

The Australian Securities and Investments Commission (ASIC) 'Appendix 4' document.

Background

ASIC refer to Appendix 4 in their submission to the Parliamentary Joint Committee Inquiry into the collapse of Trio Capital Limited, September 2011. ASIC write,

'Confidential Appendix 4 sets out ASIC's interactions with Trio over the relevant period and the status of its ongoing investigations. Appendix 4 is provided to the PJC on a confidential basis because disclosure of the information set out in this appendix may prejudice our ongoing investigations in relation to Trio. When our inquiries and investigations are complete, we will review the appendix to assess the extent to which it can be made public.'

Source: PJC Inquiry into the collapse of Trio Capital Limited
Submission by the Australian Securities and Investments Commission September 2011 page 11.

History of VOFF's attempts to access the Appendix 4 document.

1. FOI number 143 February 9th 2014 to ASIC. After ASIC terminated its investigation of the Trio mastermind we lodged an FOI request but our request was refused (April 2nd 2014) under section 46 of the FOI Act.
2. FOI number 236 August 26th 2014 to ASIC. VOFF placed a request for a particular Spreadsheet & Appendix 4. ASIC refused the Spreadsheet under section 37(1) 37(2)(b) 45, 47E and 47F and did not acknowledge the Appendix 4 request.
3. FOI number 368 July 26th 2015 to ASIC. VOFF request information about the experts and resources assigned to the Trio investigation. This round-about-way approach to access Appendix 4 failed as ASIC said (August 28th 2015) no such document exists.
4. FOI number 391 September 15th 2015 to ASIC. After the Assistant Treasurer, Josh Frydenberg MP, held a meeting with two representatives from ASIC, APRA, Treasury and VOFF in Sydney, September 3rd 2015. ASIC confirmed it has finished its investigations into the collapse of Trio Capital. VOFF submitted another request for Appendix 4 but our request was refused (November 23rd 2015) under s46 of the FOI Act.
5. FOI number 393 September 16th 2015 to ASIC. VOFF sought a copy of ASIC's review of its interactions with Trio and its associated entities (as mentioned in ASIC's submission to the PJC Inquiry). The document we sought was in fact the Appendix 4 document. ASIC refused (November 24th 2015) under s46 of the FOI Act.

6. FOI number 431 April 7th 2016 to ASIC. The combined events concerning Trio: ASIC completed its investigations; the government announced no further compensation to groups of self-directed investors and SMSF trustees; and the alleged mastermind was cleared of any wrongdoing in the way he handled investor's money, led to another request for Appendix 4. But we were refused (May 6th 2016) under section 46 of the FOI Act.

7. Meeting with ASIC July 13 2016 at ASIC Office, Sydney. VOFF requested access to the suppressed Appendix 4 document because we are seeking justice for the wrong committed against investors. ASIC said it has Memorandums of Understanding (MOUs) with a number of jurisdictions, and is bound by confidentiality and must honour those commitments. ASIC's Appendix 4 submission is suppressed due to those same reasons.

8. FOI number 447 November 27th 2016 to Treasury. VOFF explored whether Treasury could release Appendix 4. To achieve this, VOFF asked for the release of Appendix 4. Treasury replied December 22nd 2016 and refused to release Appendix 4 citing s46 of the FOI Act.

9. FOI number 448 December 1st 2016 to Kelly O'Dwyer MP. Our request was refused and Chief of Staff, Julian Sheezel said that they located "a document held by the department which comes within the scope of our request" but refuse to release it because it is 'a confidential submission made by ASIC to the PJC Inquiry into the collapse of Trio Capital Limited'.

10. FOI number 450 December 1st 2016 to ASIC. Requested the Appendix 4 document. ASIC advised Dec 21st 2016 that the document is exempt from release under section 46 of the FOI Act. This is the matter that is now being reviewed. VOFF's persistence is due to the changing circumstances surrounding ASIC's interactions with Trio.

FREEDOM OF INFORMATION ACT 1982 - SECT 46

Documents disclosure of which would be contempt of Parliament or contempt of court

A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown:

(a) be in contempt of court;

(b) be contrary to an order made or direction given by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath; or

(c) infringe the privileges of the Parliament of the Commonwealth or of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory.