

Trio Fraud Manual 2

Victims of Financial Fraud (VOFF Inc)

The Trio Fraud Manual dated 2018 looked at the people behind Trio Capital.

Trio Fraud Manual 2 confirms that ASIC licensed and APRA prudentially reviewed the Trio fund reinforced that Australia is indeed a white-collar crime paradise.

The Trio fraud affected 6,090 Australians. Some received compensation some did not. The 1,190 uncompensated were:

- Astarra Strategic Fund, 690 - 415 Direct Investors & 285 SMSFs and
- Ualan, 500 - 490 APRA-supervised funds & 10 SMSFs.

According to the Parliamentary Joint Commission Report, \$123 million was stolen from the Astarra Strategic Fund and \$53 million stolen from the ARP Growth Fund.

However, APRA claimed the \$36m lost from Ualan was due to bad investment. In recent years, APRA has refused to examine new evidence about Ualan that challenges their finding.

13 May 2022
John Telford
Secretary VOFF Inc
Email: johnt@1earth.net

Trio Fraud Manual 2

Victims of Financial Fraud (VOFF Inc) 2021

Content

	Abbreviations	p 3
	Introduction	p 4
01	ASIC's actions - inactions	pp 5 - 8
02	APRA's actions - inactions	pp 9 – 10 Attachment 11-14
03	Trio's custodians	pp 15 - 16
04	Trio's auditing firm	pp 17 – 26
05	Money Laundering	pp 27 – 29
06	Systemic issues	pp 30 – 31 A 32-42
07	Aide Memoire	pp 43 A 44-46
08	Exemption Form	pp 47 A 48-56
09	AWU slush fund	pp 57 – 58 A 59
10	Mr Meerveld's offer	pp 60 A 61-64
11	Mr Sutherland's tax	pp 65 A 66
12	Legislation change	pp 67 A 68
13	Precedent for an investigation	pp 69 A 70-71
14	Tried to communicate	pp 72 A 73-76
15	Government, corruption & the Trio fraud	pp 75 - 84
	Conclusion	p 85

Abbreviations and key definitions

ACC	Australian Crime Commission
AFP	Australian Federal Police
AFSL	Australian Financial Services Licence
APRA	Australian Prudential Regulation Authority
ASF	Astarra Strategic Fund
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
CNMV	Comisión Nacional del Mercado de Valores (Spain)
FBI	Federal Bureau of Investigation
FINOP	Financial and Operations Principals
FINRA	Financial Industry Regulatory Authority
FMA	Financial Market Authority
FMA NZ	Financial Markets Authority (New Zealand)
FOI	Freedom of Information
FOIA	Freedom of Information Act (United States)
FOI Act	Freedom of Information Act 1984
GCSL	Global Consultants and Services Limited
IOSCO	International Organisation of Securities Commissions
PJC report	The Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital May 2012
NASD	National Association of Securities Dealers
OAIC	Office Australian Information Commissioner
PI	Professional Indemnity
PDS	Product Disclosure Statement
RE	Responsible Entity
SEC	Securities and Exchange Commission (US)
SFC	Hong Kong Securities and Futures Commission
SIS Act	Superannuation Industry (Supervision) Act 1993
SMSF	Self-managed superannuation fund
Trio	Trio Capital Limited
VOFF	Victims of Financial Fraud
WGAM	Wright Global Asset Management
WGI	Wright Global Investments Pty Ltd

INTRODUCTION

Questions and answers from a decade ago, by Paul Fletcher MP, Senators Matt Thistlethwaite, Suzanne Boyce, and Nick Sherry, including recent evidence of regulatory weaknesses and systemic issues obtained under Freedom of Information law, together with the 2018 Banking Royal Commission and 2019 Productivity Commission findings, throws new light on the Trio fraud.

In April 2011, the Minister for Superannuation Bill Shorten issued a determination under Part 23 of the SIS Act, to compensate one group of victims, an act reminiscent to when he pitted one group against another in the AWU - Cleanevent deal that cost 5000-odd workers as much as \$400 million. He achieved selective compensation in 2011 by suggesting one group were victims of a fraud while the other group had invested in troubled funds. With no evidence to scrutinise he was able to spin nonsense 4 years before the Liquidator completed its investigation and 3 years before ASIC completed its investigation.

Shorten and ASIC politicised the Trio crime by turning it into an issue about financial advice when they wrongly advised one group of Trio victims to seek legal advice. The Australian Federal Police had insufficient information of a crime and as ASIC and APRA had a stranglehold on the evidence they controlled the misleading narrative that helped divert attention away from regulatory failure. The lack of transparency meant risk and cost of the Trio crime was pushed on to the victims, immaterial to what happened or whether the integrity of the financial system was compromised. ASIC created a fraud within a fraud.

Medcraft – who had worked with financial instruments that gave birth to the Global Financial Crisis; Shorten - Minister of Superannuation skilled with getting his way over industrial disputes; O'Dwyer - Assistant Treasurer talented deceiver; and several Members of Parliament that parroted the same misleading information to maintain the Government's deception. Welcome to the Trio fraud.

1. ASIC's actions - inactions

Some examples of ASIC's actions and inactions in handling of the Trio Capital scheme are presented in two parts. 1. 'Before the Fraud Started' (2001 to 2004) shows ASIC connection with the people behind Trio before Trio became an entity. 2. 'After the Fraud Robbed 6,090 Australians', (2004 to current time) the so-called investigation achieved nothing other than support and endorse the politicisation of a crime.

Shortly after the financial regulators confirmed in 2010 that Trio's assets had disappeared, the Trio fraud victims formed the group 'Victims of Financial Fraud' (VOFF), with the need for justice and to ensure Australia's largest superannuation fraud in history isn't repeated.

VOFF argue that ASIC's handling of Trio was not in the public's best interest or reflect Kenneth Hayne's statement in the Banking Royal Commission Final Report. Commissioner Hayne writes, *ASIC is charged with enforcing financial services laws on behalf of the community. One of ASIC's objectives is to 'take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth'.¹ Ref. The community is entitled to expect, and does expect, that financial services entities will comply with those laws.²*

BEFORE THE FRAUD STARTED

The seed of the Trio fraud can be traced back to 2001 when the gang of international mates registered a holding company with ASIC. Two years later (Nov 2003) the holding company purchased the Tolhurst Trust Fund that ultimately became the Trio Capital scheme. Trio was a scheme intentionally built to strip the assets of its creditors. Fraudulent activity in one of Trio's funds, the Astarra Strategic Fund (ASF), wasn't discovered until September 2009. ASF was licensed by ASIC and prudentially reviewed by the Australian Prudential Regulation Authority (APRA). ASIC failed to recognise or draw the connections with the names and business addresses of the people on its company register database since 2001 for the holding company to the warnings posted by ASIC's counterparts around the world. They had posted warnings about unlicensed companies and boiler-room scams, owned and operated by some of the same names and addresses. ASIC had ample opportunity to stop the Trio scam before it grew in to a mega size fraud.

Warnings

1. When the Trio operators applied for an operating license from ASIC late 2003, ASIC's counterparts had already posted warnings about unlicensed operators in their countries. ASIC claim it communicates with its counterparts, but in Trio's case, ASIC held the details of the people behind Trio, which were the same people in the warnings by:

- The Netherlands Authority for the Financial Markets (AFM);
- The Financial Supervision Commission of the Isle of Man (FSC);
- The Austrian Financial Market Authority (FMA);
- The Comisión Nacional del Mercado de Valores (CNMV) Spain;
- Financial Markets Authority (New Zealand) and
- Securities & Futures Commission of Hong Kong.

Around 2004 some European countries warned about the United States registered New World Financial (NWF) owned by Matthew Littauer. Littauer was one of the original owners and operators of Trio. NWF had offices throughout Europe that sold dud stock. The unlicensed

¹ Final Report Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Vol. 1

² op cit Page 424

Philippines based firm Millennium Financial also sold dud stock. The owners and operators of these funds apart from Littauer included Shawn Richard, Frank Richard Bell, Jack Flader and James Sutherland. Their names were on ASIC's 2001 registration of the Wright Global Investments Pty Limited ACN 097 478 487, including Mr Richard's registration form dated 12/07/2001. That's two years before the purchase of Tolhurst and three years before the Trio Capital scheme became public.

The warnings about Millennium appeared on New Zealand Securities Commission's website in 2001 and 2002 and listed 17 names. Shawn Richard's name was among those listed. But after the Trio fraud was uncovered in September 2009, Mr Richard's name was removed. The Securities Commission could not provide a reason for the removal of Mr Richard's name.³

ASIC cannot be excused for not seeing the boiler-room warnings as ASIC named Millennium in its *REPORT 14 International cold calling investment scams* dated June 2002.

ASIC travelled to the Hong Kong

2. In 2002, ASIC travelled to the Hong Kong office of American lawyer Mr Jack Flader and his business partner Scottish accountant James Sutherland. It wasn't a casual visit by any means. ASIC joined force with the Tax Office, the Australian Federal Police and the Commonwealth Director of Public Prosecutions. In Hong Kong they subpoenaed 100,000 documents that were used as evidence in a Fraud against the Commonwealth of Australia court case.⁴

Whatever tax minimization scheme Mr Flader and Mr Sutherland offered Mr Hart, the documents were enough to secure a conviction and send Mr Hart to prison. Had ASIC realised in 2002 that Mr Flader's and Mr Sutherland's operation was based on the ability to exploit legal technicalities and loopholes, and that they held a company on ASIC's company registration database, preparing to enter and attract business in Australia, would ASIC have acted differently or remained wilfully blind?

ASIC licenced a crook

3. In 2003 ASIC approved licences for the Trio Company without checking the people behind Trio. ASIC accepted Canadian, Shawn Richard's claim he had a Bachelor of Finance degree and was a 'senior portfolio manager'. But in reality he was better described in his Taiwan days as "office boy".⁵ Mr Richard deceived ASIC to get an Australian financial services licence (AFSL). Mr Richard was able to give false credentials to establish a deceptive business in Australia and handle Australian superannuation while he was on a Tourist Visa. ASIC's failure is a pivotal point that made the fraud possible.

ASIC didn't disturb a criminal family

4. ASIC failed to check the Paradigm Global firm and James and Hunter Biden. In 2010 Mr John Hempton [Chief Investment Officer of Bronte Capital] knew the United States Paradigm Global firm based in New York had connections with scams. When he found out that Trio and Paradigm had connections, he became concerned, then informed ASIC of his suspicions.⁶ Paradigm was owned and operated by James Biden [Joe Biden's younger brother], and Hunter Biden [Joe Biden's son]. There is no evidence that ASIC investigated the connection between Trio and Paradigm or informed the NSW Police Force of potential money laundering by the family of

³ [http://www.smh.com.au/business/how-investors-in-trio-backed-the-wrong-horse-with-\\$426-million-Stuart-Washington-March-27-2010](http://www.smh.com.au/business/how-investors-in-trio-backed-the-wrong-horse-with-$426-million-Stuart-Washington-March-27-2010)

⁴ Commonwealth Director of Public Prosecutions v Hart [2010] QDC 457 (30 November 2010).

⁵ Washington, Stuart 'Another black mark against ASIC' July 19, 2010

<http://www.watoday.com.au/business/another-black-mark-against-asic-20100718-10fzv.html>

⁶ John Hempton Bronte Capital January 2, 2010
<http://brontecapital.blogspot.com/search?q=trio>

the then Vice President of the United States. In 2020, Hunter's laptop hard drive scandal revealed ongoing money laundering and connections to corruption in Ukraine.

AFTER THE FRAUD ROBBED 6,090 AUSTRALIANS

ASIC sabotaged a crime

1. Did ASIC throw the AFP a red herring?

In correspondence to the Australian Federal Police (AFP), dated June 21st 2012, obtained under the Freedom of Information, ASIC write,

Trio was a funds management group based in Albury, NSW and provided a complex suite of managed investment funds which were heavily marketed through several financial advisors in Australia. These financial planners earned fees and commissions based on investments into Trio funds. ... It is alleged that financial advisers provided recommendations to clients due to high commissions which were paid by Trio. It is further alleged that the complex structure of the Trio scheme was designed to conceal fraudulent activity.⁷

ASIC focused on the commissions but failed to elaborate about the crime. In the same FOI release of documents, the AFP remarked about ASIC's letter, saying, '*the material provided by ASIC does not provide sufficient information to support an investigation into any Criminal Code Act 1995 offences...*'

No one was ever charged for receiving high commissions, yet the PJC Report and Treasury's review of the Trio fraud repeated the same misinformation,

Notwithstanding the conduct of some financial planners in Australia who appear to have been influenced by high commissions in recommending their clients into Trio Capital products, the fraud largely took place in off shore hedge funds.⁸ & ⁹

Obfuscation

2. ASIC kept certain information secret, such as what it collected from the Hong Kong based company Global Consultants and Services Limited (GCSL), owned and operated by American lawyer Mr Jack Flader. GCSL received money from Australia, to be diversified into international investments. In 2010, GCSL handed documents to the Hong Kong Securities & Futures Commission and ASIC received the documents under the Memorandum of Understanding (MoU). The documents remain exempt under the MoU and no one has learnt anything about their content or whether GCSL breached any laws.

The PJC Report made no mention of the GCSL documents. The Liquidator, PPB Advisory, had to take ASIC to court to gain access to the GCSL documents and even then, ASIC only provided part of the tranche. The level of protection ASIC afforded GCSL has left the consumers, who were robbed of their savings, in a void and worse off. A proper forensic investigation to follow the money trail would have wanted to examine the company where the money flow started. An obvious starting point but ASIC's stranglehold on information adversely affected the Trio victims and denied Australia the right to know what happened.

ASIC Misled the Court

3. ASIC failed to provide evidence concerning Mr Carl Meerveld to the court. As a manager of one of Trio's overseas underlying funds, he was based in Hong Kong and moved to Guernsey in 2009. In 2010 he offered to assist ASIC with the Trio fraud investigation. ASIC declined the offer.

⁷ Victims of Financial Fraud FOI No 373 to the AFP July 28 2015 17 Pages and 2 Pages

⁸ The 'Review of the Trio Capital Fraud and Assessment of the Regulatory Framework' by Treasury 26th April 2013 P. 5.

⁹ PJC Report May 2012 Page 153

In the NSW Supreme Court (NSWSC) trial of Shawn Richard in 2011, the court said, Mr Richard had assisted ASIC by providing information that saved ASIC from, ‘... *significant time and resources seeking to gather independent admissible evidence, including evidence from uncooperative witnesses from numerous overseas jurisdictions*’.¹⁰

ASIC failed to inform the NSWSC that two cooperative witnesses from overseas jurisdictions had indeed offered to assist. Apart from Mr Meerveld’s offer, Mr Flader had sent information (to set the public records straight) to the Sydney Morning Herald in March 2010. Because ASIC denied the court vital information, did the NSWSC overvalue the significance of Mr Richard’s assistance to ASIC?

After all the court rewarded Mr Richard’s pleas of guilty, with a discount of 25% off his sentence with an additional 12.5% discount allowed for the utilitarian value of the pleas of guilty.¹¹

ASIC denied opportunity to find out why \$57m disappeared.

4. In 2017, Guernsey residents became concerned over Mr Meerveld’s connection with the Trio crime. He was named by Trio’s administrator PPB Advisory and in Australian court documents and Enforceable Undertakings. PPB Advisory’s May 2015 document shows the fund Mr Meerveld managed, Global Financial Managers Ltd in 2010 transferred AU\$57m of Trio’s assets to the Exploration Fund and the securities disappeared just weeks later.

Under Guernsey legislation, authorities can question a Guernsey resident if that person is or was connected to fraud anywhere in the world. As no one in Guernsey lost money, the Guernsey authorities had no reason to question Mr Meerveld. If ASIC had made a request, the Guernsey authorities would have questioned Mr Meerveld, but ASIC refused to act.

ASIC approved Trio’s Product Disclosure Statement

5. In early October 2021, the International Consortium of Investigative Journalists (ICIJ) wrote that an enabler allowed *corporate tax dodging and acted for notorious tycoons, arms makers and authoritarian regimes operating in the shadow economy ... has helped multinationals and the wealthy avoid taxes and scrutiny through the use of shell companies, trusts and complex structures in tax havens. These vehicles, shrouded in secrecy, hold vast riches – homes, yachts, stock and money that is sometimes of murky origin.*

The above-mentioned enabler was America’s biggest law firm Baker McKenzie. The same law firm helped Shawn Richard produce the Product Disclosure Statement for the Astarra Strategic Fund. With Baker McKenzie behind the ASF PDS added great kudos to support the products Mr Richard was offering. The ASF had the National Australian Bank and The Australia and New Zealand Banking Group Limited (ANZ) as custodians. The Professional Audit, Tax, Advisory firm KPMG and the Accountancy and Finance Experts, WHK carried out ASF’s auditing. The highly respected Morningstar and VanMac research firms, listed ASF as low risk, and awarded 4 and 5 stars (respectively) out of 5. Adding to the above security was the comfort that the ASF was an APRA regulated fund [prudentially reviewed by APRA] and licensed by ASIC. Consumer due diligence, and a financial adviser’s 4-years of quantitative and qualitative analysis proved ineffective against an insidious fraud that deceived the entire financial system. The Corporations Act, under ASIC’s jurisdiction, but ASIC didn’t act against entities that breached the law.

