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## **Motor Trades Association of Australia Superannuation Fund Pty Ltd (Trustee)**

As trustee of the Motor Trades of Australia Superannuation Fund (Fund)

### **TRUSTEE SUBMISSION in response to Invitation Letter dated 8 January 2018**

1. *Excluding cases of theft from the entity itself, or from an associated entity, has the entity identified any misconduct by the entity (including by its directors, officers or employees, or by anyone otherwise acting on its behalf) which occurred at any time since 1 January 2008? If so, what is the nature, extent and effect of that misconduct.*

#### **1. 2009 Valuation – improper conduct by employee of Trustee’s agent**

A senior employee of the ██████████ ██████████ ██████████, did not follow the proper process in briefing the valuer commissioned to provide an independent valuation of the Trustee’s direct investment in a company known as Carrix. Carrix was an investment held as part of the Fund’s target return portfolio (TRP).<sup>1</sup> The employee (who subsequently left ██████████) did not provide the most recent available forecast information to the valuer, resulting in the valuer providing higher valuation ranges than would have been the case if the most up-to-date information had been used.<sup>2</sup> This meant that the value of Carrix was materially overstated and, as a result, there was a concern that the monthly crediting rates for the TRP-exposed investment options for the period September – December 2009 were overstated by between 36 – 64 basis points.

██████████ notified the Trustee of the impropriety in the valuation process on 3 February 2010 after conducting its own investigation. At its own expense, ██████████ also commissioned replacement valuations using the additional forecast information and the Trustee Office then sought additional expert advice about the member equity considerations in making retrospective adjustments to the relevant crediting rates. Regulators were also notified.

After considering the expert advice, the Trustee re-calculated the relevant crediting rates using the mid-point estimates of the replacement valuations for affected members that remained in the Fund. ██████████ also compensated the Fund for the difference in payments (arising from the initial versus the revised valuations) made to all members who had exited the Fund or switched out of the relevant options during the period, together with costs incurred by the Trustee as a result of the ██████████ employee’s misconduct.

#### **2 APRA Investigation – alleged breaches of Superannuation Law**

On 29 November 2010, APRA notified the Trustee that it proposed to conduct an investigation pursuant to section 263 of the Superannuation Industry (Supervision) Act 1993 (Cth) (SIS Act), into the whole of the affairs of the Fund, including:

<sup>1</sup> The Fund had a ‘two portfolio’ strategy, which comprised a portfolio of market linked assets such as shares and fixed interest and a target return portfolio of alternative unlisted assets.

<sup>2</sup> When replacement valuations were performed the mid-points were lower than the initial valuations by approximately 12% and 18% as at September and December 2009.

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- the adequacy of the Trustee's investment strategy and liquidity management of the Fund in light of the Fund's circumstances and whether, as a result of the Trustee's conduct, the Fund's financial position may be, or become unsatisfactory;
- the reasonableness of the Trustee's financial dealings and other arrangements with MTAA;<sup>3</sup>
- the appropriateness of the governance and management practices of the responsible officers of the Trustee, including MTAA staff who had undertaken secretariat and management functions on behalf of the Trustee; and
- whether the Trustee had contravened the SIS Legislation, including the Trustee's compliance with the Fund's trust deed and the Trustee's constitution.

The Investigation was conducted and, on 20 July 2012, APRA provided a report regarding the investigation to the Trustee, in accordance with section 284 of the SIS Act.

The report and the information contained within it are "protected" pursuant to section 56 of the Australian Prudential Regulation Authority Act 1998 (Cth) (APRA Act) and further, APRA imposed a condition that prevents the Trustee from providing a copy of the report or disclosing its contents to any person except officers of the Trustee or its legal advisers.

The Trustee Office sought advice from APRA as to how it could appropriately and transparently respond to the Royal Commission's invitation to make an early submission, regarding the Investigation, without contravening section 56 of the APRA Act and has been advised by APRA that information regarding the investigation will be provided by APRA to the Commission on a confidential basis.

