



MTAA
SUPER
FUND

MEDIA RELEASE
20 March 2010

MTAA SUPER SEEKS RETRACTION FOR MISLEADING ARTICLE

In the Weekend Edition of the Sydney Morning Herald, the Melbourne Age, Brisbane Times and WA Today of 20 March 2010, it was reported that MTAA Super “faces closure”. This is categorically refuted. The articles contain factual inaccuracies and the Trustee is seeking a retraction for the scandalous and unfounded comments.

The articles reported amongst other things, on legal proceedings that the Trustee had brought against the former Chairman of the Trustee, Mr John Rickus. 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.

In July 2008 the Trustee discontinued legal proceedings that it had brought against the former Chairman of the Trustee, Mr John Rickus on the basis that the Trustee 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.

In a judgment delivered in December 2008, the Federal Court found for the Trustee and 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.

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. 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.

As stated in the Full Court judgment, the case was only about whether the Trustee should pay some or all of the appellant's legal costs.

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.

The Trustee will comply with Court orders when they are finalised. MTAA Super is not "in danger of being wound up if it does not pay a legal bill to its former chairman" and such an assertion is categorically refuted. A retraction has been sought.

Elsewhere in a further article titled "Not So Super" by Ms Ferguson, further inaccuracies are reported in relation to the Fund's "transparency" and governance arrangements:

In particular, it is reported that "While many trustees describe MTAA as an outlier its questionable transparency, opaque set of accounts and level of corporate governance are all too common amongst funds. Such malicious comments are refuted and the Trustee is seeking a retraction. The Fund's financial statements comply with statutory accounting standards and are audited documents. Funds are required to provide at least an abridged version of the financial accounts annually to members and as well must provide any member with a full set of audited accounts if requested to do so.

MTAA Super is a regulated complying Fund and meets all of its disclosure and governance requirements.

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The article also reports that MTAA Super “pays \$7 million a year in fees to the association for services rendered”. The \$7million is not a fee but rather represents the recovery of the cost of operating the Fund in terms of the Fund’s 38 staff and business development manager salaries and expenses, rent and other utility charges.

The Trustee does not believe it is in its or the members interests to have Fund business conducted through the media however in light of the malicious and incorrect comments presented in the articles, it must respond to correct the record and have these spurious allegations retracted.

Allan Hawke
Chairman MTAA Superannuation Fund
20 March 2010

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