¹⁰ Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011) before Garling J.

¹¹ Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011) before Garling J.

2. APRA's actions – inactions.

The Australian Prudential Regulation Authority (APRA) failed to act against Trio's many red flags. As no inventory of the red flags APRA received in relation to Trio was made available to the PJC Inquiry, it's a dark secret that is not in the interest of Australian consumers. VOFF cannot confirm the 2004 incident when Trio's investment committee told Shawn Richard to stop over investing in the underlying Exploration fund. Apparently he stopped but unknown to the committee, Mr Richard set up another underlying fund called Sierra fund and continued as before.

VOFF regard Mr David Millhouse's 2005 complaint letter as a red flag. Mr Millhouse was one of the directors of Astarra, (under the flagship of Trio Capital). His letter delivered to the Trio board and to ASIC and APRA, raised concerns about the Trio fund management. VOFF regard his letter as a vital key to the understanding of the background events that eventually became the largest superannuation fraud in Australia's history. His concerns covered, *related party transactions, conflicts of interest, corporate governance, and the value of collateral, being a portfolio of unregulated US securities provided by the principals of the Astarra shareholder to support the acquisition financing.*¹²

When Mr Millhouse provided APRA with a copy, APRA was conducting a prudential review of Trio. So he was satisfied APRA would deal with the problems. It wasn't until about 8-years later that Mr Millhouse discovered that APRA didn't act on his letter. It's in the public's interest to learn how APRA handled this matter, because there were at least two other complaints, one either side of the Millhouse letter. First the 2004 conflict of Mr Richard's position, and secondly in 2006 APRA had reached the conclusion that the Trio directors were a 'bunch of incompetents'.¹³ When asked why APRA didn't inform consumers, APRA's Ross Jones said, APRA had no obligation to inform the Market. See 4-pages (pp 11 to 14) extract from OAIC and APRA's 10-page correspondence letter refusing to release Millhouse's letter.

APRA's influence of Part 23 legislation

In 2003 APRA had 4 attendees at two meetings, they helped shape Part 23 legislation. The first meeting [10.07.2003] called *Review of Part 23 of the Superannuation Industry (Supervision) Act 1993 - Industry Consultation* consisted of 12 people. The second meeting [21.07.2003] called *Review of Part 23 – Industry Roundtable Meeting* had 10 people attend. APRA combined with Treasury held the voting numbers. No one represented the self-managed superannuation funds or direct investors. Whatever was discussed at these important meetings was not made public. Self-managed trustees were never consulted about the decisions made that directly related to their financial security. APRA's attendance at both meetings was to solely represent and protect APRA-supervised funds.

Prior Sept 2009, the market was not informed about Part 23 of the SIS Act. Investors starting a superannuation fund were not aware of the protection offered by Part 23. This was not a failing by financial advisors to inform clients. Financial advisors that worked in the industry for decades had never heard of Part 23 of the SIS Act.

Part 23 of the SIS Act offers protection against "fraud" for APRA supervised funds. A fraud in an APRA supervised fund is deemed possible because many people manage the fund. On the other hand, the same protection is regarded as unnecessary for self-managed superannuation funds because trustees are unlikely to steal from themselves. Also no insurance policy covers personal theft from one's own assets.

¹² David Millhouse 'Corporate Governance in Non-Bank Financial Entities' LexisNexis Australia 2019 Pages xvii and xviii

¹³ Hansard Parliamentary Joint Committee on Corporations and Financial Services - Collapse of Trio Capital. (30.8.2011) Syd. p38

It is unlikely the SIS Act of 1993 anticipated an international fraud exploiting the gatekeeper's role of a Managed Investment Scheme (MIS) in 2009. The authors of the 1993 Act could not have predicted future developments of the next twenty years. They could not have predicted a unique sophisticated fraud, able to catch the financial regulators and the financial services industry off guard. The Part 23 architects could not have anticipated a large-scale fraud against the Australian financial system. It's also unlikely they designed legislation to protect a select few and decided not to inform the marketplace of the impending danger to the group left unprotected.

VOFF perceive the exclusiveness of Part 23 knocked down APRA-supervised funds' competitors. Part 23 compensated 90 per cent of the Trio victims. That left no need for an investigation or to worry about justice for the uncompensated 10 per cent. That Part 23 exacerbated the harm the 10 per cent benefited the advert for APRA supervised funds, deterring superannuation newcomers from opening a SMSF while at the same time discouraging APRA-supervised funds from changing over to SMSFs.

APRA did not serve the public's best interest with its involvement in Part 23. This is evident in Senator Nick Sherry's comments to APRA's Greg Brunner at the Sydney Hearing into the collapse of Trio Capital.

Mr Sherry, 'I suggest that if you said you are not subject to part 23' no-one would have any idea what you were talking about!

Mr Brunner, 'No, clearly an explanation would need to be made at that point'. Further on Mr Brunner notes, 'it is an area where perhaps there is a lack of understanding of the different types of frameworks that exist. So you would expect a professional who was advising people to warn them of the change in arrangement between the two different sectors'.

Mr Sherry, '... I ask you to take it on notice to take these issues up with both the ATO and with ASIC, because I have been at a lot of committee hearings over the last 20 years and this issue has come up time and time again, and time and time again we get—and I am not criticising you or APRA—literally hundreds of people who are not compensable in the event of theft and fraud in the SMSF sector'.¹⁴

Mr Sherry, there, "is absolutely no disclosure in any way, shape or form that an SMSF is not compensated in the event of theft and fraud from the sub-entity, the sub-investment entity. There is nothing there that relates to that".

Mr Brunner, "I would not have thought so. The part 23 arrangements clearly relate to APRA and supervised entities. I think when people step outside the APRA framework, there would be an expectation of understanding from us that people would understand that."

Mr Sherry, "very few, if any, SMSF trustees knew of the compensation provisions in this case—or, frankly, in previous cases where I have been a member of a committee conducting an inquiry: very few knew. Don't you think it would be appropriate that they be informed of that? At least as part of their consideration in setting up an SMSF, don't you think it is an appropriate risk issue that they should be aware of?"

The uncompensated Trio victims did not **step outside the APRA framework** as they were invested in the Astarra Strategic Fund, licenced by ASIC and prudentially regulated by APRA.

¹⁴ Parliamentary Joint Committee on Corporations and Financial Services - 04/04/2012 - Collapse of Trio Capital, Sydney

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY
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 T 02 9210 3000 | W www.apra.gov.au



OAIC Ref: MR21/00057
 APRA Ref: FOI 21-36

18 February 2022

Tania Strathearn
 Intake and Early Resolution Team
 Freedom of Information
 Office of the Australian Information Commissioner

By email: foidr@oaic.gov.au

Dear Ms Strathearn,

INFORMATION COMMISSIONER REVIEW AND REQUEST FOR DOCUMENTS

I refer to your letter dated 22 December 2021. In response:

OAIC's request for information	APRA's response
The FOI request, and any correspondence that modifies its scope.	Mr Telford's request to APRA under the <i>Freedom of Information Act 1982 (FOI Act)</i> dated 29 October 2020, and the correspondence modifying the request, is attached.
The names and contact details of anyone who was consulted by APRA, formally under ss 15(7), 26A 27A, or informally (including consultations with other government agencies).	APRA did not consult with any third party in the processing of the request.
Copies of any correspondence between APRA, and anyone who was consulted, including file notes of any relevant telephone conversations.	APRA's internal correspondence is attached in Schedule B.

OAIC's request for information	APRA's response
A marked up and unredacted copy of the documents at issue in an electronic format. Material which is claimed to be exempt should be highlighted with reference made to the exemptions applied.	A marked up and unredacted copy of the document responsive to the request is attached in Schedule C. The document is undated but other documents located by APRA in our searches indicated that the date of the document was 9 August 2005.

SUBMISSIONS

1. APRA continues to rely on the reasons of its original decision dated 13 January 2021 (a copy of which is attached). I reproduce relevant paragraphs of APRA's original decision:

Part 1 of the FOI request

6. APRA has conducted all reasonable searches of its records and identified one document relevant to Part 1 of the FOI request (**relevant document**).
7. I refuse access to the relevant document because of the following exemptions in the FOI Act.

Secrecy provisions

8. I have decided to refuse access to the relevant document under section 38 of the FOI Act and section 56 of the APRA Act. My reasons for the refusal are as follows:
9. I have taken the following approach in applying section 38 of the FOI Act and section 56 of the APRA Act:
 - i. under section 38 of the FOI Act, a document is exempt if disclosure is prohibited under a provision of an enactment and section 38 expressly applies to that provision;
 - ii. subsection 56(11) of the APRA Act expressly applies section 38 of the FOI Act so that any document that is a 'protected document' or contains 'protected information' within the meaning of subsection 56(1) of the APRA Act is also an exempt document under section 38 of the FOI Act;
 - iii. under subsection 56(2) of the APRA Act it is an offence to directly or indirectly disclose protected documents and/or protected information unless a specified exemption applies. This offence provision is binding on me as an APRA staff member. The offence is punishable by up to two years imprisonment;
 - iv. a 'protected document' is defined in subsection 56(1) of the APRA Act to include documents given or produced under or for the purposes of a prudential regulation framework law, and containing information relating to the affairs of a financial sector entity. The *Superannuation Industry (Supervision) Act 1993* is a prudential regulation framework law. The

relevant document was given or produced and disclosed or obtained under, or for the purposes of, this prudential regulation framework law. Therefore, the document is a protected document unless otherwise publicly available;

- v. 'protected information' is defined in subsection 56(1) of the APRA Act to include information disclosed or obtained under or for the purposes of a prudential regulation framework law, and relating to the affairs of a financial sector entity. For the same reasons set out in paragraph (iv) above, information contained in the documents is protected, unless otherwise publicly available; and
 - vi. the information and the document are not otherwise publicly available.
10. I am satisfied that the document is a protected document, and/or contains protected information as defined in subsection 56(1) of the APRA Act and that the document is consequently exempt under section 38 of the FOI Act.

11. An extract of section 38 of the FOI Act and section 56 of the APRA Act is attached to these reasons.

Parts 2 and 3 of the FOI request

12. No documents were found to be responsive to Parts 2 and 3 of the FOI request.

Documents cannot be found, do not exist or have not been received

13. Based on the information before me, APRA has taken all reasonable steps to locate the documents relevant to Parts 2 and 3 of the request and I am satisfied that the documents do not exist. Accordingly, I refuse Parts 2 and 3 of the FOI request for access to the documents under section 24A of the FOI Act.'
2. The relevant document contains information relating to the affairs of Astarra Capital Limited (**Astarra**), its ultimate Australian holding company (Wright Global Asset Management Pty Limited) and the Astarra Group. Astarra, which was later known as Trio Capital Limited and subsequently deregistered, was a 'financial sector entity' as defined by section 5 of the *Financial Sector (Collection of Data) Act 2001* (Cth) and a body regulated by APRA as defined by subsection 3(2) of the APRA Act. Under section 56 of the APRA Act, a body regulated by APRA includes a body that has at any time been a body regulated by APRA.
 3. A 'protected document' is defined in subsection 56(1) of the APRA Act to include documents given or produced under or for the purposes of a prudential regulation framework law, and containing information relating to the affairs of a financial sector entity or a body that has at any time been a body regulated by APRA. Subsection 56(11) of the APRA Act provides that a protected document is an exempt document for the purposes of section 38 of the FOI Act.
 4. The *Superannuation Industry (Supervision) Act 1993* (Cth) is a prudential regulation framework law. The relevant document was given or produced and disclosed or obtained under, or for the purposes of this prudential regulation framework law. The relevant document is also not publicly available. The relevant document is a protected document under section 56 of the APRA Act and is therefore exempt under section 38 of the FOI Act.

5. Please contact me on [redacted] or by email at [redacted] if you would like to discuss these submissions.

Yours sincerely,

Kathryn Petrie
Principal Solicitor
Australian Prudential Regulation Authority



3. Trio's custodians

Mr John Hempton, Chief Investment Officer of Bronte Capital informed ASIC on the 19 September 2009 of the potential fraud in Trio. His Submission to Cooper Review of Superannuation dated 17 February 2010, thus 5 months later, he still didn't know if Trio's missing money would turn up. His 14-page submission made several interesting points that are quoted below.

Some unrequited transfers should simply not be allowed. For instance if the fund manager were to ask the custodian to send \$10 million to their personal account because they want to spend it on cocaine and high class hookers the custodian should (of course) refuse. In the Astarra Strategic Fund case the custodian (National Australia Bank) was asked to send money to an entity in the British Virgin Islands (EMA International) for whom they could identify neither the custodian nor the directors. To my surprise they did this – though they may have sent the money via a Hong Kong bank account with Standard Chartered. I can't see the difference between this behavior and sending it to the fund manager's personal bank account – at least as far as client safety is concerned.

I suspect in the Astarra case that National Australia Bank will need to make good the missing money – which will be in excess of 100 million. If the fraud were 200 times as large (possible given the scale of the Australian Superannuation system) then National Australia Bank would fail.

'...National Australia Bank have not proven themselves competent custodians in the Astarra case

National Australia Bank used to use State Street as an external custodian – but they bought the function in-house when the single-responsible entity regime was enacted. This increased the fraud risks to a great extent. "

During the Trio Inquiry the Parliamentary Joint Commission (consisted of politicians with no background in law enforcement or forensic accountancy) signed off on what it considered appropriate explanations it received from the banks. It became apparent in 2018 when the Banking Royal Commission highlighted the banks responsibilities and obligations under anti-money laundering laws that the statements in the PJC Report were potentially false and misleading.

When the Banking Royal Commission's release its Interim Report on 12 October 2018, Shayne Elliott, Chief Executive Officer, ANZ, invited disgruntled bank customers to email him directly.¹⁵ On 16 October 2018, VOFF sent Mr Elliott an email and asked why the ANZ Custodian Services of Trio Capital and Astarra Strategic Fund, over a three to four year period, sent nearly \$200m overseas but are exempt from AML-CTF law?

Mr Elliott wrote, *"I refer to the letter by email dated 16 October 2018. ANZ is "not exempt from AML-CTF" laws and is required to, and does, meet its reporting obligations to*

¹⁵ Peter Ryan ANZ boss Shayne Elliott urges disgruntled customers to email him directly 12 Oct 2018
<http://www.abc.net.au/news/2018-10-12/anz-boss-shayne-elliott-fronts-parliament/10368460>

AUSTRAC including the obligation to report all cross-border funds transfers.”

Mr Elliott's letter contradicts the PJC Report that gives the impression that responsibility for money transactions rests with the responsible entity - not the Custodian. In Trio's case the responsible entity was Canadian, Shawn Richard who was jailed for his part in operating Trio. The PJC Report claims, *“The custodian does virtually nothing to protect the funds of investors. It makes no independent checks before transferring money offshore. Instead, the custodian simply acts on the instructions of the responsible entity”*.¹⁶

The PJC state, *“A key theme of the NAB's evidence to the committee centred on what custodians do and do not do, and some confusion about this delineation between REs and custodians. In its submission, it noted that as a custodian for a RE, it is responsible to the RE in accordance with its custody agreement. The custody agreement provisions clearly state that as a custodian, it will not act on instructions that are considered to be unclear, ambiguous or unlawful. It also noted that in acting as custodian, the NAB was not undertaking authorized deposit-taking institution (ADI) activities such as taking deposits.”* and Ref.¹⁷

Anti-money laundering details that the Banking Royal Commission brought to the public's attention was demonstration that ASIC failed the Trio victims. There is no evidence to show that ASIC carried out a proper investigation into whether Trio's custodians, ANZ and NAB, breached their obligations under anti-money laundering laws.

If Mr Hempton understood the technicalities and saw the potential custodian breach as early as 2010, why didn't ASIC pursue this line of investigation?

¹⁶ The Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital, May 2012 Report Page 132

¹⁷ PJC Report May 2012 Page 65 and Ref. National Australia Bank, Submission 72, Page 18.