Commencing prior to, and independently of, the APRA investigation, the Trustee commenced a process of renewal involving a number of significant changes to its investment strategy, liquidity management, risk management, governance structure and Management team. This included:

- putting in place a plan of action to better manage valuation and liquidity risks while divesting alternative assets from the TRP in an orderly fashion over a three year period, in order to reduce the Fund's strategic and actual allocations to illiquid assets;
- changing the structure of the Trustee Board to a 3x3x3 model<sup>4</sup> which increased the number of independent directors from one (the independent Chair) to three;<sup>5</sup>
- insourcing its Trustee Office so that Trustee Office staff were no longer employed by MTAA but by a separate service company unrelated to MTAA;<sup>6</sup> and
- the retirement of the former CEO and replacement with the current CEO, who introduced, and is supported by, an Executive Team.

### 3 Employee Breach of Trustee's Insider Trading Policy

<sup>3</sup> Motor Trades Association of Australia Ltd (MTAA) is the employer association that founded the Fund and supported the Trustee through the provision of secretariat and other services.

<sup>4</sup> Three employer representative directors, three member representative directors and three independent directors

<sup>5</sup> APRA granted a modification to the equal representation rules to enable this model to be adopted.

<sup>6</sup> APRA granted an exemption from the 'in house asset' rules to facilitate the establishment of a wholly owned service company.

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In 2014, a Manager in the Trustee Office Investments team committed a breach of the Trustee's Insider Trading Policy by switching his investment option during a three month 'no action' period. He also made an incorrect compliance declaration to the Trustee.

The Trustee's Insider Trading Policy is stricter than the insider trading prohibitions under Part 7.10 - Division 3 of the Corporations Act, because it extends to switching investment options within the Fund, whereas the law prohibits the acquisition or disposal of financial products.<sup>7</sup> The Policy is, however, intended to reflect the 'spirit' of the insider trading prohibition and also facilitates compliance with the broader obligation in section 183 of the Corporations Act for employees not to improperly use information they have obtained as an employee to gain an advantage for themselves.

As a result of the incident:

- The Trustee's internal auditor was engaged to undertake an investigation of the incident and provided an independent report. The auditor found that the Manager's conduct was not motivated by an intention to gain but was a standard investment option switch, albeit in breach of the Trustee's policy. There was no evidence of dishonesty in the Manager's conduct and he did not in fact benefit from the investment switch.
- The Manager was counselled and given an official warning as to the serious ramifications of his conduct, including a first and final warning that any future similar breach of policy would result in his termination.
- Further training and reinforcement of the Trustee's Insider Trading Policy was also provided to all staff.

2. *Has the entity identified any conduct, practice, behavior or business activity it has engaged in (including by its directors, officers or employees, or by anyone otherwise acting on its behalf) since 1 January 2008, which it considers has fallen below community standards and expectations? If so, what is the nature, extent and effect of that conduct, practice, behavior or activity.*

In responding to this question, the Trustee has assumed a community expectation that superannuation fund members will:

- have their superannuation accounts properly maintained, with contributions promptly allocated, returns correctly calculated, fees correctly charged and insured benefits accurately administered; and
- have their superannuation fund administered consistently with disclosures made in the Fund's Product Disclosure Statement (PDS).

## **1 Maintenance of Duplicate Accounts**

During 2015, the Fund's then Administrator (Superpartners Pty Ltd) found that the Trustee's rules for identifying and merging duplicate accounts had not been followed in relation to a substantial number of accounts. Approximately 2,800 accounts were identified as possible duplicate accounts.

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<sup>7</sup> A superannuation product (being a beneficial interest in the superannuation fund as a whole) is a financial product: *Corporations Act 2001*, s 764A(1)(g).

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This failure to merge duplicate accounts meant that affected members were incorrectly charged two sets of administration fees and insurance premiums. The incident was notified to regulators.

In remediation, the Trustee required the Administrator to investigate all potentially duplicate accounts and to merge the identified duplicate accounts and refund the excess administration fees and insurance premiums. The remediation was completed by the current Administrator (**AAS**) during December 2016. The Administrator reimbursed the refund of member account keeping fees.

