

Our Ref: MJW:82659

20 March 2010

**URGENT**

The Editor  
John Fairfax Publications Pty Limited  
1 Darling Island Road  
Pyrmont NSW 2009

**BY FACSIMILE: 9282 3253**

**BY EMAIL: [readerlink@smh.com.au](mailto:readerlink@smh.com.au)**

Dear Sir

**Motor Trades Association of Australia Superannuation Fund Pty Limited ('MTAA')**

We act for the MTAA.

We refer to the article entitled "Not so Super" and in particular, the article entitled "Fund in Legal Row with Former Chairman Faces Closure" attributed to Adele Ferguson and published in the Sydney Morning Herald today Saturday 20 March 2010. The same articles have been published today in the The Age, the Brisbane Times and WA Today.

We are instructed as follows:

- 1 We refer to the headline "Fund in Legal Row with Former Chairman Faces Closure" (at page 4 of Weekend Business) and the first sentence that follows:  
  
"ONE of the country's biggest superannuation funds, MTAA Super, is in danger of being wound up if it does not pay a legal bill to its former chairman."
- 2 The headline and the above statements in the article are totally false and without any foundation (**the offending statements**).
- 3 The offending statements can only have been made with malice and with the intention of causing irreparable harm to MTAA Super.
- 4 The offending statements constitute an injurious falsehood which have caused damage and unless corrected urgently will inevitably cause further damage to MTAA Super.
- 5 The identified articles reported amongst other things, on legal proceedings that MTAA Super had brought against the former Chairman of the Trustee, Mr John Rickus. By way of background and in order to correct the unfair reporting of those proceedings:
  - (a) MTAA Super was compelled to commence legal proceedings against Mr Rickus when, despite repeated requests to do so, he refused to provide the Trustee Board of MTAA Super with documents he provided to APRA in his capacity as Chairman of the Trustee. MTAA Super was entitled and required to know of the documents Mr Rickus had provided in order to be in a reasonable position to properly respond to the prudential review of the Fund being conducted by APRA. The need for the commencement of the legal proceedings was underlined by MTAA Super's need to preserve and protect its RSE licence issued by APRA in the interests of its members.

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- (b) In July 2008 MTAA Super discontinued legal proceedings that it had brought against Mr Rickus on the basis that MTAA Super had recovered from him and, by other means, most of the documents that Mr Rickus had provided to APRA pursuant to a statutory notice. However Mr Rickus pursued the cross claim for indemnity.
- (c) In a judgment delivered in December 2008, the Federal Court held that Mr Rickus should have made available to the Trustee copies of the documents he provided to APRA and that he had a duty to place the Board in a position whereby it could respond to a Prudential Review by APRA and the information he had provided to APRA.
- (d) The Federal Court dismissed a cross-claim by Mr Rickus that he be paid his legal costs on the basis of a Deed of Indemnity and in accordance with the Constitution of the Trustee, and ordered that each party pay their own costs of and incidental to MTAA Super's proceedings.
- (e) The Full Court of the Federal Court overturned the Federal Court's decision in relation to costs and ordered MTAA Super to pay Mr Rickus' legal costs incurred and paid in relation to the discontinuance of the proceedings by MTAA Super. The Full Court also ordered MTAA Super to pay Mr Rickus' costs in relation to the earlier Federal Court Hearing.
- (f) It is open to the Trustee to seek leave to appeal the decision to the High Court of Australia. The quantum of legal costs incurred and paid by Mr Rickus has not yet been determined nor has the question of whether Mr Rickus can rely upon any fee agreement with his lawyers or any other basis for recovery of his legal costs incurred and paid.

MTAA Super therefore requires that you publish a prominently displayed retraction and apology on the the front page of the business section of the Monday (22 March 2010) edition of each of the Sydney Morning Herald, The Age, the Brisbane Times and WA Today in terms to be agreed by this firm. Please therefore contact as a matter of urgency Mr Tim Griffiths of our firm (0417 069307) or Mr Mark Webeck of our firm (details below) so that the terms may be discussed.

MTAA Super otherwise reserves all rights against John Fairfax Publications Pty Limited and Adele Ferguson.

Yours faithfully  
**HWL Ebsworth**

**Mark Webeck**  
Partner

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