4. Trio's auditing firm

The Banking Royal Commission found misconduct in the financial sector that previous government reviews and inquiries had never detected. The Commission found cosy relationships between regulators, banks and industry and that ASIC *received champagne, vintage wines, expensive dinners, concert tickets, airline upgrades and customized 'training seminars' as corporate gifts from stockbrokers, banks, law firms and industry lobby groups.*¹⁸

The Commission also found ASIC and APRA reluctant to act against misconduct in banking, superannuation and the financial services sector. The commission found the regulators knew of certain crimes and if and when they acted, it was often to negotiate a deal with the offender.

ASIC offered the Trio auditor Timothy Frazer, an Enforceable Undertaking. Allan Fels claims systemic issues are not dealt with by EUs. Fels writes,

"...ASIC, have tended to overuse them when they should have taken court action, as we heard at the Banking Royal Commission.

*The problem with using enforceable undertakings instead of taking court action is that generally it's not what parliament intended for significant breaches of the law. Parliament has prohibited certain forms of behaviour and attached sanctions to them, and the regulator's job is to enforce the law. It's not appropriate to do a private deal with the company rather than go to court and get a court outcome. That approach is also not sufficiently transparent as to what deals get done behind closed door. For example, part of the deal may be for the regulator not to give a full public account of what the unlawful behaviour has been."*¹⁹

ASIC's cosy relationships to a reluctance to act is reflected in ASIC's handling of the Trio auditor. Auditing firms have argued that it's not the auditors' responsibility to find fraud. No longer a valid argument as seen by the many cases where auditing firms faced negligent charges over fraud. The Parliamentary Joint Committee on Corporations and Financial Services inquiry into the collapse of Trio Capital hearing (4.11.2011) questioned the auditing firm that had carried out the 2008 and 2009 audits of Trio. The committee consisted of Senator Boyce, Mr Fletcher, Mr Griffin, Mr Ripoll, Ms Smyth, Senators Stephens and Matt Thistlethwaite MP. The two witnesses before the committee were Mr Gavens - Principal, Audit and Assurance of WHK Group Ltd and Mr Lombard - Chief Executive Officer, and Managing Director of WHK Group Ltd. The following is an extract from the Hansard,

Ms Smyth: *I understand from your introductory remarks, Mr Lombard, that you do not have a background in accountancy or auditing.*

Mr Lombard: *Correct.*

¹⁸ Royce Millar and Chris Vedelago, 'Watchdogs wined, dined and given corporate gifts without scrutiny', 22 January 2019, www.smh.com.au/national/watchdogs-wined-dined-and-given-corporate-gifts-without-scrutiny-20190122-p50sy8.html

¹⁹ Allan Fels 'Tough Customer, Chasing a better deal for battlers' Melbourne University Press 2019 Page 112

Ms Smyth: I understand that Mr Gavens is not someone who has participated in the audit of the funds that we are particularly interested and that you have not in fact reviewed the audit files. Is there someone more appropriate who should perhaps be here today who either did undertake the audit or has reviewed the files?

Mr Lombard: I am happy to answer that in camera, because it may impinge on the privacy of an individual.

Ms Smyth: But, as a matter of course, you would expect that a committee like this, looking at the specifics of a case and a collapse, would be interested in more than just the generalities of an audit practice—we would actually be interested in the specifics of that and we will be looking at that.

Mr Lombard: Actually, I have a statement here that may answer some of that question, but certainly the documentation that we received asked for my attendance. I am here, and what I have decided to do - given that, as you have identified, I am not an accountant - is to ask the most senior audit practitioner in our company to attend to be in a position to answer questions more meaningfully.

Ms Smyth: You have given us an indication that there was an acquisition of a firm which had a history of involvement in relation to the funds. Presumably that person who did the audit is no longer an employee or a practitioner within your group of companies.

Mr Lombard: No, he is an employee.

Ms Smyth: So he is still available to provide some information?

Mr Lombard: I would suggest that, if I could go through the second part of my statement, I think it may address Ms Smyth's questions.

Chairman: Sure. You are talking about in camera?

Mr Lombard: Yes.

Chairman: Okay. Are there any other questions we want to put before that? We have a range of questions I want to get to as well, but it is appropriate—

Mr Fletcher: Can I just ask a couple of questions.

Chairman: Yes, you certainly can. What I was going to say is that I am keen for everyone to ask a couple of questions on the public record first, and then we will move in camera.

Senator Thistlethwaite: I have one general question.

Chairman: Okay. I will come back to you, Mr Fletcher. ...

Senator Thistlethwaite: My question is in respect of the way professional scepticism works. I am reading here from auditing standard ASA 200. It says: '... is alert to audit evidence that contradicts or brings into question the reliability of documents and responses to enquiries and other information obtained from management and those charged with governance.'

Could you just outline for us generally how your auditors satisfy themselves—the practices that they

undertake to ensure that they have met that requirement.

Mr Gavens: *Certainly. In the course of an audit information is obtained from a range of different sources. As part of the audit process the auditor would conduct, for example, an analytical review of financial information, they would review the minutes of the board meetings and of the committees and they would be aware of general economic financial conditions and particular conditions impacting on the organisation. They would review the culture within the organisation and make assessments of the integrity of management and the extent to which within an organisation there was a culture around overriding policies and procedures. So there is a range of those matters that are considered as part of the audit process which helps to inform the auditor about the likelihood of information being provided that may not be what it is represented to be. So it is by virtue of a range of processes and the accumulation of that information and the sharing of that information across the audit team that judgments are made in terms of the environment in which that audit has been conducted and the veracity of that evidence.*

Senator Thistlethwaite: *If you are auditing, say, a managed investment fund and this particular fund says, 'Here are the accounts, there is this much in the account,' do you accept that on face value or do you make other inquiries?*

Mr Gavens: *We make other inquiries.*

Senator Thistlethwaite: *What are those other inquiries?*

Mr Gavens: *It depends, with the managed investment funds, whether they are managed locally or whether they are in an outsourced environment. The auditing standards and through guidance statements provides quite a deal of guidance around how to go about the conduct of an audit in relation to circumstances where, for example, those funds might be managed by a service organisation outside of the organisation you are doing an audit of. There is quite extensive guidance such as GS 13, which deals with the audits of managed investment schemes, and GS 7, which deals with the audits of service organisations.*

Senator Thistlethwaite: *What does GS mean? Mr Gavens: They are guidance statements. They are a further elaboration on the specific auditing standards.*

Mr Fletcher: *WHK was the auditor of the ARP Growth Fund. Is that correct?*

Mr Gavens: *I am not across the specifics of that.*

Mr Fletcher: *Is my understanding that WHK was the auditor of ARP.*

Mr Gavens: *Apparently yes.*

Mr Fletcher: *The major investment of the ARP Growth Fund was in a company called Professional Pensions ARP Ltd, and in turn Professional Pensions ARP Ltd entered into a derivative contract with Bear Stearns. Professional Pensions ARP Ltd was based in the British Virgin Islands. What would your audit team have done to understand the assets owned by ARP Growth Fund? What documentation would they have looked at?*

Mr Gavens: *In relation to the specifics that you are requesting, I am not particularly across those specifics, but the audit work that the auditing standards would require is that they are looking for support evidence. Where the investments are held in a situation where they have not got direct access to the entities that you are referring to, they would be largely relying on audit work done by others to provide them with assurance in relation to the sign-off of the financial statements they are*

auditing. Therefore you would be looking for evidence provided either from the responsible entity on which you are able to rely or you would be looking for an audit report provided through that responsible entity in relation to the service organisation.

Mr Fletcher: So if we take the ARP Growth Fund it presumably would have had documents evidencing its ownership of assets, including shares in Professional Pensions ARP Ltd?

Mr Gavens: That is what you would expect. **Mr FLETCHER:** Would your audit team have simply looked at those documents or would they have done more?

Mr Gavens: They would look at that as evidence to see whether it was satisfactory evidence and determine whether they needed to do more. But where those funds are held offshore, it is likely that they would be looking for further evidence.

Mr Fletcher: My question to you as a factual matter: I would like to know which documents your audit team sought to satisfy themselves as to the value of the assets held by ARP Growth Fund. And I would also like to know specifically whether they made any inquiry of Bear Stearns about the existence of the swap, or the derivative contract, between Bear Stearns and Professional Pensions ARP Ltd.

Mr Gavens: That particular question comes back to the question that I think was alluded to earlier, and that is I have not specifically reviewed the files and I am therefore not in a position to state what particular inquiries were made.

Mr Fletcher: I understand that, but my question to you and to WHK is: can you go back and find out the answer to that question and provide it to the committee?

Mr Lombard: Yes, we will take that on advice and we will do what we can.

Chairman: We will go into camera. Before we go into camera I want to ask you a very simple question: have you reviewed the case—the Trio, Astarra Strategic Fund and ARP Growth Fund—which you were paid to audit over a number of years? Have you reviewed that case?

Mr Lombard: Have I personally?

Chairman: No. I am asking a very simple question; it is not a trick. Have you—the organisation, anyone within your organisation—has the organisation in any way reviewed that case?

Mr Lombard: There has been a review with the support of our legal team.

Chairman: Have you got that review here with you? Have you read that review? Do you know what that review says?

Mr Lombard: No, I have not read it. The detail of that review is an audit document, I understand.

Chairman: So you are not interested? What is your role, again, in WHK? You are the—?

Mr Lombard: As I said in my opening statement, Chairman, I am the managing director of the company.

Chairman: So you are the MD and you do not interest yourself enough to read—

Mr Lombard: *I am extremely interested.*

Chairman: *But you have not read it?*

Mr Lombard: *I understand the document itself is a detailed document of which I am not in a position to provide any—*

Chairman: *The collapse of Trio, the ARP Growth Fund and the Astarra Strategic Fund are the most significant and most serious fraud cases in Australian superannuation history. Your organisation is involved in that circumstance. You have done a review but you have not bothered to read it?*

Mr Lombard: *I understand there is a review.*

Chairman: *I would remind you again—I am just asking you whether you have read it; I am not asking you to give me anything that is in it. What I want to know is: do you know anything about what we are talking about?*

Mr Lombard: *Yes, of course I do.*

Chairman: *You do?*

Mr Lombard: *Yes.*

Chairman: *Okay, good. It is a good answer to start with: you do know something.*

Mr Lombard: *Yes, I do. I have been in the role now for four months and about five days—*

Chairman: *That does not really concern me. Your role as the MD—*

Mr Lombard: *Prior to that I did not live in the country; I was a non-resident. So I have been going through a significant background and learning curve myself on this. But I take this extremely seriously. I apologise that I am not an accountant or auditor, but I have our most senior person here today to answer those questions.*

Chairman: *Mr Gavens, are you aware of the review that WHK have done?*

Mr Gavens: *I am aware there is one; I have not seen it.*

Chairman: *How is that possible? Let me ask another question. At what level—if you cannot give me the name, yet—in your organisation was this review carried out?*

Mr Gavens: *That is a question for Mr Lombard.*

Mr Lombard: *The process that we have gone through is a process that is involving an individual. Actually, I think part of your question that you are asking—and I understand you want to get that question on the public record—*

Chairman: *I am not asking for the details at this stage; I am just asking whether the review has been done, how significant is that review, and whether you have read it. We will get the detail in a moment. I think that is important for the public record.*

Mr Lombard: *I am advised that a review has been done—and I am advised that a review has been done with the support of our legal counsel. There are aspects of your question that I believe will be answered as part of the in camera component, as it infringes on the rights and privacy of individuals.*

Chairman: *Have WHK, since taking over the role from KPMG, been contacted by either APRA or ASIC in relation to anything that you audit in terms of Astarra or any of the Trio entity? Have you been contacted or not by APRA or ASIC?*

Mr Lombard: *I have not.*

Chairman: *Has WHK? It is hard to believe that you would not know; it really is. It makes it very difficult for us to take your evidence seriously.*

Mr Lombard: *Mr Chairman, I do know, but it is—*

Chairman: *It is just a simple, 'Yes, we have been contacted,' or, 'No, we have not.'*

Mr Lombard: *Yes, individuals in our organisation have been contacted.*

Chairman: *No, WHK is an organisation. I do not suspect people are just having private cups of coffee. They have done it in the capacity of either APRA or ASIC as the two regulators in relation to WHK in their role as auditors.*

Mr Lombard: *Can I just ask my colleague a question?*

Chairman: *Sure.*

Mr Lombard: *Mr Chairman, we have had a document notice from ASIC. That is the only information that we have received from them.*

Senator Boyce: *What is a document notice?*

Mr Lombard: *I do not know.*

Mr Griffin: *Do any of the gentleman behind you know?*

Mr Lombard: *I am sure they do.*

Chairman: *Can you take it on notice and give to us something of meaning.*

Senator Boyce: *You may not be able to tell us what it says but you can tell us what sort of information it has.*

Chairman: *I do not see why you would not be able to do either, but just take it on notice and come back to us because we do not have that much time.*

Mr Lombard: *Okay.*

Chairman: *I call Senator Stephens, and then I think we will go in camera to try to deal with this.*

Senator Stephens: *I am sure, Mr Lombard, you appreciate that this has been a very public inquiry and a lot of people are paying attention to all the evidence that is being expressed here. My very simple question, following on from Mr Ripoll, is: have the company WHK evaluated what the reputational risk has been to your company of your participation in these events?*

Mr Lombard: *It would be a lot easier to answer your question if we were in camera—*

Senator Stephens: *We can go to it again.*

Mr Lombard: *I am happy to come back to it. But clearly we are waiting for organisations like ASIC to complete processes that are currently underway, which will clearly determine and actually will resolve a number of the questions that have been asked. There have been questions about whether the individual is still working at WHK, your question, the questions surrounding whether we have done a review of the file and those sorts of things. Do I think about that? Of course I do, in my role as the CEO. That is something that we take extremely seriously. But, as I have said, we believe that we have acted—and I am advised that we have acted—correctly as auditors in accordance with Corporations Law and all of the associated standards. That is the advice I have received. Again, I am not an auditor, but the advice I have been given is that that is the case, and I accept that advice absolutely as the managing director of the company.*

Evidence was then taken in camera.²⁰

Lack of transparency:

There's no publicly available information about the in-camera discussion between the Committee, Lombard and Gavens. The Parliamentary Joint Committee found, *'much of WHK's public evidence to the committee unacceptable. In particular, it is surprising that the Managing Director of a company responsible for auditing the financial statements of a company involved in one of the most significant and serious fraud cases in Australian history, could not have read his own company's internal review of this experience. That he should appear before a parliamentary committee to give evidence on matters relating to the collapse of Trio Capital without having read and considered this review is insulting to the committee.'*²¹

The PJC also noted that,

*'The committee is particularly concerned at the 'expectation gap' between what is expected of auditors and what they are actually responsible for doing. ... Clearly in the case of Trio, the requirement for the auditors to demonstrate 'professional scepticism' about the information given to them was insufficient to prevent the loss of investors' funds.'*²²

The PJC said,

*'KPMG was the auditor responsible for Trio Capital's compliance plan. Remarkably, its submission to an inquiry into the collapse of Trio Capital contained not one mention of Trio Capital. Given that KPMG had responsibility for Trio's compliance plan, the committee finds this most peculiar. Again, the committee urges ASIC to thoroughly investigate the quality of KPMG's auditing in the Trio case, if it has not done so already.'*²³ and Ref.

²⁰ Official Committee Hansard, Parliamentary Joint Committee On Corporations And Financial Services, Collapse Of Trio Capital, Canberra 4 November 2011 Pages 1 to 7

²¹ PJC Report May 2012 Page 92

²² PJC Report May 2012 Page 130

²³ PJC Report May 2012 Page 92 and Ref. There was one reference in the opening paragraph to the submission being made to the 'Inquiry into the collapse of Trio Capital Limited'.

Seemingly ASIC don't expect the auditor to detect fraud or misconduct, unless it materially impacts the financial statements. The PJC found that,

*'...both the regulators and investors have expressed frustration at the role of Trio Capital's financial statement and compliance plan auditors, particularly their inability to verify information. The auditors cite the limitations on their role and that the primary responsibility for detecting fraud rests with the responsible entity. They note that auditors can only obtain reasonable assurance that a financial report is free from material misstatement, whether caused by fraud or error.'*²⁴

Yet elsewhere in the world, auditors have been held to account for their failure to see the red flags or to miss the warning signs of fraud.

At a PJC Hearing into the Trio fraud, Financial Adviser Mr Tarrant said,

'The first place to look when fraud is discovered is the audit process. In this case, we had WHK, the fifth largest audit firm in Australia as the external auditor, and KPMG, one of the largest in the world, as the internal compliance auditor.