Since identifying the issue, AAS has implemented process enhancements for matching and merging member accounts. The Trustee continues to monitor the merged account process.

## **2 Failure to Allocate Contributions**

During 2010, the Fund's then administrator (Superpartners Pty Ltd) reported that application moneys and contributions (dating back to 2002) had not been either allocated to a member account, returned to the contributor or transferred to ASIC as unallocated contributions. The matter was reported to regulators.

The Administrator acknowledged that it had not always followed its procedures for dealing with client money and undertook a remedial program to clear the unallocated contributions.

By the end of 2010 all outstanding application monies had either been allocated to a member account, returned to the contributor or transferred to ASIC as unallocated contributions. Where an outstanding amount was allocated to a member account, the amount was allocated as at the date of receipt of the contribution so that earnings applicable to the contribution from the date of receipt were also applied to the member's account.

For the purpose of preventing the recurrence of a similar issue, improved reporting requirements were implemented, including monthly reporting by Superpartners to the Trustee on all unallocated contributions and quarterly reporting to the Trustee's Audit, Risk and Compliance Committee on the allocation of contributions.

## **3 Investment Option Descriptors**

From November 2008 (and as a result of market volatility caused by the GFC), the Fund's label for its Conservative Option could have inadvertently misled members to believe that its asset allocation would always remain at its strategic allocation, when in fact, due to the asset allocation ranges for the option (which were not disclosed) there were times when the actual allocation of the option was significantly different to its strategic allocation. This meant that some members incurred negative returns in the Conservative Option and complained to the Trustee.

This matter was reported to both regulators. The Trustee agreed that the accounts of members in the Conservative Option adversely impacted by the divergence would be adjusted (using a methodology recommended by APRA).

For the purpose of preventing the recurrence of such a divergence, the Trustee made changes to its asset allocation processes and enhanced its due diligence and compliance processes around Trustee disclosures.

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The Trustee now discloses the asset ranges for all investment options, so that members are better informed about the risks in selecting an option.

#### **4 Insurance Administration Errors**

Since 2008, there have been a number of instances where the administrator has incorrectly administered the insurance cover of members – for example, recording zero insurance for members who were actually entitled to cover or deducting incorrect insurance premiums.

Depending on the nature of the error, this may have resulted in incorrect cover (both too much and too little) being recorded, members not being given any cover at all, members' cover not being recommenced or members being charged incorrect insurance premiums.

In particular, during 2013, Superpartners Pty Ltd undertook a comprehensive program of work across all of its client funds to identify and correct a range of issues affecting its insurance administration services.

The Trustee advised both regulators about the Administrator's insurance remediation program.

Where errors have been identified, the Trustee has required the Administrator to correct the errors so that the members are provided with the correct level of insurance cover, with appropriate adjustments being made to the premiums paid for the cover by those members.

In remediating insurance administration errors, the Trustee has focussed on providing fairness to members whose cover required adjustment. This remediation approach was facilitated by the insurer's agreement to honour insurance cover paid for by the member even if the level of cover was strictly outside the Fund's insurance rules. The remediation approach sought to ensure:

- as a first priority that members did not have any gaps in insurance cover they were entitled to receive under the Fund's insurance arrangements; and
- as a second priority that members did not pay for more insurance cover than they actually held.

#### **5 Disclosure Errors**

There have been a number of instances where the Administrator has failed to administer the Fund in accordance with disclosures made in the Fund's PDS. For example:

- The Pension PDS disclosed to members that an anti-detriment benefit would be paid to a member's eligible beneficiaries on the member's death, but the administrator did not include the anti-detriment amount in the death benefit payment.
- The PDS disclosed that on a member's death the member's account balance would be invested in the Cash option (to minimize investment risk until payment could be made) but the administrator did not change the investment option. As a result of the GFC, this meant that some death benefits incurred negative returns during the period when the Trustee was gathering information to assist it in distributing the benefit to the appropriate beneficiaries.

In these cases the beneficiaries were compensated for the administration errors and the correct procedures were put in place by the Administrator.

