rules of the Motor Traders' Association of New South Wales (MTA NSW)

9<sup>th</sup> May, 2023

### BACKGROUND

The Rules of the Association provide the basis of the operation and functioning of MTA NSW from both a Governance and Operational perspective. Whilst the Rules have been amended in recent years to make them compliant with changes in legislation as well as grammatically more readable, the basic structure of MTANSW as well as the process surrounding decision making by the overarching Governance Bodies have remained largely unchanged for decades.

The Executive Board in conjunction with Management considered that the Rules had become overly complicated and not fit for purpose in the running of the Association as well as not being in keeping with modern governance practices. Consequently, the Executive Board delegated authority to a "Rules Subcommittee", to undertake a effective overhaul of the Rules from a content, structure and functionality perspective.

On the **24<sup>th</sup> February, 2023**, the Rules Committee, Chaired by Mr Adrian Carlson, formulated the changes in the Rules which they considered would not only streamline the Governance of MTANSW but also provide Management with a more effective Governance structure whilst still retaining the connection with the membership which is so vital in the decision making process within the Association.

At the Executive Board meeting held on the **24<sup>th</sup> March, 2023** the proposed Rule changes were finalised and following completion of the review Management was briefed with the proposed changes. Subsequently, management in company with Henry Williams Lawyers have prepared a new set of Rules. This Explanatory memorandum seeks to provide a summary of the changes made, both as to the effect and purpose of the changes.

The proposed Rule changes as presented to the Governing Council (**Council**) are proposals only. Following deliberation by the Council and any additions or alterations as recommended, it will be necessary for any Proposed changes to be submitted to the membership via a Special General Meeting and if approved by the membership then the document will be lodged with the Fair Work Commission for certification.

### PROPOSED AMENDMENTS

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## 1. **Governance and officers**

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### 1.1 **Overview**

- (a) The key change amongst the proposed amendments is the re-design of the Association's internal governance structure to keep governance agile and responsive to better meet the challenges associated with the Association's size and its multitude of objects.
- (b) Most importantly, the Executive Board will now become the governing body responsible for the overall management and control of the Association in place of the Council. The Executive Board's power will be subject to control of the members in general meeting.
- (c) The Governing Council will be renamed the "Advisory Council" and have a different but significant role in guiding the direction of the Association. Members of the Advisory Council will be referred to as Councillors much as they are now.
- (d) Further, the members of the Executive Board will be nominated by and from Councillors and elected by all members (regardless of which Division they belong to) and will owe their duties to all members as a whole rather than to specific Divisions.
- (e) Elections of Councillors will largely remain the same (including aspects such as divisional entitlements to seats on the Council and eligibility requirements) although the election rules will be modernised based on the model rules published by the Australian Electoral Commission (**AEC**) and will be able to be conducted in-house or through third party providers other than the AEC.
- (f) The members of the Advisory Council will not be required to undertake any financial training as required of Office holders under the Fair Work (Registered Organisations) Act 2009. This will be not only a cost saving for the Association but relieve the Councillors of this requirement and the legal obligations and liabilities that currently accrue to Councillors as they will no longer be Office holders.
- (g) The offices of Secretary and Honorary Treasurer will be abolished. The relevant responsibilities will be allocated to the Executive Board and the President, which will in practice mostly be performed by senior management staff or other employees through delegation.
- (h) The Association will continue to have a CEO although this position will not be referred to in the Rules to avoid unintended statutory consequences, including in respect of election procedure.
- (i) Please see below for further details.

### 1.2 **Governing Council**

- (a) To reflect the change of its role, the Council will be renamed to "**Advisory Council**".