*Both internal and external auditors KPMG & WHK signed off that systems internally were all working properly and that assets and performance of the fund were fairly stated, giving a true and fair view. The auditor's opinion was unqualified and compliant with Australian Accounting Standards, the Corporations Regulations, as well as, with International Financial Reporting Standards'*²⁵

Auditors around the world face accountability charges in cases of fraud

There are examples in Ukraine, United Kingdom and United States where auditing firms have lost contracts with banks and fines for failing to identify 'fraud'. Auditors are now often questioned over their failure to identify misconduct. For example,

*'The Bank of England has probed the strength of KPMG's business after a string of high-profile corporate scandals damaged the reputation of the Big Four accounting firm. ... These problems came to the fore in 2002 when Arthur Andersen, then one of the Big Five auditors, collapsed following the Enron accounting scandal. ... In the UK, the accounting watchdog last month (2018) rebuked the firm for an "unacceptable deterioration" in the quality of audit work it performs for Britain's largest publicly traded companies. KPMG is also under investigation over its audit of Carillion. ... In South Africa, KPMG is under investigation by two local regulators, has been banned from auditing public institutions and has lost several important clients, including Barclays Africa. ... In the US, the Securities and Exchange Commission in January charged three former KPMG partners with leaking confidential information in a bid to improve inspection results for the firm. ... The firm's work for Abraaj, the troubled Dubai-based private equity fund, has also drawn criticism'*²⁶.

In 2019 in the United Kingdom, *'KPMG was fined £5m and "severely reprimanded" after admitting misconduct in its 2009 audit of Co-operative Bank. The Financial Reporting Council (FRC) said KPMG's deficiencies included "failures to exercise sufficient professional scepticism"*²⁷.

²⁴ PJC Report 2012 *Op. cit.* Page 123

²⁵ PJC Report May 2012 Page 104 and Ref. Mr Ross Tarrant, Submission 35, p. 4.

²⁶ M Marriage & P Jenkins Bank of England probed risks to KPMG's viability after string of scandals 20 July 2018

<https://www.ft.com/content/0fb845e0-8b5b-11e8-b18d-0181731a0340>

²⁷ KPMG fined £5m over Co-operative Bank audit 8 May 2019

<https://www.bbc.com/news/business-48198385>

Also in UK, the big four accountancy firms are currently (2019) under review by the Competition and Markets Authority (CMA), which has proposed an internal split between their audit and non-audit businesses to prevent conflicts of interest in audits... and urging a full structural break up of the firms. - Deloitte, EY, KPMG and PwC currently conduct 97% of big companies' audits.²⁸

ASIC failed to see the warnings surrounding the Trio fraud

In 2013 ASIC Chairman, Greg Medcraft, *told a forum that experience has taught him "disclosure doesn't work, in many cases", that auditing often does more to hide corruption than expose it, and that "we can't have cops on every street corner".*²⁹

Medcraft's prognosis is unacceptable and unsatisfactory. His statement should've set-off alarm bells. He's not assuring the millions of Australians who are compelled into superannuation that their money is safe. When Mr Medcraft retired from ASIC, he warned in an interview on ABC Radio³⁰ (03.11.2017) that Australia could have an Enron-style corporate collapse if the accounting firms Deloitte, KPMG, PWC and Ernst and Young don't improve their auditing standards.

Questions about Trio raised by an investigative journalist in 2010

Investigative journalist Stewart Washington questioned the auditing of Trio, saying, *Trio Capital is the responsible entity and a responsible entity has legal obligations to employ a series of third-party gatekeepers, such as the auditor. WHK was a listed accounting business for Trio. KPMG was paid to perform another gatekeeping role... but it is unclear whether KPMG's audit asked questions of Trio.*

Washington continues, *Particularly when the scheme's financial position as at June 30th 2009 showed that \$47 million was transferred between Trio funds, with an overseas fund expanding to \$75 million. KPMG's should have asked:*

Where did the \$47 million come from?

Who moved it?

Why the rush on June 30th?

Why were these transactions going unreported in annual reports?

*The June 30th movement of \$47 million into one of Trio's offshore fund, affecting several other Trio funds, was not something that was noted in particular. KPMG signed off on all the affected funds' compliance plans.*³¹

No one to-date has answered Mr Washington's questions.

The PJC questioned Howard Insall SC about Trio's audits:

The Parliamentary Joint Committee on Corporations and Financial Services hearing in Sydney into the Collapse of Trio Capital, 4 April 2012, questioned the Chairperson, of

²⁸ Ibid.

²⁹ Richard Cooke The poor face onerous rules while rich corporations avoid tax with impunity <https://www.themonthly.com.au/issue/2014/november/1414760400/richard-cooke/much-obliged>

³⁰ Peter Ryan on AM - Poor auditing risks Enron-style collapses: ASIC boss 03.11.2017 <http://www.abc.net.au/radio/programs/am/poor-auditing-risks-enron-style-collapses-asic-boss/9114592> <http://www.abc.net.au/news/2017-11-03/asic-boss-concerned-over-poor-auditing/9114490>

³¹ Stuart Washington Trio problems are a failure on the part of its gatekeepers Jan 2 2010 <http://www.smh.com.au/business/trio-problems-are-a-failure-on-the-part-of-its-gatekeepers-20100101-llqf.html>

Companies Auditors and Liquidators Disciplinary Board, Mr Howard Insall SC about Trio's audits. Does the Trio investigation stand beside world best standards?

Senator Thistlethwaite asked,

*'In respect of the auditing profession: the average Australian would probably believe that, if the accounts of a particular company or managed fund had been audited, there is an extra level of protection that they have there and they could safely assume that the funds in the accounts that had been audited are indeed there. In the case of this particular matter—Trio and certain funds in 2008-09—I understand that the funds were audited but the money evidently was not there. From the perspective of the Australian public, how does that happen? How can the Australian public have any confidence in the role of auditors if that can happen and no - one-particularly the auditing companies - appears to be able to get away with it?'*³²

Mr Insall: *It is not really a question that I can answer as chairperson of the board.*

Senator Thistlethwaite: *In a general sense, then, is it a requirement for an auditor to verify that the underlying assets are actually there?*

Mr Insall: *That is a complicated question. I am not an auditor myself—I am a practicing barrister—but I do understand something about the way that auditors operate.*³³

Senator Sherry asked the General Manager of Enforcement at APRA, Mr Louis Serret, *'In relation to the action against the auditor, Mr Frazer, and the undertaking, are you aware of whether there is any other activity involving the auditing firm, or as far as you know is that the end of the matter with respect to auditors?'*

Mr Serrett: *Of WHK?*

Senator Sherry: *Yes.*

Mr Serrett: *I understand that is the end of the matter.*

Senator Sherry: *You understand that is the end of the matter with respect to WHK?*

Mr Serrett: *Correct.*

Evidence-based auditing

ASIC allowed misstatements, error and fraud. Consumers including financial advisors rely on honest auditing that is lawful and in accordance with the financial reporting framework.

ASIC did not provide an accurate account of how Trio's money disappeared or explain why no one bothered to follow the money trail. Instead ASIC politicised the crime and pointed blame at financial advice and the victims. The auditing issue escaped the spotlight.

³² Official Committee Hansard, Parliamentary Joint Committee On Corporations And Financial Services Hearing into the Collapse of Trio Capital, Sydney 4 April 2012 pp 2 and 3

³³ Ibid.

5. Money Laundering:

Attorney-General Mr Porter in the Australian Financial Review (25.09.2020) said, *'...Westpac's fine ... should serve as a 'wake-up call to every other financial institution' that the government expected strict obedience with anti—money laundering (AML) laws to protect Australians from criminal activity.'*

Really, the first 'wake-up call', the AML/CTF Act 2006 is 14-years old! During that 14-year period, the Trio Capital Limited custodians were on duty when nearly \$200 million disappeared. How did Trio transfer through a bank, a single transfer of \$50 million, to a foreign tax haven without raising a suspicious transaction report?

ASIC, APRA and AUSTRAC during the Trio investigation (2010 to 2012) did not ask any questions about the \$50m transfer nor did they question Trio's custodians – the ANZ Nominees Limited, member of the Australia and New Zealand Banking Group Limited; and the National Australia Trustees, member of the National Australia Bank group. It appears no questions were asked about the custodian's obligations under The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act). The Trio victims and public have no knowledge of whether ANZ or NAB met their obligations and responsibilities under anti-money laundering laws.

In May 2012, the Parliamentary Joint Committee on Corporations and Financial Services, Inquiry into the collapse of Trio Capital, (PJC Report) said,

'The custodian (in Trio's case, the National Australia Bank) does very little to protect the funds of investors. It makes no independent checks before transferring money offshore. Instead, the custodian simply acts on the instructions of the responsible entity'.³⁴ Also, '... the custodian does not have the expertise to question underlying values of either domestic or offshore funds.'³⁵

The PJC added,

'The committee did not receive a submission, or take direct evidence from the Australian Reports and Analysis Centre (AUSTRAC). It does appear, however, that AUSTRAC was not given any significant information from the various gatekeepers alerting it to suspicious activity in Trio Capital. In this context, questions must be raised as to whether the gatekeepers— particularly the financial advisers and custodians—conducted due diligence when taking on prospective clients.'³⁶

³⁴ PJC Report May 2012 Page 123

³⁵ PJC Report May 2012 Page 123

³⁶ PJC Report May 2012 Page 145

Ultimately, Australians did not benefit from any protection offered by the AML/CTF Act. The money laundering through the ATM's at the Commonwealth Bank was discovered after the surveillance of drug syndicates and outlaw motorcycle gangs. Westpac's money laundering was discovered through investigations into people supporting human trafficking and Paedophilia. Trio's money laundering made John Hempton³⁷ suspicious in 2010 when he found Trio's Absolute Alpha was linked to Paradigm Global in the United States. Paradigm Global was an asset manager, owned by James and Hunter Biden. Mr Hempton claimed, Paradigm had a history of being associated with scams and the connection with Trio alarmed him so he alerted ASIC. There is no evidence that an investigation was carried out into the Paradigm connection. Ten years later, October 2020, Hunter Biden is embroiled in alleged money laundering dealings in Ukraine.

Some of the characters that owned and operated Trio faced court in the United States for fraud. American lawyer Jack Flader, and business partner, Scottish accountant James Sutherland worked with the Jeeves Group, a fiduciary service provider based in Liechtenstein. The Jeeves Group faced money-laundering charges in more than one country.

In 2002, the United States Treasury Undersecretary travelled to Liechtenstein as Washington had identified a dozen top al-Qaeda financial backers who were funnelling donations through a number of tax havens in Europe, such as The Jeeves Group. But the Jeeves Group refused to provide information to the Bundesnachrichtendienst (BND) (German intelligence agency) or the United Kingdom's Serious Fraud Office, due to client confidentiality.

In 2009, Mr Flader, Mr Sutherland and the Jeeves Group were found by the US District Court in Charleston, South Carolina of operating a \$billion Ponzi stock-loan program that ripped off investors and paid \$US100 million to its promoters. The court ordered them to pay \$157 million each, for breaching multiple laws by committing mail fraud, wire fraud, securities fraud and money laundering. They were fined under '*Racketeer influenced and corrupt organisations*' (RICO).

In 2011, Mr Flader sold his Hong Kong based company Global Consultants and Services Limited (GCSL) to The Jeeves Group. When Robert Maxwell raided millions of pounds

³⁷ John Hempton Bronte Capital January 2, 2010
<http://brontecapital.blogspot.com/search?q=trio>

from the coffers of his public companies and their pension funds, some of the money ended up in Liechtenstein trusts. The territory's banking secrecy didn't allow the administrators or the Serious Fraud Office to access Maxwell's information. Australian law enforcement and financial regulators did not confirm or deny if money-laundering tactics were used by Trio to make the money disappear.

In early 2016, Mr Flader and Mr Sutherland faced the charge laid by the Serious Fraud Office (SFO) of 'entering into or becoming concerned in a money-laundering arrangement that had targeted more than 1,000 investors in the U.K. After a nine-week trial, the Southwark Crown Court jury acquitted Sutherland and Flader of laundering the proceeds contrary to Section 328 of the Proceeds of Crime Act 2002'.³⁸

During the hearing, the court learned that,

'over seven years of investigation, fraud police had uncovered a network of offshore companies and bank accounts across Europe and the world, through which "multiple unnecessary movements of money" were used to launder the fraud's proceeds, make them clean and untraceable and then distribute them back to those involved in the fraud. The entire edifice of companies and accounts was set up to deceive.

*The two accused money launderers were directors and managers of that process, bank signatories and in some cases even the beneficial owners of the companies involved.'*³⁹

The Trio fraud appears as an example of how fraudsters outsmarted law enforcement and financial regulators. ASIC and AUSTRAC did nothing to prevent money laundering or minimise the risk to Australians, and also did nothing to help the creditors get their savings back.

³⁸ <https://beta.sfo.gov.uk/cases/james-sutherland-jack-flader/>

³⁹ Nick Miller Busting the boiler room March 28, 2016

<http://www.smh.com.au/business/markets/busting-the-boiler-room-20160323-gnpuxj.html>

6. Systemic issues.

The systemic issue in regards to Trio occurred when some of the various parts of the financial system became corrupted and deceived the other parts and the regulators covered up the mess. The deception undermined well intended consumer due diligence and the safety of the creditors was compromised and justice denied by misinformation.

In 2011, in regards to the Trio fraud Senator Sue Boyce said,
"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."

APRA's Chairman Mr Ross Jones replied 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."*⁴⁰

At a 2013 Parliamentary Joint Committee Statutory Oversight, the Committee noted the limitation of ASIC's Trio investigation,

*"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."*⁴¹

Despite the regulatory weaknesses as pointed out above, Treasury's media statement (1.04.2016) said, *'The Government considered the action taken by the financial regulators, ASIC and APRA, and is satisfied that in relation to the collapse of Trio, both regulators carried out their roles and responsibilities appropriately, in accordance with the law and the regulatory framework.'*

VOFF wrote an FOI to Treasury (12.02.2017) requesting the document to show what ASIC and APRA contribute to safeguard and protect superannuation including any report by APRA to alert Treasury of gaps in legislation. The process required the Treasury, the Ombudsman and the Information Commissioner before a redacted document was released. The following paragraph identifies an issue that is contrary to the Government's official narrative that blames financial advice,

"If this material were released, it would allow persons with malicious intentions to identify gaps and loopholes in the legislation that limit APRA's powers as the relevant regulator. This would then enable such people to more effectively exploit these gaps and loopholes, prejudicing APRA's effectiveness as a regulator. I have considered the age of the document, but consider that the risk in releasing this information still exists."

⁴⁰ Official Committee Hansard, Parliamentary Joint Committee On Corporations And Financial Services, Collapse of Trio Capital, 30 August 2011, p 41.

⁴¹ Parliamentary Joint Committee on Corporations and Financial Services, Statutory Oversight of the Australian Securities and Investments Commission, Number 2, May 2013 p 47

In 2012, the PJC Report refer to system failure and systemic weakness in the following context,

'ASIC offered pointed criticism of the role of the auditors in the Trio case, but noted that this was due to systemic failure. As ASIC's Chairman told the committee, 'there are checks and balances that we felt were built into the managed investment scheme (MIS) system that are just not working the way perhaps it was contemplated originally'.⁴²

And the PJC Report noted,

The strength of single responsible entity regime is its clean lines of accountability. With some notable exceptions, most submitters supported the regime primarily for this reason. However, the system can falter when the responsible entity stalls and deceives. In these circumstances, as the Trio case amply demonstrates, there are various points of systemic weakness relating to the role of the regulators, the auditors, custodians, research houses and financial advisors.⁴³

In 2010, Mr Shorten reached the conclusion there were no system issues long before any evidence was in about the Trio fraud,

'While the Parliamentary Joint Committee on Corporations and Financial Services on the collapse of Trio Capital (the Trio Report) as well as the report by Mr Richard St. John on Compensation arrangements for consumers of financial services indicate no systemic issues in the regulation of the superannuation industry, they do recommend a range of improvements to governance arrangements to assist investors in understanding and managing risks.'⁴⁴

See extracts from correspondence between Treasury w. Information Commissioner (IC) pp 32-35; APRA w. IC pp 36-39; and Treasury w. IC pp 40-41. See also p 42 letter from Treasury's Principal Adviser, Retirement Income Policy Division dated 6 November 2018, pointed out to VOFF that the current regulatory regime is now significantly different from the regime that was in place at the time of the Trio fraud.

⁴² Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital May 2012 Page 129 and Ref. Mr Greg Medcraft, Chair, ASIC, Committee Hansard, 6 September 2011, p. 7.

