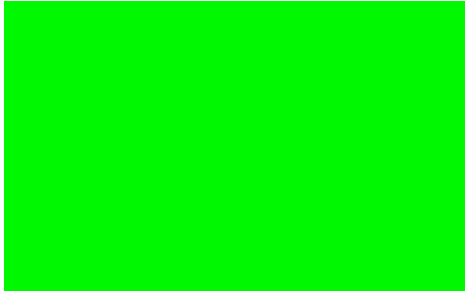




Ref no. 14/002019

20 May 2014



Your request for information under the *Freedom of Information Act 1982*

I refer to your email of 24 April 2014, in which you request:

- a) documentation illustrating that Senator Sherry's request was carried out, how it was carried out and how SMSF sector is now warned about theft and fraud.

Section 24A(1) of the FOI Act provides that an agency may refuse a request for access to a document if all reasonable steps have been taken to find the document, and the agency is satisfied that the document is either in the agency's possession but cannot be located, or does not exist.

A preliminary search of APRA's records indicates that no relevant documents are held by APRA.

Background information

I note the Government's response to the report by the Parliamentary Joint Committee (PJC) on Corporations and Financial Services on the collapse of Trio Capital (the Trio Report). In particular I draw your attention to recommendations three and four.

'Recommendation 3:

The committee recommends that the Australian Taxation Office (ATO) include a clear, understandable, large print warning on its website that SMSF trustees are not covered in the event of theft and fraud. This warning must be effectively communicated to all existing SMSF trustees through the guidance material of the Australian Securities and Investments Commission (ASIC).

The Government accepts the recommendation

- The ATO has updated its website indicating that SMSF trustees do not have the same access to compensation as APRA-regulated funds in the event of theft or fraud.
- ASIC has also updated its MoneySmart website material on SMSFs to warn consumers about access to compensation.

Recommendation 4:

The committee recommends that the guidance material provided by the ATO for SMSF investors clearly state the difference between the protections and compensation arrangements for investors in funds regulated by APRA as distinct from the limited protections available to SMSF investors.

The Government accepts the recommendation

- The ATO will seek to amend its registration process to add additional warnings that SMSF members are not eligible for compensation.
- ASIC will also consult on requiring advisers, on the establishment of SMSFs, to advise clients that they do not have access to compensation arrangements under the SIS Act.'

The Trio Report is publically available via:

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/Completed_inquiries/2010-13/trio/report/index

The Government's response to the Trio Report is also available via:

<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2013/028.htm&pageID=003&min=brs&Year=&DocType>

As noted in previous correspondence, APRA administers much of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and *Superannuation Industry (Supervision) Regulations 1994* (SIS Regs) in respect of the superannuation entities for which it has regulatory responsibility. This does not include SMSFs.

The ATO is responsible for the regulation of SMSFs under the SIS Act. Further ASIC is responsible for consumer protection across the financial system including some areas of superannuation such as market conduct and disclosure.

As such, FOI requests regarding the abovementioned recommendations may be better directed to the ATO or ASIC.

Please confirm if you wish to proceed with your FOI request after you have reviewed the relevant material.

I have enclosed an ATO publication titled '*How your self-managed super fund is regulated*' and an extract of section 24A the FOI Act for your reference.

Please contact me if you have any questions.

Yours sincerely,



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s 24A Freedom of Information Act 1982

24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

(1) An agency or Minister may refuse a request for access to a document if:

- (a) all reasonable steps have been taken to find the document; and
- (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Document not received as required by contract

(2) An agency may refuse a request for access to a document if:

- (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
- (b) the agency has not received the document; and
- (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.