- (b) In terms of the role and functions of the Council post-amendments are as follows:
- (i) all of the current powers and responsibilities of the Council Officer's in their capacity as Office holders under the Fair Work (Registered Organisations) Act 2009, will be transferred to the Executive Board;
  - (ii) the role of the Council will be a forum of the Association to:
    - (A) facilitate communications between the Executive Board and the Association Members;
    - (B) inform decision-making by the Executive Board; and
    - (C) facilitate implementation and enforcement of decisions of the Executive Board;
  - (iii) the Council will also perform other functions as may be determined by the Executive Board from time to time; and
  - (iv) the functions and responsibilities of the Councillors will be:
    - (A) serving as representatives of the respective Divisions and affiliates which elected them to the Council; and
    - (B) nominate, and run as, candidates in elections for members of the Executive Board.
- (c) Procedural aspects of the Council will remain the same (such as frequency of meeting, quorum etc).
- (d) In term of elections:
- (i) the elections will be conducted by a returning officer appointed by the Executive Board (who need not be an employee of the AEC but can be an officer or employee of the Association or someone from an external service provider);
  - (ii) election rules for Councillors will be determined by the Executive Board – see proposed election rules for the Council in a separate document to be adopted by the Executive Board, which are adapted from AEC model election rules and allow the flexibility of adopting postal and/or electronic ballot (as well as other desirable changes that may arise, without the need to amend the Association's Rules);
  - (iii) divisional entitlements to seats on the Council will remain the same (ie variable depending on demographic size at the same thresholds rather than 1 Councillor for each Division);
  - (iv) nomination, candidature and voting eligibility will remain the same (ie any financial member from the relevant Division/affiliate);
  - (v) there will be no further nominations/elections where there are insufficient nominations; and
  - (vi) the voting system for determining election results will remain "first past the post".
- (e) In terms of term of office:
- (i) it will remain 4 years;
  - (ii) there will be no maximum term limitation but there is a limitation to 3 consecutive terms (term of office served before these amendments will be disregarded); and
  - (iii) there will be no filling of casual vacancy.

- (f) The position of “Alternate Councillor” will be abolished to avoid confusions and procedural complexities.

### **1.3 Executive Board**

- (a) In terms of powers and responsibilities:
  - (i) the Executive Board will have plenary power of the Association except only powers reserved by law for the members in general meeting;
  - (ii) the Executive Board's power will be subject to the power of the members in general meeting to override and invalidate decisions and acts (including prior acts) of the Executive Board; and
  - (iii) provisions regarding delegation of power and regulation-making by the Executive Board have been proposed to be modernised in line with modern companies law practice.
- (b) In terms of composition and elections:
  - (i) the Executive Board will be comprised of 10 members;
  - (ii) the office of a member of the Executive Board will be their primary office;
  - (iii) elections in which members participate directly will be in respect of the office of a member of the Executive Board rather than Office Bearers;
  - (iv) the members of the Executive Board will be nominated by and from Councillors and elected by all members (regardless of which Division they to) and will owe they duties to all members as a whole rather than to specific Divisions;
  - (v) in the event of insufficient nominations, there will be no further nominations unless nominees are fewer in number than a quorum for the Executive Board (and if nominations still insufficient, the returning officer will open up candidature to entire membership);
  - (vi) the elections of members of the Executive board will be conducted by a returning officer at the AEC as required by law unless an exemption is obtained in this regard; and
  - (vii) the election rules for elections of members of the Executive Board have been modernised based on the AEC model rules and set out in a schedule to the Rules.
- (c) Procedural aspects of the Executive Board will remain largely the same with additions of quality-of-life mechanisms such as flexibility regarding use of technology in line with modern companies law practice.
- (d) In terms of term of office:
  - (i) it will remain 4 years;
  - (ii) there will be no maximum term limitation but there is a limitation to 3 consecutive terms (term of office served before these amendments will be disregarded); and
  - (iii) filling of casual vacancy will be conducted by the Executive Board from Councillors subject to statutory limitations.
- (e) All members of the Executive Board will be entitled to remuneration as determined by the Executive Board.