*3. If yes to either or both of questions 1 and two:*

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- a) *Is the identified conduct, practice, behavior or activity the subject of another inquiry or investigation or a criminal or civil proceeding?*

The alleged breaches of Superannuation Law referred to in the Trustee's response to question 1 were examined as part of the APRA investigation. The Report and information contained within it are protected pursuant to section 56 of the APRA Act.

- b) *Does the entity attribute any of the identified conduct, practice, behavior or activity to particular cultural or governance practices of the entity? If so, describe that cultural or governance practice.*

The governance practices of the Trustee referred to in the Trustee's response to question 1 were examined as part of the APRA investigation. The Report and information contained within it are protected pursuant to section 56 of the APRA Act.

- c) *Does the entity attribute any of the identified conduct, practice, behavior or activity to some broader cultural or governance practices in the industry or sector of the industry in which the entity operates? If so, describe those cultural or governance practices.*

No. The Trustee acknowledges however, that cultural and governance practices in the superannuation industry have matured significantly over the past ten years as a result of legislative and regulatory changes and an increased recognition of fiduciary responsibility and the role that superannuation plays in the financial system and broader economy.

- d) *Does the entity consider that the identified conduct, practice, behavior or activity results from other practices (including risk management, recruitment or remuneration practices)? If so, describe those practices.*

The GFC exposed investment risks that most superannuation trustees (and, in some cases, their advisers) had not previously contemplated.

Dealing with those risks, together with the enhanced requirements for stress testing and scenario planning introduced from 1 July 2013 under APRA's Prudential Standard SPS 530 *Investment Governance* and the more comprehensive approach to risk management required from 1 July 2013 under APRA's Prudential Standard SPS 220 *Risk Management* has significantly improved risk management practices, including more comprehensive risk oversight and a bolstering of risk mitigation controls. In addition, the introduction of a professional fiduciary standard as a result of the 'Stronger Super' reforms to the SIS legislation in 2013 has meant that superannuation trustees and their directors are actively engaged in the prudent investment of the fund's assets. This higher standard has also led to a more sophisticated approach to APRA's Prudential Standard SPS 520 – *Fit and Proper*, such that most trustees (including MTAA Super) now use a skills matrix or similar tool to ensure that their Responsible Persons (including the directors) have the right complement of skills and experience to manage superannuation funds as significant financial institutions.

In relation to the administration errors that have led to the instances of conduct falling below community expectations set out in the Trustee's response to question 2, the Trustee observes that superannuation is a complex offering that includes the receipt of contributions from

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multiple sources, the investment of assets through multiple investment options, multiple taxation points, insurance offerings including default cover and additional cover that can be changed at the member's election and mandated communications to members in a number of circumstances and formats.

The superannuation industry is also highly regulated by APRA, ASIC and the ATO, leading to a plethora of requirements to be managed. It is perhaps not surprising that a fund's administrators would make errors in the administration of this complex offering, either through system failure or human mistake. From a risk perspective, we anticipate that some errors will rise from this complex amalgam and the Trustee actively manages that risk. The Trustee did, however, change administrators (from Superpartners to AAS) in 2015. Pleasingly, the Trustee has observed increased accountability and prompter reporting of incidents from its administrators (both Superpartners and AAS) in recent years, enabling the Trustee to take appropriate action to remediate mistakes and compensate errors that have caused loss to members.

- e) *What steps has the entity taken to:*
- i. *Remedy the consequences for consumers or other businesses of the identified conduct, practice, behaviour or activity;*
  - ii. *Prevent recurrence of the conduct, practice, behaviour or activity of the kind identified?*

The steps that the Trustee has taken in each instance are set out in its answers to questions 1 and 2 and in all instances the Trustee seeks to act in the best interests of all members after consideration of all known circumstances.

