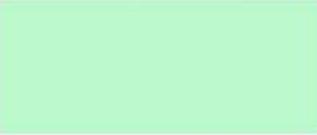


To the Office of the Australian Information Commissioner (OAIC)

Victims of Financial Fraud



OAIC references- MR17/00003
VOFF FOI No 450

February 22nd 2017

Dear Information Commissioner,

Thank you for your letters dated February 20th 2017. Your letter notes that the Information Commissioner (IC) is currently reviewing our appeal of the Australian Securities and Investments Commission (ASIC) decision - to refuse the release of information concerning VOFF's FOI request No 450. Please find copy of ASIC's decision letter enclosed.

As the IC will review 450 and 451 separately and because we compiled them together, we are adding a support letter specifically covering FOI No 450.

The information we seek provides a window into ASIC's governance of the Australian financial market. The FOI Act allows citizens to participate in policy, accountability and decision making processes. The FOI process opens the government's activities to scrutiny, discussion, comment and review. The fundamental purpose of the FOI Act is to *"give to members of the public rights of access to official documents of the Government of the Commonwealth and of its agencies"* ... *to promote Australia's representative democracy by contributing towards ... promoting better-informed decision-making and ...increasing scrutiny, discussion, comment and review of the Government's activities. ...at the lowest reasonable cost. Source: FOI Act.*

The information we seek is ASIC's interaction / investigated with the Astarra Strategic Fund (ASF) / Trio Capital Limited (Trio) and its entities. It is assumed (no one has seen ASIC's account of why or how Trio collapsed) is the information that comprises the Appendix 4. ASIC provided the Appendix 4 to the Parliamentary Joint Committee Inquiry into the Collapse of Trio Capital, however, the PJC made no mention about receiving the Appendix 4 in their Report.

The *"PJC Inquiry into the collapse of Trio Capital Limited, Submission by the Australian Securities and Investments Commission, September 2011"* is ASIC's 123 page submission. Less than a third of a page is about ASIC's involvement with Trio, 138 words. The greater part of ASIC's involvement in Trio is the 74 words explaining the Appendix 4 document. ASIC note that, *"When our inquiries and investigations are complete, we will review the appendix to assess the extent to which it can be made public."*

After ASIC publicly announced the Trio investigation was closed VOFF reissued our FOI request seeking the release of Appendix 4 but our request was refused. At a later date, ASIC informed the Senators at a Statutory Oversight Hearing that investigations were closed. Again we took this opportunity to apply under the FOI Act for the release of Appendix 4 but again turned down.

There are too numerous narratives about the Trio scheme to raise in this appeal letter to the IC but the public look up to the financial regulator – charged with governance and regulating the financial system and there is public perception that the regulator is in a position to best know what happened in any particular financial event, such as the disappearance of \$194.5m from the Trio Capital Limited scheme.

ASIC's decision letter stated that it refused to release the information sought by FOI 450 relying on section 46 of the FOI Act.

*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 or of Norfolk Island.*

To our knowledge ASIC did not approach to Parliament or the committee members of the PJC into which ASIC submitted Appendix 4 to ask whether ASIC can now release Appendix 4. It is highly probable that the Parliament and specifically the Senators that chaired the PJC Inquiry in the Collapse of Trio would be agreement to the release of Appendix 4.

Australian mandated superannuation can be rightly accused of herding citizens into a black hole where legislation denies them access to information about what happened if something goes wrong. Also denying them to the opportunity to learn what action ASIC took over a particular incident where retirement saving disappeared. It would be both Farce and Tragedy to legislate citizens to place their savings into funds that they have no right to know what happened if savings vanish.

Appendix 4 remains out of reach of the 6,000 people affected by Trio and the 14.8 million people with superannuation that could be served well by what can be learnt from Appendix 4.

If the release of Appendix 4 is refused, it will herald a sad day for transparency and integrity. The disclosure of Appendix 4 will show the public what ASIC do or don't do to protect superannuation. Investors' interests deserve more than a false sense of security that two Australian regulators provide compliance and security of the financial system when it is possible ASIC is under funded or don't have enough power to manage the multi jurisdictional complexities of the global financial market. For example, ASIC's limitations in the Trio investigation were acknowledged in 2013 during a Parliamentary Joint Committee Statuary Oversight. The committee noted,

"Fraudulent activity where money is siphoned to other jurisdictions is an international problem. The committee is of the view that Mr Medcraft's new position as head of the international corporate regulator provides an opportunity to negotiate measures that would close the loopholes in international fraud detection and response."¹

It is unknown whether ASIC were given greater powers to improved its jurisdiction flexibility or whether the Serious Financial Crime Taskforce (SFCT) will take over this role. VOFF are concerned and it is a concern shared by Senator Boyce when she asked at a parliamentary hearing, *"I suppose my concern as a legislator would be if there are people who have committed wrong in the view of society and yet are outside the reach of any laws or regulations of the country."*

¹ Parliamentary Joint Committee on Corporations and Financial Services, Statutory Oversight of the Australian Securities and Investments Commission, Number 2, May 2013. Page 47

The question was directed at Mr Ross Jones, Deputy Chairman and Member of the Australian Prudential Regulatory Authority (APRA).

Mr Jones answered saying, *"It would certainly be our concern as well, and it is something that we would raise directly with Treasury via our normal processes. Any time we believe that there are gaps in legislation, we automatically revert back to Treasury to discuss these sorts of matters"*.²

The release of Appendix 4 will be a window for citizen's mandated into superannuation who are reliant on what ASIC do or don't do to keep Australian superannuation safe. Citizens will gain a better understanding of where they stand in the global market and ASIC's ability to detect and respond to breaches in law that expose investors to harm.

Thank you
John Telford



Secretary VOFF

² Official Committee Hansard Parliamentary Joint Committee On Corporations And Financial Services, Collapse of Trio Capital. Tuesday, 30 August 2011 Sydney Page 41