#### **1.4 President and Vice President**

- (a) There will be one President and one Vice President.
- (b) In terms of powers and responsibilities:
  - (i) the President's powers and responsibilities will include only:
    - (A) all the powers and responsibilities under the current Rules;
    - (B) any such functions customarily exercised by the President to the extent not inconsistent with these Rules; and
    - (C) those transferred from the Secretary;
  - (ii) the President will be able to delegate any of his or her powers and responsibilities to any member of the Executive Board, the Vice President or any Councillor, employee of the Association or other person as s/he sees fit, provided that powers and responsibilities that must or may be exercised by the secretary of a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) (**Act**) must only be delegated to an officer for the purposes of the Act;
  - (iii) the Vice President's powers and responsibilities will include only:
    - (A) those of the President where the President is unable or unwilling to act; and
    - (B) those expressly conferred or imposed on the Vice President in these Rules.
- (c) The President and the Vice President will have the same term of office and limitation on term of office as those for the Executive Board.
- (d) The President and the Vice President will be elected by and from the members of the Executive Board.
- (e) The election of the President and the Vice President will be conducted:
  - (i) by a returning officer at the AEC as required by law unless an exemption is obtained in this regard; and
  - (ii) in accordance with election rules which are similar to those for elections of members of the Executive Board but simpler (also set out in a schedule to the Rules).

#### **1.5 Secretary**

- (a) This office will be removed.
- (b) All statutory and additional powers/responsibilities of the secretary under the current Rules will be re-allocated to the President and will be delegable subject to the limitation mentioned above).

#### **1.6 Honorary Treasurer**

- (a) This office will be removed.
- (b) All powers/responsibilities of the honorary treasurer under the current Rules will be re-allocated to the Executive Board and will be delegable.

## **1.7 CEO**

- (a) All references to the CEO in the Rules will be removed and the relevant functions allocated to the Executive Board.
- (b) However, in practice the functions currently performed by the CEO will still be delegated to the CEO by the Executive Board.

## **2. Other material changes**

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### **2.1 Divisions**

- (a) The following Divisions will be amalgamated into 1 Division called “Australian Automobile Dealers Association”:
  - (i) Australian Automobile Dealers Association Metropolitan Division;
  - (ii) Australian Automobile Dealers Association North and North West Division;  
and
  - (iii) Australian Automobile Dealers Association South and South West Division.
- (b) The Executive Board will be able to determine changes to Divisions without the need to amend the Rules, as is the case under the rules of similar organisations (such as the VACC).

### **2.2 Disciplinary actions against members and officers**

- (a) The current mechanisms regarding disciplinary actions against members will remain largely the same with minor improvements.
- (b) The provisions regarding the Board of Enquiry will be improved and grouped together under its own Rule and will also be able to be utilised in disciplinary actions against officers.
- (c) The Rule regarding dismissal from office of officers will be expanded adopting features in the procedure for disciplinary actions against members.
- (d) Officers may be suspended for a defined period of time, following determination by Executive Board or a court as to certain types of misconduct etc, to allow an investigation by Board of Enquiry to be carried out and special general meeting to be called to determine whether the relevant officer will be removed from office.
- (e) Except for statutory disqualifying events, officers can only be removed from office by a simple majority vote of the members in general meeting.

### **2.3 Admission of new members**

- (a) Application for membership will be accepted/rejected by the Executive Board with immediate effect.
- (b) Where an application for membership is accepted by a delegate on behalf of the Executive Board, such acceptance requires ratification by the Executive Board within a defined period of time, failing which the relevant membership will be automatically cease.

- (c) There will no longer be a formal obligation to forward applications to relevant Divisions(s) to give them a chance to object to admission of membership in their Division(s) in the initial membership application process, any subsequent membership application process for additional Division(s) and any nomination of representatives by corporate members. In practice the CEO will still be able to consult the relevant Division(s) if there is any doubt.

#### **2.4 Other changes**

- (a) The text of the Code of Ethics will be deleted from the Rules and will be made available separately.
- (b) The Rules will not make specific references to the MTA Journal.
- (c) There will also be a number of other corrections and improvements on issues accumulated over the years in the iterations of the Rules.

### **3. Readability improvements**

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- (a) We appreciate that the current Rules are difficult to navigate, read and change due to format problems such as the dated style of language and layout, lack of headings and lack of automatic numbering.
- (b) In addition to the substantive changes mentioned above, we have also made various corrections and improvements in this regard. You will immediately notice the new look of the Rules which are now organised under headings and sub-headings and grouped under Rules and sub-Rules of more manageable and digestible size.
- (c) The amended Rules will also have automatic numbering and cross-referencing, which will make it significantly easier for the reader to navigate the document.