4. *For an entity that is ... an RSE licensee of a registrable superannuation entity (as defined in the Superannuation Industry (Supervision) Act 1993 (Cth):*

- (a) *During each of the past ten years (according to whatever annual reporting periods the entity has employed in the ordinary course of its operations) to what uses and in what amounts has the entity applied members' funds other than the investment of those funds, the administration of the superannuation fund and the payment of member benefits?*

See attached table of expenses

- (b) *In respect of each kind of those other applications of members' funds, why was that application in the best interests of members?*

See attached table of expenses

- (c) *What are the cost centres that make up costs attributed to administration in each of those years?*

The cost centres that make up costs attributed to administration in each of the years are:

- Administration (including payments to the administrator for core superannuation and pension services and the member contact centre)
- Communications (mandated communications and digital media – website and research expenses have been separately allocated in the attached table of expenses)
- Debt collection costs (Superannuation Guarantee contributions)

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- Finance (including accounting, audit and tax consulting expenses)
- Legal and Regulatory (including compliance and regulatory fees)
- Other (including general consulting expenses)
- Staff Related Expenses (of which a portion has been allocated to Business Development in the attached table of expenses)

The costs associated with Trustee Board meetings, directors' fees, directors' insurance and director training are not attributed to administration, but are attributed to Trustee Expenses. All director fees are paid to the relevant director and not any nominating entity.

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**MTAA Super: Table of Trustee Expenses not applied for investment, administration and payment of benefits**

2008-2017

Expense Category	Description	Year	Amount Paid (\$000s)	Percentage of all Operating Expenses	Amount Paid to Connected Entity (\$000s)	Best Interests
<b>Sponsorship<sup>1</sup></b>						
	Payments for Sponsorship of events and initiatives related to the motor trades industry such as V8 SuperCars, Lifeline (prevention of member suicide) and ANU research for development of solar car	2017	1,518	4.2%	0	Sponsorship of motor trades industry initiatives and corporate social responsibility within the sector promotes member retention * and loyalty in the interests of Fund members collectively
		2016	1,469	4.2%		
		2015	1,139	3.2%		
		2014	1,464	3.9%		
		2013	640	1.8%		
		2012	789	2.2%		
		2011	1,135	3.5%		
		2010	1,842	5.9%		
		2009	1,825	5.5%		
	2008	1,138	3.9%			
	Payments to State Employer Associations for initiatives related to the motor trades such as Apprentice Training Awards	2017	44	0.1%	44	
		2016	67	0.2%	67	
		2015	90	0.3%	90	
		2014	59	0.2%	59	
		2013	22	0.1%	22	
		2012	102	0.3%	102	
		2011	92	0.3%	92	
2010		54	0.2%	54		
2009	201	0.6%	201			
2008	76	0.3%	76			

<sup>1</sup> Sponsorship payments are made from the Trustee's marketing budget.

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<b>Business Development</b>						
Business Development including member and employer seminars and inclusive of staff and associated costs <sup>2</sup>	2017	2,486	6.8%	0	Growing the Fund** and retaining support of participants (employer and member information services) in the interests of Fund members collectively	
	2016	2,445	7.0%			
	2015	2,586	7.3%			
	2014	2,590	6.8%			
	2013	2,566	7.4%			
	2012	2,706	7.6%			
	2011	3,143	9.7%			
	2010	3,213	10.2%			
	2009	3,005	9.1%			
	2008	2,998	10.2%			
<b>Marketing Campaigns &amp; Advertising</b>						
Television advertising and marketing campaigns directly to members (such as Boost Your Super to encourage voluntary contributions)	2017	3,223	8.8%*	0	Growing the Fund* (brand awareness and public profile plus direct member engagement) in the interests of Fund members collectively	
	2016	2,123	6.1%*			
	2015	744	2.1%			
	2014	464	1.2%			
	2013	396	1.1%			
	2012	801	2.3%			
	2011	625	1.9%			
	2010	774	2.5%			
	2009	2,165	6.6%*			
	2008	1,784	6.1%			
Payment to ISA for joint marketing campaign	2017	1,182	3.2%	1,182	Growing the Fund*(brand awareness/public profile) in the interests of Fund members collectively and at a lower cost than could otherwise be achieved	
	2016	1,150	3.3%	1,150		
	2015	1,149	3.2%	1,149		
	2014	1,043	2.8%	1,043		
	2013	1,000	2.9%	1,000		
	2012	1,076	3.0%	1,076		

<sup>2</sup> These amounts include an allocation for staff and associated costs calculated as a proportion of overall salaries. Other costs (for example data analytics) have also been allocated based on usage for a particular purpose.

\* Television advertising campaigns were carried out in these years.

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		2011	1,076	3.3%	1,076	Growing the Fund* (brand awareness/industry profile) in the interests of Fund members collectively
		2010	1,053	3.4%	1,053	
		2009	1,356	4.1%	1,356	
		2008	1,025	3.5%	1,025	
	Payments to State	2017	169	0.5%	169	
	Employer Associations for	2016	132	0.4%	132	
	Trade Journal Advertising	2015	105	0.3%	105	
		2014	116	0.3%	116	
		2013	85	0.2%	85	
		2012	91	0.3%	91	
		2011	134	0.4%	134	
		2010	124	0.4%	124	
		2009	99	0.3%	99	
		2008	117	0.4%	117	
<b>New Product Development</b>						
	RetireSafe	2017	0	0.0%	0	Development of product to allow Fund members to better manage longevity risk in retirement
		2016	0	0.0%		
		2015	0	0.0%		
		2014	647	1.7%		
		2013	196	0.6%		
		2012	0	0.0%		
		2011	0	0.0%		
		2010	0	0.0%		
		2009	0	0.0%		
		2008	0	0.0%		
<b>Member Services</b>						
	Website	2017	642	1.8%	0	Provision of advice services and tools to allow Fund members to make better informed choices about
		2016	1,418	4.1% <sup>3</sup>		
		2015	203	0.6%		
		2014	31	0.1%		

<sup>3</sup> The website was completely revised in this year.

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		2013	36	0.1%		their superannuation benefits and achieve improved retirement outcomes
		2012	87	0.2%		
		2011	13	0.0%		
		2010	115	0.4%		
		2009	117	0.4%		
		2008	47	0.2%		
	Payments to <b>IFFP</b> <sup>4</sup> and administrator for financial advice services	2017	1,101	3.0%	478	
		2016	1,174	3.4%	560	
		2015	1,093	3.1%	533	
		2014	1,195	3.2%	563	
		2013	1,408	4.0%	771	
		2012	1,312	3.7%	738	
		2011	1,145	3.5%	583	
		2010	1,307	4.2%	774	
		2009	1,099	3.3%	967	
	2008	710	2.4%	616		
<b>Other</b>						
	Research Houses and Rating Agency subscriptions	2017	301	0.8%	0	To rate and profile the Fund to enable members to make informed comparisons in the interests of Fund members collectively
		2016	412	1.2%		
		2015	176	0.5%		
		2014	469	1.2%		
		2013	204	0.6%		
		2012	179	0.5%		
		2011	94	0.3%		
		2010	112	0.4%		
		2009	70	0.2%		
		2008	176	0.6%		
	Payment to ISA for Policy Development Government Relations	2017	313	0.9%	313	To participate in policy development, research and advocacy efforts in the
		2016	305	0.9%	305	
		2015	313	0.9%	313	

<sup>4</sup> The amounts paid to IFFP cover the financial planners' salaries, on-costs, compliance and training.

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	and Research	2014	387	1.0%	387	interests of members collectively; for example, advocating for policy changes that would benefit Fund members such as an increase in SG contributions
		2013	300	0.9%	300	
		2012	256	0.7%	256	
		2011	256	0.8%	256	
		2010	256	0.8%	256	
		2009	0	0.0%	0	
		2008	0	0.0%	0	

**Notes:**

\* In an environment of increasing competition and pressure for industry consolidation, it is in members' interests for the Fund to be sustainable and therefore for a portion of member funds to be spent promoting the Fund as a way of both increasing assets under management and retaining existing assets under management.

Amounts paid to related entities include the non-recoverable component of GST.

The Trustee is empowered under its trust deed to advertise, market and otherwise promote the Fund and to join in with trustees of other superannuation funds to advertise, market and otherwise promote superannuation funds including the Fund.

Blue shaded columns are 'commercial in confidence'