⁴³ PJC Report May 2012 Page 154

⁴⁴ Comprehensive response to combating superannuation investment fraud <https://ministers.treasury.gov.au/ministers/bill-shorten-2010/media-releases/comprehensive-response-combating-superannuation> Page 128



Australian Government
The Treasury

8 March 2018
FOI ref: 2088
OAIC ref: MR17/00343

Office of the Australian Information Commissioner

By email:

Confidential name & email

Notice of IC review and request for documents – John Telford and Treasury

Dear Ms Emery

I refer to your correspondence dated 14 February 2018, in relation to Mr John Telford's application for Information Commissioner review of the Treasury's decision under the *Freedom of Information Act 1982* (the Act) dated 24 March 2017.

Requested information

In your correspondence, you requested a further submission in support of the Treasury's original decision and previous submission to the OAIC on 21 August 2017. You advised that while you agree that the document under consideration does contain deliberative material, you were not satisfied on the basis of information provided to date that releasing the document would be contrary to the public interest.

I have considered the document again, and I now propose to release a revised version of the document to the applicant. I note that where I would have ordinarily issued a revised decision to the applicant under section 55G of the Act, you have advised that the application of section 55G is currently awaiting clarification by the Federal Court of Australia. Accordingly, you have requested that the revised decision be provided to you in the form of a submission.

A copy of the proposed document is at **Attachment A**.

A copy of further correspondence between the Treasury and the Australian Prudential Regulation Authority (APRA) is at **Attachment B**. If you have any questions about this correspondence, you may contact [REDACTED]

The Treasury's submissions in relation to the claimed exemptions in the proposed document are set out below.

Submission in support of the application of the subsection 37(2)(b) exemption

Section 37(2)(b) of the Act provides that a document is exempt if its disclosure would (or could reasonably be expected to) "disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures".

The marked sections of the document contain the opinions, advice and recommendations from APRA to the Treasury regarding legislative gaps relevant to the factual circumstances of the collapse of Trio Capital

Limited (Trio). These gaps are directly relevant to APRA's ability to prevent, detect, investigate and deal with matters arising out of breaches or evasions of the relevant laws.

If this material were released, it would allow persons with malicious intentions to identify gaps and loopholes in the legislation that limit APRA's powers as the relevant regulator. This would then enable such people to more effectively exploit these gaps and loopholes, prejudicing APRA's effectiveness as a regulator. I have considered the age of the document, but consider that the risk in releasing this information still exists.

While the Treasury would not suggest that Mr Telford has any intentions to undermine the legislation, I am conscious that the document cannot be released to Mr Telford in a controlled manner, meaning that the document would become available to anyone who wished to access this information.

On this basis, the Treasury submits that the document is partially exempt for the purposes of subsection 37(2)(b) of the Act.

Submission in support of the application of the subsection 47E(d) exemption

Section 47E(d) of the Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

As submitted in relation to the subsection 37(2)(b) exemption, the marked sections of the document contain the opinions, advice and recommendations from APRA to the Treasury regarding legislative gaps relevant to the factual circumstances of the collapse of Trio. These gaps are directly relevant to APRA's ability to prevent, detect, investigate and deal with matters arising out of breaches or evasions of the relevant laws.

If this material were released, then it would allow persons with malicious intentions to identify gaps and loopholes in the legislation that limit APRA's legal powers as the relevant regulator. This would then enable such people to more effectively exploit these gaps and loopholes. In order to counteract this harm, APRA would need to implement new methods of identifying and dealing with the increase in superannuation fraud, as well as implementing legislative change to close any gaps or loopholes in the legislation. Both of these processes are extremely time consuming and resource intensive, which would severely impact the APRA's ability to conduct their operations properly and efficiently.

Public interest

Section 11A(5) of the Act provides that conditionally exempt material must be released unless its disclosure would be contrary to the public interest.

While the document in question relates to legislative gaps and there may be some public interest in debating the opinions, advice and recommendations from APRA, there is a far more significant public interest in government agencies being able to undertake their responsibilities in the most efficient and effective manner possible. This efficiency reduces the amount of resourcing needed for regulators in particular to function optimally, which in turn reduces the burden on taxpayers.

On this basis, the Treasury submits that the document is conditionally exempt in part for the purposes of subsection 47E(d) of the Act, and disclosure would be contrary to the public interest.

Submission in support of the application of the subsection 47F(1) exemption

Section 47F of the Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person.

The document in question contains the names of a number of APRA employees who were courtesy copied (CC'd) into the email from Mr Taylor to Ms Kane. I consider these names to be personal information. As none of the named employees contributed to the substance of this email, and do not appear to be directly relevant to the FOI request, then I consider it would be unreasonable to disclose their names in this case.

Public interest

Section 11A(5) of the Act provides that conditionally exempt material must be released unless its disclosure would be contrary to the public interest.

I do not consider that the information is well known; that the persons named are known to have been associated with the matters in the document; or that the names are available from publicly accessible sources.

Further, I do not consider that these names would inform debate on a matter of public importance, would promote effective oversight of public expenditure, or would allow a person to access his or her personal information. I consider that releasing the names would only promote the objects of the Act in the most general sense, in that releasing information of any kind supports this objective.

I do consider that there is a broad public interest in allowing public servants to undertake their regular duties in an expected and appropriate way. Where there is no suggestion that a public servant (particularly a junior officer) has done anything inappropriate, I consider that the public interest is in public servants enjoying the same rights to privacy as the general public. I consider this particularly true in regard to this document, where the inclusion of the officers so marked does not inform or contribute to the substance of the document in any way.

On this basis, the Treasury submits that the document is conditionally exempt in part for the purposes of subsection 47F(1) of the Act, and disclosure would be contrary to the public interest.

Submission in support of the application of the subsection 22(1)(a)(ii) deletion

Section 22 of the Act provides that sections of a document may be deleted where they are determined to be irrelevant to the request.

The first marked section relates to the processing of the FOI request; being the forwarding information of the original email. As this information was created after the Treasury received Mr Telford's original request, I consider it to be irrelevant.

The second marked section contains the names of a number of APRA employees who were courtesy copied (CC'd) into the email from Mr Taylor to Ms Kane. As none of these employees contributed to this email, and do not appear to be directly relevant to the FOI request, then I consider their names to be irrelevant in this case.

4

Next steps

The Treasury is willing to provide further submissions in relation to the review if required.

Should you have any enquiries concerning the matter, please email FOI@treasury.gov.au.

Yours sincerely



Blocked due to confidentiality

Principal Adviser
Fiscal Group

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY
1 Martin Place (Level 12), Sydney, NSW 2000
GPO Box 9836, Sydney, NSW 2001
T 02 9210 3000 | W www.apra.gov.au



APRA

8 May 2018



Freedom of Information Officer
The Treasury
Langton Crescent
Parkes ACT 2600

By email: foi@treasury.gov.au

Dear Brad

INFORMATION COMMISSIONER REVIEW – MR17/00343
Request from Mr John Telford, on behalf of Victims of Financial Fraud (VOFF)

1. Thank you for inviting APRA to make submissions in relation to the above Information Commissioner review (**IC review**).
2. APRA consents to a copy of this letter being provided to the Office of the Australian Information Commissioner (**OAIC**) for the purpose of conducting the IC review. APRA requests that this letter be kept confidential and not be provided to the applicant, as it contains reference to the content of the document subject to this review. In accordance with the OAIC's email dated 7 May 2018, APRA has provided a separate version of the submission that can be shared with the applicant.
3. APRA has set out its submissions using the headings provided in the email dated 19 April 2018 from the OAIC to the Treasury.

Why exemptions were not relied on in original decision

4. In March 2017, the Treasury consulted with APRA in relation to the relevant document. APRA submitted that the document should be exempt in full as it contains deliberative material and disclosure would be contrary to the public interest. APRA did not consider that it was necessary to rely on further exemptions in its submissions. In the interest of time and cost efficiency APRA does not as a matter of practice rely on every available exemption when making a decision to release a document. Rather it relies on the strongest exemptions.
5. In March 2018, during the course of the Information Commissioner review, the Treasury recommended a partial release of the document with parts being redacted on the basis of the exemptions in sections 37(2)(b) and 47E(d). The Treasury's recommendation arose following the OAIC review officer indicating her preliminary view that there are strong public interest factors in favour of disclosure. APRA agrees with the approach proposed by the Treasury to partially release the document subject to the redaction of the exempt material.

The passage of time since the document was created

6. There have been no changes to the legislative provisions referred to in the relevant document since July 2012. [REDACTED]
7. There is general ongoing public debate about reforms needed to the superannuation framework to ensure that it remains fit for purpose as the superannuation industry continues to evolve and expand. Recent proposed reforms have focused on improving the legislative and regulatory framework, including through proposals to provide APRA with the power to issue directions [REDACTED]. These reforms have not to date been implemented, nor do they specifically address the gaps discussed in the relevant document. The gaps in the legislation identified in the relevant document still exist today.

Reasonable expectation

8. In the OAIC's email to the Treasury dated 1 May 2018, Ms Cameron stated 'it is my view that the Commissioner may not be satisfied that a discussion of the legislation is a method or procedure for the purposes of s 37(2)(b)'. In response, APRA considers that the relevant document is not merely a discussion of the legislation. [REDACTED]
9. [REDACTED]
10. Disclosure of the document therefore would, or would be reasonably likely to, prejudice the effectiveness of a [REDACTED] method used by APRA, as a person with malicious intent could use the information to identify and exploit the weaknesses [REDACTED]. Although some of the identified gaps in the SIS Act may be evident through studying the legislation, the relevant document draws particular attention to and explains what APRA considers to be weaknesses [REDACTED]. This analysis by APRA provides an additional layer of information which could be misused by a person with malicious intent.

■ [REDACTED]

12. This would prejudice the effectiveness of APRA's methods, as APRA's [REDACTED] method for dealing with the identified gaps in the SIS Act would be rendered ineffective.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

13. To counteract this harm, the legislation must be amended to close the identified gaps. Amendments to the legislative framework for superannuation are a matter for the Government. APRA is not aware of any plans to action reforms to address these legislative gaps in the short or medium term. It is a lengthy process to amend the legislation and there is a risk that individuals or entities would exploit the identified gaps in the intervening period.

Public interest factors

14. APRA agrees with the Treasury's submission that there is a significant public interest in government agencies being able to undertake their responsibilities in the most efficient and effective manner possible. As raised in the Treasury submission, efficiency reduces the amount of resourcing needed for regulators to function optimally, which is in the public interest.
15. APRA further submits that there is significant public interest in APRA being able to take appropriate enforcement action in relation to breaches of the SIS Act. Disclosure of the relevant document creates a heightened risk that APRA would be unable to prove a breach of the legislation due to individuals or entities exploiting the identified gaps and weaknesses in the current legislation.
16. Finally, APRA submits that there is significant public interest in preventing fraud from occurring in the superannuation industry. APRA considers that public confidence in superannuation is essential to the delivery of sound retirement outcomes for all Australians. Disclosure of the relevant document may facilitate the commission of fraud by enabling persons to exploit the identified gaps and weaknesses.
17. APRA considers that these public interest factors against disclosure equally apply to the section 47E(d) exemption and the section 47C exemption which, in APRA's view, is applicable to the redacted material. APRA considers that any public interest in debating

the issues raised in the relevant document is outweighed by the significant public interest factors against disclosure set out in paragraphs 14 to 16 above.

18. If you would like to discuss any aspect of this submission please contact me on

[Redacted]

Yours sincerely

[Redacted]

Senior Manager, Legal



Australian Government
The Treasury

14 May 2018
FOI ref: 2088
OAIC ref: MR17/00343

[Redacted]
Office of the Australian Information Commissioner
[Redacted]

Notice of IC review and request for documents – John Telford and Treasury

Dear Ms Cameron

I refer to your correspondence dated 19 April 2018, in relation to Mr John Telford's application for Information Commissioner review of Treasury's decision under the *Freedom of Information Act 1982* (the Act) dated 24 March 2017.

Requested information

In your correspondence, you requested a further submission in support of Treasury's original decision and previous submissions to the OAIC on 21 August 2017 and 8 March 2018. On 7 May you advised that Treasury could provide a confidential submission on this matter.

In support of this submission, and in order to address the substance of your questions, I sought a letter from APRA. I consider it most appropriate in this case for APRA to address the material harm that would come from releasing this document, as it is APRA's operations that would be so harmed.

The full confidential letter from APRA is at **Attachment A**.

A partially redacted version of the letter, which can be provided to the applicant, is at **Attachment B**.

Treasury's submissions in relation to the questions you raised are set out below, and can be provided to the applicant in full.

Submissions about why exemptions were not relied on in original decision

The original decision was made to exempt the document in full, and the deliberative exemption provision was applied in relation to the entire document.

The proposed revised decision is to exempt the document in part. The exemption provisions recommended for this revised decision are applicable only to certain parts of the document, and would not have been appropriate to apply to the entire document in the first instance.

Treasury maintains that the suggested exemption provisions are applicable to the sections of the document as previously recommended.

Submissions about the passage of time since the document was created

APRA has asserted that the risks discussed in the document are still relevant. Treasury supports APRA's assertion.

Reasonable expectation

The reasonable expectation of harm is demonstrated within the document itself. Mr Telford has made a significant number of public statements about the actual harm that was caused to him, and others, by the collapse of Trio Capital. Within the document, the author specifically describes the relationship between the legislation and the investigation into Trio Capital that led to this harm.

The discussion of the legislation, however, is not limited to Trio Capital. If the document were released, it would reasonably be expected that it would enable others to repeat the actions of Trio Capital. If this happened, then it would expose other people to the same actual harm that Mr Telford himself has been exposed.

Public interest factors

Treasury made submissions relating to public interest in its letter to the OAIC of 8 March 2018. APRA has made a further submission on this issue in the attached letter. Treasury has nothing more to add in support of these submissions.

The applicant's additional contentions

In his submission of 7 May 2018 Mr Telford has drawn a comparison between the document and the banking data breach. The situation that Mr Telford describes relates to notifying potentially affected persons of a privacy breach. Releasing the document would not alert any affected persons to any real or potential harm, but in actuality would expose people like Mr Telford to an increased risk of harm.

While I am sensitive to the fact that Mr Telford has not read the document, I respectfully disagree that the two situations are analogous.

Next steps

Treasury is willing to provide further submissions in relation to the review if required.

Should you have any enquiries concerning the matter, please email FOI@treasury.gov.au.

Yours sincerely,



Principal Adviser
Fiscal Group



Australian Government
The Treasury

Ref: MC18-007930

Mr John Telford
Secretary VOFF Inc
johnt@1earth.net

- 6 NOV 2018

Dear Mr Telford

Thank you for your correspondence of 24 October 2018 to the Treasurer concerning the collapse of Trio Capital. The Treasurer has asked me to respond to you.

On behalf of the Government I wish to express my sympathies to all investors affected by the Trio collapse, and to acknowledge the significant financial and personal stress that the collapse has caused them and their families, including to those who lost their entire retirement savings.

As you are aware, the Government has established a Royal Commission and appointed former High Court Judge, the Honourable Kenneth Madison Hayne AC QC, as Commissioner to inquire into the conduct of banks, superannuation and financial services entities to examine allegations of misconduct or conduct that falls below community expectations. The Royal Commission is examining similar issues to those you have raised in your letter and the Government will consider its response after the Commission reports in February 2019.

I note that the current regulatory regime is significantly different from the regime that was in place at the time of the Trio Capital collapse, in part because of the lessons learned from the collapse. In addition, the Government remains committed to the comprehensive package of superannuation reforms it introduced into Parliament last year. As part of this Member Outcomes package, before a change of ownership of a trustee can occur, the potential owner would need to obtain APRA approval. Changes to superannuation director penalties will address a gap in the criminal and civil penalty framework concerning misconduct of a superannuation trustee director. The measure will ensure that superannuation trustee directors are held accountable for their conduct in the same way as directors of managed investment schemes (consistent with Financial System Inquiry Recommendation 13).

More information on the package can be found at: <http://kmo.ministers.treasury.gov.au/media-release/093-2017/>.

Yours sincerely



Confidential name & signature

Principal Adviser
Retirement Income Policy Division

7. AIDE MEMOIRE Document

Author / investigative journalist Adele Ferguson published 'Banking Bad' shortly after the close of Kenneth Hayne's Banking Royal Commission. In Banking Bad she points to an 8-page document circulated within government, dated 10.12.2015 that was damning of ASIC.⁴⁵ That's 4 months before the Minister for Small Business and Assistant Treasurer Ms Kelly O'Dwyer released Treasury's media statement (1.04.2016) - stating,

*"The Government considered the action taken by the financial regulators, ASIC and APRA, and is satisfied that in relation to the collapse of Trio, both regulators carried out their roles and responsibilities appropriately, in accordance with the law and the regulatory framework."*⁴⁶

Then 4 weeks later, in May 2016, the Financial Sector Advisory Council (FSAC), presented the Government with advice on the performance of the regulators - ASIC, APRA and the Reserve Bank - and on policies relating to the financial system, including potential areas for regulatory reforms.

The aide memoire document and the advice by FSAC including the more recent 2018 and 2019 findings by The Banking Royal Commission (FSRC) and the Productivity Commission (PC) lean towards what Alan Fels calls a, "*severe dereliction of duties by both regulators*".⁴⁷

Hard evidence suggests the Government misinformed the public when it stated that ASIC and APRA handled Trio appropriately. It was a misleading statement that resulted in the closing of the Trio matter. In other words, Trio was closed based on a lie. A lie that ultimately denied honest hard-working Australians natural justice. The Government failed to stocktake the appalling regulatory failure and harm done against more than a thousand Trio victims.

See 3 of the 8-page aide memoire document pp 44-46. The remaining 5-pages are redacted under section 47C of the Freedom of Information Act.

⁴⁵ Adele Ferguson Banking Bad, Published by Harper Collins Australia 2019 Page 183

⁴⁶ Government decision on financial assistance relating to the collapse of Trio Capital <http://kmo.ministers.treasury.gov.au/media-release/032-2016/>

⁴⁷ Allan Fels, *Tough Customer Chasing a better deal for battlers* Melbourne University Press 2019 Page 101



Australian Government
ASIC Capability Review

CONFIDENTIAL

10 December 2015

The Hon Kelly O'Dwyer MP
Minister for Small Business and Assistant Treasurer
Parliament House
CANBERRA ACT 2600

<https://treasury.gov.au/sites/default/files/2019-03/FOI-2348-documents-final-2.pdf>

Dear Minister

Fit for the Future – A Capability Review of ASIC
Panel aide memoire on ASIC's Response on the Panel's Report to Government

Further to our recent meeting with you to present and discuss our Report, *Fit for the Future – A Capability Review of ASIC*, the Panel would like to take the opportunity to provide you with a comprehensive record of our reactions to *ASIC's Response on the Panel's Report to Government*, authored by the ASIC Commissioners and provided to the Panel on 4th December.

As previously discussed, the document was only received by the Panel after the finalisation of our Report to you. Given that the Panel did not have the opportunity to reflect our views on ASIC's response in the Report, as had originally been agreed with ASIC upon commencement of the Review, we thought it important to do so for your benefit in this letter. The letter contains a summary of the document's contents, s 47C and s 47E(d)

SUMMARY OF ASIC'S RESPONSE

The overall tone of the document is one of positive engagement, and ASIC actively endorses a number of the Panel's key findings. For example, ASIC agrees with the Panel on the need to improve performance measurement; the importance of cultural improvement; challenges and priorities around the IT infrastructure and the need to upgrade it; and opportunities to get better at external engagement. Overall, ASIC indicates that it supports 29 out of 34 of the Panel's recommendations.

s 47C and s 47E(d) the 29 proposals ASIC endorses, for almost half of them ASIC claims that the recommendation is either current ASIC practice, or is in the process of being implemented. For example, ASIC indicates that it supports Recommendation 8, (implementation of a periodic forward looking skills gap assessment of the Commission), but also states that this reflects ASIC's current practice. s 47C and s 47E(d)

CONFIDENTIAL

More directly, ASIC's response disputes the Panel's findings s 47C and s 47E(d) .

These include in particular:

- The 'expectations gap' – ASIC believes the significance and extent of the expectations gap (referring to both differences between ASIC's perceptions and stakeholder perceptions, as well as the gap between expectations of what ASIC can achieve and what is realistic) is exaggerated in the Panel's report.
- Commissioner time split between strategic and operational matters – ASIC challenges the Panel's conclusions about how the Commissioners divide their time between strategic and operational matters, as well as some of the analysis on which this conclusion is based.
- Characterisation of ASIC's cultural problems – ASIC rejects the Panel's finding that its organisational culture is variable and can tend to be overly defensive, inward looking, risk averse and reactive. ASIC indicates that it does not believe there is sufficient evidence to support this conclusion and instead refers to previous culture exercises it has conducted internally with different results. ASIC also points to various 'organisational health' indicators such as Comcare claims, turnover, absenteeism, etc. in support of its position.
- Deregulation effectiveness – ASIC does not agree with the finding that it has failed to articulate its approach to delivery on its deregulation objectives, and reiterates the successes it has had with deregulation.
- 'Future-proofing' – ASIC believes the Panel's finding that it has not been sufficiently 'future-proofing' its IT investments to ensure they are suitable for future needs is inaccurate. In support of this position, ASIC references its choice of Microsoft as software vendor.

The Response document also directly disagrees with the Panel's recommendations in a number of areas, s 47C and s 47E(d) those related to internal governance and leadership – s 47C and s 47E(d)

ASIC objects to the recommendations that the Commissioners move into a full-time non-executive governance role; a Head of Office (HoO) role be established with the Senior Executive Leaders (SELs) reporting into it; and that the SELs be delegated executive responsibilities.

In making this objection, they refer to the time use analysis concerns (raised above) and concerns about how well the proposed new model will work. The key concern with the HoO role is its scope of responsibilities, although cost implications are also raised. ASIC also claims that it is not possible to distinguish strategic and operational matters in a regulatory context.

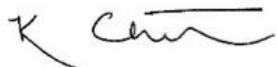
Finally, ASIC rejects the Panel's recommendation that it rebalance its emphasis on enforcement in its public communications. s 47C and s 47E(d)

s 47C and s 47E(d)


s 47C and s 47E(d)

We trust that this letter will be of use to you in your consideration of our Report and its recommendations, and we stand ready to discuss any matter with you and your Office should further clarification be required.

Yours sincerely



Karen Chester
Chair



Mark Gray
Member



David Galbally AM QC
Member

Pages 6 to 8 have been redacted under s 47C and s 47E(d)

8. EXEMPTION FORM for AML/CTF Act

• **First attempt**, Freedom of Information request (No 45) to the Australian Transaction Reports and Analysis Centre (AUSTRAC), dated May 29th 2013, sought the Exemption document⁴⁸ to waive the Absolute Alpha fund from AML/CTF legislation.⁴⁹ VOFF already had a copy of the Exemption but didn't know if the document was authentic.

30 May 2013, AUSTRAC said, "*AUSTRAC does not grant waivers for international funds transfers for reporting entities.*"

15 July 2017, AUSTRAC provided three documents, but no 'exemption' document.

• **Second attempt** – VOFF FOI (No 422) to AUSTRAC dated February 22, 2016, requested:

- Copy of Absolute Alpha's request for an exemption / waiver.
- Copy of AUSTRAC's acknowledgement of the \$50 million transferred by Rex Phillipott into one of Trio Capital's overseas hedge funds in 2009.

24 March 2016, AUSTRAC refused the 'exception' doc under Section 24A of the FOI Act, saying documents cannot be found or do not exist.

On **8 April 2016** VOFF sent AUSTRAC a copy of the "exemption" document. See attachment pp 48-49.

On **1 June 2016** AUSTRAC sent express post a 7-page document. See pp 50-56.

There was no mention by ASIC, APRA, or Trio's liquidator PPB Advisory about the Absolute Alpha exemption. The PJC Report made no mention about the exemption. It is unknown whether the exemption helped the Trio scheme make money disappear. Did the "exemption" allow Trio to avoid AML/CTF obligations and allow the auditor to turn a blind eye to potential money laundering?

⁴⁸ Absolute Alpha Pty Limited ABN 24 113 940 953, Registration Date: 22/04/2005 with the Australian Securities & Investments Commission (ASIC), Australian Financial Services Licence (AFSL) Rep No. 28937 and is appointed as an authorized representative of Wright Global Investments Pty Ltd. Absolute Alpha Pty Ltd is an Authorised Representative of Wright Global Investments Pty Ltd, AFSL 225058. Absolute Alpha Pty Limited changed its name in August 2009 to Astarra Asset Management Pty Limited and was the investment manager and External Administration for the Astarra Strategic Fund (ASF). Shawn Richard was a director of Absolute Alpha.

⁴⁹ Note. Absolute Alpha was a fund of hedge funds based in Australia and started in August 2005. In 2006–2007 Research house Van Mac gave Absolute Alpha a 5 star rating. Absolute Alpha was the investment manager of the Astarra Strategic Fund (ASF). In August 2009, Absolute Alpha renamed to 'Astarra Asset Management' (AAM).



Australian Government
Australian Transaction Reports
and Analysis Centre

Exemption

Section 248 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

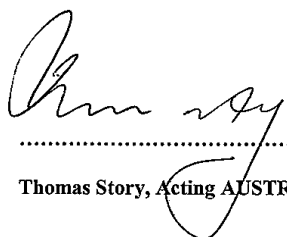
I, Thomas Story, Acting AUSTRAC CEO, pursuant to paragraph 248(1)(a) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)*, hereby exempt Absolute Alpha Pty Ltd ACN 113 940 953 of Suite 5302 Level 53, MLC Centre, 19-29 Martin Place, Sydney NSW 2000 from the following specified provisions of the AML/CTF Act:


- (a) sections 1-252

Conditions

Pursuant to paragraph 248(2)(b) of the AML/CTF Act, the exemption is subject to the following conditions:

1. Absolute Alpha must inform the AUSTRAC CEO or delegate of any changes that may affect the exemption and/or conditions imposed by this written instrument within 14 days from when the change affecting the exemption occurs.


.....
Thomas Story, Acting AUSTRAC CEO


.....2008



Australian Government
Australian Transaction Reports
and Analysis Centre

Exemption

Section 248 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

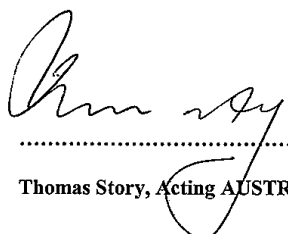
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.....
Thomas Story, Acting AUSTRAC CEO


.....2008

**Australian Transaction Reports
and Analysis Centre**
4 National Circuit
BARTON ACT 2600
Telephone +612 6120 2600



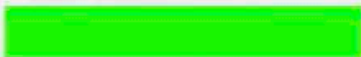
Australian Government
AUSTRAC

Correspondence
c/- Attorney-Generals Department
3-5 National Circuit
BARTON ACT 2600
Facsimile +612 6120 2601
www.austrac.gov.au

Our ref: 16/191

1 June 2016

Mr John Telford
Victims of Financial Fraud



Dear Mr Telford,

Freedom of Information request decision – Absolute Alpha

The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to your Freedom of Information request (FOI request) that was received on 8 April 2016 in which you sought access to documents in relation to Absolute Alpha, under the provisions of the *Freedom of Information Act 1982* (FOI Act), that you understood to be held at AUSTRAC.

The scope of your FOI request is as follows:

'The document showing how and by whom requested this exemption.'

In a telephone conversation of 8 April 2016, you confirmed that third party consultation was to be undertaken. Accordingly, AUSTRAC conducted third party consultation. Further, in accordance with section 15(6) of the FOI Act, an additional 30 days was added to the processing time to allow for consultation to be undertaken.

A search of the databases administered by AUSTRAC was conducted using the following search parameters:

Name	Absolute Alpha Pty Ltd
Address	Suite 5302 Level 53, MLC Centre, 19-29 Martin Place, Sydney NSW 2000
A.C.N.	113 940 953

The result of these searches revealed a total of **1 document**, consisting of 3 pages, within the scope of your request. I have examined the document and have decided to release the document in full.

Section 26 of the FOI Act requires AUSTRAC to provide a statement of reasons in support of a decision. My reason for this decision is set out in **Attachment A**.

The FOI Act provides a number of avenues for review if you are dissatisfied with any aspect of this decision. Your review rights are set out in **Attachment B**.

I have enclosed a copy of the released documents in accordance with the FOI Act. If you have any questions or require further information, please contact the decision maker on 02 6120 2630 or via email INFO_ACCESS@austrac.gov.au.

Yours sincerely



name & signature confidential

Authorised Decision Maker
AUSTRAC

enc: Document released under the FOI Act

ATTACHMENT A

Statement of Reasons

I, Suzie Sazdanovic, am an officer authorised under section 23 of the FOI Act to make a decision in relation to your request. The following is my decision and the reasons for that decision.

Overview

The examination of the documents in AUSTRAC's possession revealed that a total of **1 document** have been identified to be within the scope of your request.

I have examined the document and considered all the relevant factors including third party and internal consultation. I decided to release the document in full in accordance with the FOI Act.

Evidence/Material on which my findings were based

In reaching my decision to release the documents, I relied on the following documentary evidence:

- *Freedom of Information Act 1982*;
- Guidelines issued by the Australian Information Commissioner;
- third party and internal consultation;
- the documents falling within the scope of the request; and
- your FOI request received by AUSTRAC on 8 April 2016.

ATTACHMENT B

Review Rights

The following review rights apply.

Section 54 of the FOI Act gives you the right to apply for an internal review of the decision refusing to grant access to documents. An application for a review of the decision must be made in writing within 30 days of receipt of this letter. No particular form is required; however, it would assist the decision maker if the application grounds on which it is considered that the decision should be reviewed were set out.

Under section 53A of the FOI Act you may have ground for review under section 54 if you can establish that there are other documents held by AUSTRAC which have not been released.

Applications for review of the decision should be addressed to:

Australian Transaction Reports and Analysis Centre
Freedom of Information
c/- Attorney General's Department
3-5 National Circuit
BARTON ACT 2600
Facsimile +612 6120 2601
www.austrac.gov.au

It is not necessary to seek internal review before seeking review of the decision by the Australian Information Commissioner.

Office of the Australian Information Commissioner

As part of the 2016-17 Budget, the OAIC has been allocated \$37 million over the next four years to fund their ongoing Privacy and Freedom of Information functions. The OAIC will therefore remain operational and will continue to conduct Information Commissioner (IC) reviews.

IC review applications can be made to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001
enquiries@oaic.gov.au

For further information about IC reviews please refer to the OAIC website.

Administrative Appeals Tribunal

An application may be made to the Administrative Appeals Tribunal (AAT) after the OAIC has made a decision. The AAT may also review a decision by the OAIC not to undertake a review. An application must be submitted to the AAT within 28 days of being notified of the decision by the OAIC. The AAT can be contacted on 1300 366 700.

Complaints

If you are not satisfied with the way AUSTRAC has processed your Freedom of Information request, you can complain to the OAIC. A complaint must be made in writing and must identify AUSTRAC as the agency that made the decision. There is no particular form required to make a request, however, the complaint should set out the grounds on which it is considered the action taken in relation to the FOI request should be investigated. Complaints can be made to the OAIC at the address listed above.

For up to date information please visit the OAIC website at <https://www.oaic.gov.au>.



10 December 2007

The General Manager
Regulatory Policy
Australian Transaction Reports and Analysis Centre
PO Box 5516
WEST CHATSWOOD NSW 1515

Received
by Regulatory Policy
12 DEC 2007

Dear Sir/Madam

Absolute Alpha Pty Ltd ('Absolute Alpha')
**Request for exemption and modification under section 248 of the Anti-Money
Laundering and Counter-Terrorism Financing Act 2006 ('AML/CTF Act', 'Act')**

In accordance with section 248 of the AML/CTF Act, we wish to make a request to the AUSTRAC CEO to not treat Absolute Alpha as a Reporting Entity under section 6 of the AML/CTF Act.

With due respect, we will not be taking any action in respect of the requirements of the AML/CTF Act, in particular Part 10, including the requirements of the *Australian Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)* ('AML/CTF Rules') while awaiting the decision of the AUSTRAC CEO concerning our request.

Background

Absolute Alpha, an Australian registered company, is the *Investment Manager* of the Alpha Strategic Fund ('Fund'), a managed investment scheme (specialising in absolute return strategies), registered with the Australian Securities and Investments Commission. In that role, Absolute Alpha is liable and accountable to Astarra Capital Limited ('Astarra'), being the Fund's Responsible Entity ('RE').

Absolute Alpha assists the RE in formulating the investment objective and strategy for the Fund, and in particular, Absolute Alpha is responsible for the investment portfolio construction and selection of underlying fund managers. These activities are undertaken by Absolute Alpha within a strict compliance and risk management framework, which includes a due-diligence process. Absolute Alpha also assists with the marketing of the Fund, but is limited to providing general information only. Absolute Alpha only deals with dealer groups and not directly with investors in the Fund, nor does it hold money on behalf of investors or Astarra.

Investors in the Fund have no discretion to select underlying fund managers or where their funds should be invested in. This is because investments in the fund are **pooled** and invested with offshore underlying managers/funds, in accordance with the Fund's investment objective and strategy, via a *Deferred Purchase Agreement*.

Absolute Alpha Pty Ltd ABN 24 113 940 953, Level 53, MLC Centre, 19-29 Martin Place, SYDNEY NSW 2000
Telephone: +61 2 9233 9800 Facsimile: +61 2 9233 9810, Web: www.absolutealpha.com.au, Email: info@absolutealpha.com.au. Absolute Alpha Pty Ltd is a Corporate Representative of Wright Global Investments Pty Ltd AFSL 225058 and Solutions Wealth Strategies Pty Ltd AFSL 282103.

Deferred Purchase Agreement ('DPA') and Fund Investment Structure

The Fund has adopted an investment structure whereby certain parties, including:

- Absolute Alpha (as agent for Astarra);
- ANZ (as Fund Custodian and legal holder of Fund assets); and
- an off-shore counter-party (as a special purpose vehicle)

enter into a contract, referred to as DPA, for allocation or placement of investments with offshore underlying managers/funds, which may be taken to mean as 'acquisition of securities' (conversely, 'disposal of securities', where redemption or withdrawal of investments arises) under the AML/CTF Act.

In this exercise, the actual remittance of the pooled funds is made by ANZ (transferred by ANZ to the offshore underlying managers/funds in accordance with the terms of the DPA and the investment allocation portfolio developed by Absolute Alpha for the Fund).

Astarra

As the Fund's RE, Astarra is responsible for the overall management and administration of the Fund and its investments. Astarra (not Absolute Alpha) deals directly with investors in the Fund or their financial adviser/representative and is responsible for accepting and processing applications for investments in the Fund.

Astarra has appointed ANZ Banking Corporation (ANZ') as Custodian for the assets of the Fund.

Astarra is a Reporting Entity under the AML/CTF Act.

Designated service

It appears that due to the Fund's Investment Structure, in particular, the use of a DPA, Absolute Alpha, being an agent of Astarra for purposes of 'acquiring or disposing of a security' via the DPA, is considered as a Reporting Entity under the AML/CTF Act, specifically, Item 33 of section 6.

It should be noted that Astarra is the only customer of Absolute Alpha in so far as the AML/CTF Act is concerned.

We believe that Absolute Alpha would not have been considered a Reporting Entity in respect of designated services under Item 33, but for, Absolute Alpha being a party to the DPA. We also believe that this was an unintended consequence of the AML/CTF Act.

Other matters for consideration

In addition to the above, we offer the following in support of our request for exemption as a Reporting Entity under the AML/CTF Act.

Absolute Alpha Pty Ltd ABN 24 113 940 953, Level 53, MLC Centre, 19-29 Martin Place, SYDNEY NSW 2000
Telephone: +61 2 9233 9800 Facsimile: + 61 2 9233 9810, Web: www.absolutealpha.com.au, Email: info@absolutealpha.com.au. Absolute Alpha Pty Ltd is a Corporate Representative of Wright Global Investments Pty Ltd AFSL 225058 and Solutions Wealth Strategies Pty Ltd AFSL 282103.

- Absolute Alpha poses no risk to the integrity of the AML/CTF Act. Absolute Alpha does not deal directly with investors in the Fund nor does it transfer funds to underlying managers/funds in relation to individual investor's request. Transfer of funds under the DPA consists of pooled funds from a number of investors. Investors in the Fund have no discretion to direct which offshore underlying managers/funds should their investments be invested in.
- The granting of the exemption would be consistent with the intent and purpose of the AML/CTF Act. We believe that it is not the intent and purpose of the Act to consider entities such as Absolute Alpha, that does not deal directly with ultimate investors nor act on their behalf, as Reporting Entities.
- The level of the regulatory burden to which Absolute Alpha would be subjected to in relation to its sole customer, Astarra, which in its own right is a Reporting Entity under the AML/CTF Act, is not commensurate to the risk, if any (or lack of it), that may be applicable to Absolute Alpha. Our risk assessment of money laundering and terrorism activity for Absolute Alpha has yielded a 'highly unlikely' outcome.
- The reporting obligations under Part 3 of the Act has no direct application to Absolute Alpha. Reporting under Part 3, if any, will fall under Astarra's responsibility.

We are hoping for the favourable consideration of AUSTRAC's CEO on the matter.

Should you need more information, please do not hesitate to contact our Head of Compliance, Florissa Villavert on 02 9233 9820.

Yours faithfully



Shawn Richard
Chief Executive Officer

Absolute Alpha Pty Ltd ABN 24 113 940 953, Level 53, MLC Centre, 19-29 Martin Place, SYDNEY NSW 2000
Telephone: +61 2 9233 9800 Facsimile: + 61 2 9233 9810, Web: www.absolutealpha.com.au, Email: info@absolutealpha.com.au. Absolute Alpha Pty Ltd is a Corporate Representative of Wright Global Investments Pty Ltd
AFSL 225058 and Solutions Wealth Strategies Pty Ltd AFSL 282103.

9. AWU slush fund

In 1991, while Julia Gillard worked at law firm Slater & Gordon (1988 to 1995) she set up the Australian Workers Union (AWU) 'slush fund' for state secretary Bruce Wilson and Ralph Blewitt.⁵⁰ The fund allegedly embezzled and misappropriated money to purchase property and carry out renovations on Ms Gillard's home, making her an alleged beneficiary of the fund.

In June 2010 to June 2013 Ms Gillard became the 27th Prime Minister of Australia.⁵¹

VOFF couldn't complain to the Gillard government about stolen superannuation as the Prime Minister was under a cloud of suspicion for stealing money from a union fund. In 2014, the Royal Commission into trade union governance and corruption investigated the 'slush fund' and recommended fraud charges be considered against Wilson and Blewitt. Although Gillard's conduct as a solicitor was 'questionable', no charges were made.⁵² However, Commissioner Dyson Heydon, found Ms Gillard was a beneficiary of the union election slush fund.⁵³

The Trio Capital fraud was a contributing factor that pushed two people who had been exposed to the fraud to end their lives by suicide. In 2017, Ms Gillard became Chair of 'BeyondBlue', Australia's leading mental health awareness body. In her May 2018 speech at the Public Health Prevention Conference, Ms Gillard said she wants suicide to emerge from the shadows into everyday conversation as eight people die by suicide every day.⁵⁴

Only in October 2017, did VOFF learn that the Australian Workers Union (AWU) had a 'slush fund' called 'Officer's re-election fund'. See page 59 of this document. The OEF invested in Trio Capital products and consequently lost money, meant to be the AWU's war chest. Which might explain why Mr Shorten's office issued a directive, to bring down Mr Tarrant as he was the financial adviser who had recommended the Trio product to the AWU.

⁵⁰ https://en.wikipedia.org/wiki/AWU_affair

⁵¹ About Julia

<http://juliagillard.com.au/about-julia/>

⁵² Royal commission takes aim at CFMEU, recommends charges against senior officials (<http://www.theage.com.au/victoria/royal-commission-takes-aim-at-cfmeu-recommends-charges-against-senior-officials-20141219-12awyp.html#ixzz3j8VQUH4s>); The Age; 19 Dec 2014

⁵³ https://en.wikipedia.org/wiki/AWU_affair

⁵⁴ beyondblue Chair Julia Gillard delivers 2018 Public Health Prevention Conference speech 3 May 2018

<https://www.beyondblue.org.au/media/news/news/2018/05/02/i-beyondblue-i-chair-julia-gillard-delivers-2018-public-health-prevention-conference-speech>

Mr Shorten's history illustrates a union bias. For example,

- i) The AWU National Secretary kept quiet about the Australian Workers' Union slush Fund;⁵⁵
- ii) AWU - Cleanevent deal that cost 5000-odd workers as much as \$400 million;⁵⁶ and
- iii) Attempt to destroy the small business trucking industry by forcing the little guys to join the trucking giants.⁵⁷

Part 23 of the Superannuation Industry (Supervision) Act (SIS Act) compensated 5,400 investors while the collateral damage done to self-managed superannuation fund (SMSF) trustees became a market-signal that would deter superannuation newcomers from opening a SMSF account and discourage APRA-supervised funds from changing over to SMSFs.

Senator Mathias Cormann echoes a similar concern when he stated, *'Bill Shorten's problem is that he continues to let his union bias get in the way of his responsibility as a Minister to act in the public interest. It's the forgotten families of Australia who are being asked to pay the price for Bill Shorten's shameless union bias.'*⁵⁸

Mr Shorten's alleged union bias was noted in a letter dated August 2017 to the Hon Michaelia Cash. Her Chief of Staff, Ben Davies, replied on 6th September 2017 saying, *"the actions of Mr Shorten when he was the Minister responsible for Superannuation consistently fell short of the standards of unbiased conduct that Australians are entitled to expect."*

Mr Shorten's and Mr Medcraft's misleading comments about Trio denied Australians an accurate understanding or the opportunity to learn any lessons from the Trio fraud. Had comments been accurate from the start, the two people that ended their life as a direct result of the Trio fraud might still be alive today.

⁵⁵ <http://tinyurl.com/y7d3jxlg>

⁵⁶ Anthony Klan 'Cleanevent staff lost \$400m under deal by Bill Shorten's AWU' July 8, 2015
<http://tinyurl.com/hwqmqae>

⁵⁷ Grace Collier Union, Gillard rules driving owner-truckers out of business March 5, 2016
<http://tinyurl.com/l9nsuxw>

⁵⁸ Shorten to blame for workers' super losses 09/06/11
<http://www.liberal.org.au/Latest-News/2011/06/09/Shorten-to-blame-for-workers-super-losses.aspx>

29/01/2018

Current details for ABN 30 450 889 656 | ABN Lookup



ABN Lookup

Current details for ABN 30 450 889 656

ABN details

Entity name:	[REDACTED] name confidential
ABN status:	Active from 13 May 2008
Entity type:	Other Partnership
Goods & Services Tax (GST):	Not currently registered for GST
Main business location:	NSW 2142

Trading name(s)

From November 2018, ABN Lookup will cease displaying all trading names and only display registered business names. For more information, click [help](#).

Trading name	From
name confidential OBO Officer's Election Fund	13 May 2008
Officer's Election Fund	13 May 2008

Deductible gift recipient status

Not entitled to receive tax deductible gifts

ABN last updated: 11 Jul 2008

Record extracted: 29 Jan 2018

Disclaimer

The Registrar makes every reasonable effort to maintain current and accurate information on this site. The Commissioner of Taxation advises that if you use ABN Lookup for information about another entity for taxation purposes and that information turns out to be incorrect, in certain circumstances you will be protected from liability. For more information see [disclaimer](#).

10. Mr Meerveld's offer

Mr Carl Meerveld was a fund manager of one of Trio's overseas underlying funds. Before moving to Guernsey he lived in Hong Kong, where his work colleague American lawyer Jack Flader also lived. By 2010, Mr Meerveld, had become a resident of Guernsey. It was while he was living in Guernsey that he had offered to assist ASIC in its investigations of Trio. See attached 3-pages of the 4-page Media Statement by Mr Meerveld pp 61-63. ASIC declined Mr Meerveld's offer.

In 2011 at the NSW Supreme Court (NSWSC) trial of Trio manager Shawn Richard, the court said Mr Richard had assisted ASIC by providing information that saved ASIC from, *'significant time and resources seeking to gather independent admissible evidence, including evidence from uncooperative witnesses from numerous overseas jurisdictions'*.⁵⁹

ASIC failed to inform the NSWSC that two cooperative witnesses from overseas jurisdictions did offer assistance. Both Mr Meerveld and Mr Flader had offered their assistance. The NSWSC possibly overvalued the significance of Mr Richard's assistance to ASIC, because the court rewarded Mr Richard's pleas of guilty, with a discount of 25% off his sentence with an additional 12.5% discount allowed for the utilitarian value of the pleas of guilty.⁶⁰ After all Mr Richard's guilty plea was for being dishonest, the fact that nearly \$200m had been stolen without any trace didn't seem to matter.

In February 2019, VOFF lodged a complaint to the Commonwealth Ombudsman about ASIC withholding information from the NSWSC. The Ombudsman said it has no role in this space. See letter from Ombudsman dated 19 February 2019, page 64.

⁵⁹ Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011) before Garling J.

⁶⁰ Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011) before Garling J.

MOURANT OZANNES

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T +44 1481 723 466
F +44 1481 727 935
mourantozannes.com

Guernsey Financial Services Commission
Giategny Court
Giategny Esplanade
St Peter Port
Guernsey
GY1 3HQ

14 April 2016

Your ref:
Our ref: M24750001/67298264/1

Dear Sirs

Carl Meerveld

We act on behalf of Mr Meerveld, and who was a person of potential interest for the Guernsey Financial Services Commission in 2010.

For completeness, please kindly find enclosed a letter from the Commission dated 3 September 2010.

Given the effluxion of time since your last communication, we would be grateful to receive your confirmation that the matter is now closed with both the Guernsey Financial Services Commission and the Australian Securities and Investments Commission with no further action being taken and we can archive our file accordingly.

Yours faithfully



confidential name & signature

Advocate & Managing Associate

D. +44 (0)1481 731495
E. alastair.hargreaves@mourantozannes.com

Enc



MOURANT OZANNES

21 APR 2016

Received

KEVIN BOWN CFE
Deputy Director of Intelligence Services

Your ref: M24750001/67298264/1
Our ref: Y274(C)/106527/KJB

Advocate [REDACTED] **confidential name**
Mourant Ozannes
1 Le Marchant Street
St Peter Port
GY1 4HP

20 April 2016

Dear Advocate Hargreaves

Carl Meerveld

Thank you for your letter of 14 April. I have looked into the matter to which our enquiry with Mr Meerveld related and can confirm that the case has indeed closed. Neither the Australian Securities and Investments Commission or this Commission have any outstanding issues with Mr Meerveld.

Yours sincerely



GUERNSEY
FINANCIAL
SERVICES
COMMISSION

6 SEP 2010

KEVIN BOWN CFE
Deputy Director of Intelligence Services

Your ref: PTRF/MB/M2475001/4908118.1
Our ref: Y274/KJB

Advocate P T R Ferbrache
Mourant Ozannes
1 Le Marchant Street
St Peter Port
GY1 4HP

3 September 2010

Dear Advocate Ferbrache

Mr C P Meerveld
Enquiry by Australian Securities and Investments Commission ("ASIC")

I refer to our previous exchange in connection with ASIC's wish to have a discussion with Mr Meerveld on a voluntary basis. I relayed your message to ASIC and I have just received their response. They express their thanks for the assistance given and to Mr Meerveld's agreement to speak with ASIC but they now wish to hold off from taking up that offer. They may wish to explore this avenue at some point in the future but it can be considered dormant for now. If circumstances change, I shall be in touch again.

Yours sincerely



Our ref: 2019-400074

19 February 2019

Mr John Telford
Secretary
Victims of Financial Fraud

 address confidential

By email only to: johnnt@1earth.net

Dear Mr Telford

I refer to your complaints about ASIC and our conversation on 14 February 2019.

I acknowledge you found my letter frustrating because you thought I had not addressed the issue you brought to our attention. For this, I apologise.

I understand you believe the letter from the Guernsey Financial Services Commission mentions communication between Mr Carl Meerveld, and ASIC. You assert this letter demonstrates that Mr Meerveld offered to talk to ASIC but ASIC did not take that offer up. You also assert that ASIC failed to inform the New South Wales Supreme Court of this. You want the Ombudsman to investigate why ASIC did not pursue this and whether it misled the court.

Decisions about how litigation is conducted and what evidence is presented to the court involve detailed analysis and assessments about a range of technical and practical considerations, including arguable matters of legal opinion. The Ombudsman has no role in this space. We cannot be of any further assistance to you or VOFF.

Yours sincerely

 name & signature confidential

Assistant Director
Early Resolution Team

11. Mr Sutherland's tax

In May 18, 2019, The Courier Mail article (subscribers only)⁶¹ Vanda Carson wrote that in December 2017, the Deputy Commissioner of Taxation sued James Campbell Sutherland, a Hong Kong-based company chairman in the Supreme Court in Brisbane for \$31 million claiming he failed to pay taxes for 14 years between 2003 and 2016.

Mr Sutherland claims he cannot be taxed in Australia when he resides in Hong Kong. He is fighting to overturn the tax bill and penalty in the Administrative Appeals Tribunal. The article doesn't mention Trio Capital.

VOFF purchased some of the documents from the Supreme Court in Brisbane but found no details about the business that was being taxed. See – The front page from one of the court documents on page 66 of this document.

The Trio victims have been told by lawyers and ASIC that any court action is pointless because there's no money. Yet ten years later, the ATO is chasing after \$31m!

The Trio fraud raised revenue for the Government's coffers. The Trio money trail shows the Deputy Commissioner of Taxation v. James Campbell Sutherland (2017) case claimed \$30,791,572.78, and the Deputy Commissioner of Taxation v Liu (September 2012) case claimed \$811,180.35. That's two entities of the 55 Trio staff; including the 155 financial advisers / fund managers that had to pay fees to ASIC and APRA. Businesses and funds were taxed. The fraudulent scheme continued to operate based on it being good for business and the Government's coffers.

⁶¹

https://www.couriermail.com.au/subscribe/news/1/?sourceCode=CMWEB_WRE170_a&dest=https%3A%2F%2Fwww.couriermail.com.au%2Fnews%2Fqueensland%2Fhong-kong-aussie-tycoon-cleared-of-laundering-in-31m-tax-battle%2Fnews-story%2Fd194eb6799f12a688438c44e43600b42&memtype=anonymous&mode=premium



SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 13582 OF 2017

PLAINTIFF: DEPUTY COMMISSIONER OF TAXATION

AND

DEFENDANT: JAMES CAMPBELL SUTHERLAND

CLAIM

The plaintiff claims the sum of \$30,791,572.78 for a debt due by the defendant to the Commonwealth of Australia and payable to the Commissioner of Taxation and recoverable by the plaintiff pursuant to the provisions of the *Income Tax Assessment Act 1936* ("the ITAA 1936"), the *Taxation Administration Act 1953* ("the TAA 1953") and Schedule 1 of the TAA 1953, together with further general interest charge pursuant to the TAA 1953 calculated upon amount or amounts and for a period or periods at the rates provided in that Act, and costs.

The plaintiff makes this claim in reliance on the facts alleged in the attached Statement of Claim.

ISSUED WITH THE AUTHORITY OF THE SUPREME COURT OF QUEENSLAND

And filed in the Brisbane Registry on: **21 DEC 2017**

Registrar:

To the defendant[s]:

TAKE NOTICE that you are being sued by the plaintiff in the Court. If you intend to dispute this claim or wish to raise any counterclaim against the plaintiff, you must within 28 days of the service upon you of this claim file a Notice of Intention to Defend in this Registry. If you do not comply with this requirement judgment may be given against you for the relief claimed and costs without further notice to you. The Notice should be in Form 6 to the Uniform Civil Procedure Rules. You must serve a sealed copy of it at the plaintiff's address for service shown in this claim as soon as possible.

FEE: 13582
INIT: RA
REC: 4/5/17
ENT:

Address of Registry: 415 George Street, BRISBANE QLD 4000

Claim

Australian Taxation Office
55 Elizabeth Street
Brisbane QLD 4000

Filed on behalf of the Plaintiff
[Form 2 Rule 22]

Tel: (03) 9937 9702
Fax: (03) 9937 9913

12. Legislation change

Extensive reform and legislation change occurred as a direct consequence of the Trio fraud. Seemingly introduced by stealth because systemic issues were not acknowledged. New legislation requires ASIC, APRA and the Australian Tax Office to inform new superannuation account holders about Section 23 of the Superannuation Industry (Supervision) Act 1993. They must warn consumers that only APRA-supervised funds have 'fraud'-protection. Part 23 doesn't cover self-managed funds. Also, The Australian Reports and Analysis Centre (AUSTRAC) now warn on its website about the risk of organised crime.

Consumers expect the financial system to be properly operated within a legal framework. The Trio matter showed the financial regulatory supervision was wanting. Trio products were in full view of ASIC, APRA, custodian, auditor, research houses and star rating firms yet the investors' had their savings stolen. If the Trio fraud is a textbook example of money laundering, why didn't Trio face charges over non-compliance of Anti-Money Laundering and Counter-Terrorism Financing law?

The current regulatory regime is now understood to be significantly different from the regime that was in place at the time of the Trio fraud (see letter on p 68 of this document).

Trio victims harmed by an ill-conceived previous system are simply ignored.

Mr Hempton concluded his Submission to Cooper Review of Superannuation dated 17 February 2010 by saying, *The SEC has had to reform practice after Madoff and a swathe of Ponzis exposed during this market downturn. Australia should use the Astarra example to implement rigorous reform.*



Australian Government
The Treasury

Ref: MC18-007930

Mr John Telford
Secretary VOFF Inc
johnt@1earth.net

- 6 NOV 2018

Dear Mr Telford

Thank you for your correspondence of 24 October 2018 to the Treasurer concerning the collapse of Trio Capital. The Treasurer has asked me to respond to you.

On behalf of the Government I wish to express my sympathies to all investors affected by the Trio collapse, and to acknowledge the significant financial and personal stress that the collapse has caused them and their families, including to those who lost their entire retirement savings.

As you are aware, the Government has established a Royal Commission and appointed former High Court Judge, the Honourable Kenneth Madison Hayne AC QC, as Commissioner to inquire into the conduct of banks, superannuation and financial services entities to examine allegations of misconduct or conduct that falls below community expectations. The Royal Commission is examining similar issues to those you have raised in your letter and the Government will consider its response after the Commission reports in February 2019.

I note that the current regulatory regime is significantly different from the regime that was in place at the time of the Trio Capital collapse, in part because of the lessons learned from the collapse. In addition, the Government remains committed to the comprehensive package of superannuation reforms it introduced into Parliament last year. As part of this Member Outcomes package, before a change of ownership of a trustee can occur, the potential owner would need to obtain APRA approval. Changes to superannuation director penalties will address a gap in the criminal and civil penalty framework concerning misconduct of a superannuation trustee director. The measure will ensure that superannuation trustee directors are held accountable for their conduct in the same way as directors of managed investment schemes (consistent with Financial System Inquiry Recommendation 13).

More information on the package can be found at: <http://kmo.ministers.treasury.gov.au/media-release/093-2017/>.

Yours sincerely



Confidential name & signature

Principal Adviser
Retirement Income Policy Division

13. Precedent for an independent investigation

Senator Mathias Cormann's keynote address at the 7 May 2013, CEDA Superannuation Seminar made the following comments about Trio Capital,

- The Trio Capital fraud had "unique circumstances" which justifies "a closer look" and "scrutiny of those circumstances ..."
- From all appearances, Trio Capital was not a risky investment
- There was a failure of Regulation to protect all Trio Capital investors and
- Regulators need to do more to pursue the perpetrators and recover the proceeds of crime."

On 27 June 2013 a VOFF delegation met Shadow Minister Mathias Cormann, Senator Concetta Fierravanti-Wells and Paul Fletcher MP in Canberra. The meeting agreed that an independent investigation into ASIC's handling of Trio would be quicker than a royal commission. The VOFF delegation left the meeting expecting that the government would organise an independent investigation. VOFF thought Mr Cormann and Mr Fletcher understood the issues surrounding the Trio and would pressure Chris Bowen to review Mr Shorten's inadequate response to the Trio collapse. But no independent investigation occurred. The government had only wasted our time.

In September 2019, the United Kingdom's Judge-led probe launched an independent investigation into an "**unregulated collective investment scheme**". See article on pp 70-71 of this document. The UK investigation covered an 8-year time-period. An independent investigation into ASIC's handling of Trio would require about 6 to 7 years. If the court found valid reason to investigate an unregulated investment scheme in UK, Australia should be able to investigate ASIC's handling of a regulated investment scheme - Astarra Strategic Fund - under flagship Trio Capital Limited.

Judge-led probe into FCA's regulation of collapsed Connaught kicks off

By [Laura Miller](#) 27th September 2019 12:07 pm



An investigation has finally begun into the [FCA's](#) handling of the £120m failure of asset manager Connaught, which collapsed seven years ago.

Investors and advisers have been asked to give their testimony.

The independent review will be led by Raj Parker, an associate member of legal chambers Matrix and a part-time judge, who will investigate the regulator's role in the investment failure.

Parker says he will look at the FCA's "[ability to protect consumers and whether its approach to communications with investors in the fund was appropriate, timely and transparent](#)".

He adds: "I am keen to hear from anyone who has been affected and would encourage them to email any relevant information to me."

Under investigation will be the FCA's response to intelligence, and the negotiations it mediated between the parties before it launched formal enforcement proceedings in March 2015.

This was almost three years after investors were frozen out of their funds, most of which was deemed to be lost.

Connaught investors to get final compensation

Connaught collapsed in September 2012 after catastrophic problems in the financing of its unregulated collective investment schemes, which backed failed bridging finance firm Tiuta. Investors, often advised, had placed round £120m into its flagship Series 1 fund.

The investments were not regulated but almost every other party involved was, from Connaught to financial administration companies Capita and later Blue Gate. The FCA's failure to spot longstanding problems with their management of the scheme has been heavily criticised.

Final compensation payments were only made to Connaught investors in January this year, after the FCA ruled in November 2017 that Capita Financial Managers Limited, the fund's authorised corporate director, should pay affected investors compensation worth up to £66m, around half what they invested.

An assessment of the Financial Services Authority and FCA's actions and any lessons to be learned will be made publicly available.

By [Laura Miller](#) 27th September 2019 12:07 pm

<https://www.moneymarketing.co.uk/judge-led-probe-into-fcas-regulation-of-collapsed-connaught-kicks-off/>

14. Tried communicating

Letters from VOFF informed ASIC and Treasury of ongoing loss and damages caused after the Trio Capital Limited (Trio) scheme, licensed by the Australian Securities and Investments Commission (ASIC) and prudentially reviewed by The Australian Prudential Regulatory Authority (APRA) but was fraudulently operated.

VOFF mailed a 3-page letter to ASIC dated 5 February 2018, it detailed some of the contributing factors that led to the financial loss of Trio investors, such as, loopholes in law and ASIC's jurisdictional weaknesses. The Trio fraudsters had exploited both of these weaknesses.⁶²

ASIC's reply dated 8 March 2018 failed to respond to the concerns VOFF raised. See pp 73-74 of this document.

VOFF mailed a ten-page letter to Treasurer, Josh Frydenberg,⁶³ dated 24 October 2018, and pointed out the following concerns:

- Bill Shorten, Minister for Financial Services and Superannuation, (14.9.10 to 1.7.13) while in charge of the Trio fraud investigation failed to disclose his connection with the Australian Workers Union's (AWU's) slush fund called the Officer's Election Fund (OEF).
- Mr Shorten failed to disclose his interests with AWU's OEF that had invested in the Trio Capital products and consequently lost money to the fraud.
- Mr Shorten's office gave a directive to ASIC to "bring down" the financial adviser who had recommended Trio to AWU. Ross Tarrant was 1 out of the 155 advisers who had clients in Trio. VOFF perceive Mr Shorten acted out of revenge.
- VOFF perceive that ASIC did not act as an independent agent.
- Concerns were raised about ASIC's chairpersons, Mr Tony D'Aloisio and Mr Greg Medcraft among others.

Mr Josh Frydenberg never replied.

VOFF mailed a letter to ASIC's Chairman, James Shipton dated 5 December 2018,⁶⁴ that offered an opportunity for ASIC to have the Guernsey authorities question Mr Meerveld. The Guernsey authorities could use legislation under Clause 11 of the Fraud (Bailiwick of Guernsey) Law, 2009, and question Mr Meerveld about the Trio underlying fund he had managed and perhaps ask how over \$50m disappeared.

Mr Shipton did not reply.

⁶² See copy of letter to ASIC <https://tinyurl.com/y77lvneg>

⁶³ See letter to Josh Frydenberg <https://tinyurl.com/yd5924qw>

⁶⁴ See letter to ASIC's Chairman James Shipton <https://tinyurl.com/y9c4cocz>



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www.asic.gov.au

Our Reference: CCU 18/0055
Your Reference: CCU 18/0055

7 March 2018

Mr John Telford

Email: [REDACTED]

Dear Mr Telford

Open Letter to Acting Chairman, Peter Kell, Victims of Financial Fraud

Commissioner Peter Kell, has asked me to respond to your email and open letter of 5 February 2018 on his behalf.

The points you have raised in your letter of 5 February 2018 have previously been addressed by the Australian Securities and Investment Commission (ASIC) most recently in my letter to you of 12 December 2017.

As set out previously:

- ASIC's undertook a range of enforcement actions arising from our Trio Capital investigations.
- These actions included the criminal prosecution of Shawn Richard and accepting Enforceable Undertakings from the directors of Trio.
- ASIC conducted a surveillance of a large number of financial planners who recommended their clients invest in funds operated by Trio.
- Arising from that surveillance a small number of matters were referred for investigation where there was a suspicion that they had breached their regulatory obligations.
- The decision of an ASIC delegate to ban Mr Ross Tarrant from the financial services industry for 7 years was subsequently reviewed by the Administrative Appeals Tribunal (AAT) and the delegate's decision was upheld.

- The Full Court of the Federal Court subsequently dismissed Mr Tarrant's appeal against the decision of the AAT.

I note that your letter of 5 February 2018 also refers to the decision to ban Peter and Anne-Marie Seagrim from providing financial services for a period of 3 years. This decision was also reviewed by the AAT with the ban varied to a period of 6 months. A copy of the AAT's decision, *Seagrim and Australian Securities and Investments Commission* [2012] AATA 583 (31 August 2012) is attached.

These decisions of the AAT and the Full Court of the Federal Court confirm that these three financial planners did not meet their regulatory obligations.

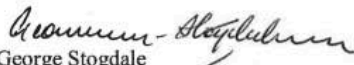
In relation to the provision of financial assistance to members of APRA regulated funds that invested in the Astarra Strategic Fund, this decision was made pursuant to Part 23 of the *Superannuation Industry (Supervision) Act 1993*. There is an express prohibition on self managed superannuation funds seeking compensation under these legislative provisions.

ASIC, the Australian Prudential Regulatory Authority and the liquidators of Trio have all concluded their investigations. The Trio Capital matter including the roles of the regulators has been the subject of a Joint Parliamentary Committee inquiry as well as a review by Department of Treasury.

ASIC staff have also met with members of your organisation on a number of occasions. We have also responded to various letters and representations that you, your members and other investors have sent to us either directly or through Members of Parliament.

In the circumstance we do not consider that there are any outstanding issues in relation to Trio Capital to be addressed.

Yours sincerely



George Stogdale
Senior Executive
Corporations and Corporate Governance Enforcement

15. Government, corruption & the Trio fraud

Mums and Dads who invested in the Australian financial system over the last 15 years, had \$40.23 billion misappropriated. It's taken 15-years for ASIC's Chairman Mr Longo to inform the Senate Economics References Committee's Sterling Income Trust inquiry (15.12.2021) that ASIC's *'regulatory tools and resources are not intended or able to prevent many of the losses that retail investors and financial consumers will experience from time to time. This is true of every financial market regulator.'*

[Note - A Freedom of Information request to ASIC sought the document of ASIC's first realisation that its statutory objectives, regulatory tools and resources were unable to prevent many retail investor losses. Also the cost analysis document with the amount of funding needed to upgrade ASIC's tool kit [specific to the tool-kit referred to by Mr Longo]. ASIC replied on 4 February 2022 saying no such docs exist.]

Mr Longo is wrong in saying, *"This is true of every financial market regulator"*. For example, courts in the United States sentenced a fraudster to 660-years in prison; Canada, 10 years for a \$14.5 million fraud; United Kingdom, 33 years for laundering nearly US\$95 million; Australian, 33 months for the Trio theft of nearly \$200 million.

And it's an inadequate defence to suggest, *"regulatory tools and resources are not intended or able to prevent many of the losses that retail investors and financial consumers will experience from time to time"* for frequently recurring misconduct by banking, insurance, superannuation and the financial services industry. In September 2021, Mr Longo informed *'investors to take responsibility for your own losses.'* His statement exemplifies ASIC's zero effort to reduce financial theft while preparing consumers for their inevitable loss.

Is financial theft managed by blaming consumers for their losses? Acting Chair Senator O'Neill at the November 2021 Senate Economics References Committee inquiry into Sterling Income Trust said, *'financial dealings must be governed by the principle of caveat emptor—Latin for buyer beware—and the Prime Minister himself and the Treasurer agreed with the chair of APRA, Wayne Byers, when he described that: "And that is our reality."'*

[So what is ASIC and APRA's reason for existing if not to be able to stop fraud before it happens?]

O'Neill's statement infers Labor and Liberal Governments agree to consumers must be held responsible for their losses. There's no sign that any consideration was given to the different types of frauds or whether the regulators were a factor in causing damage to consumers.

The way financial crimes have been handled for the last 15 years is to push risk and cost on to the victims. The victims absorb the losses under the legal term 'caveat emptor'. A Freedom of Information request seeking the Government's basis for using caveat emptor in fraud cases was sent to the Australian Prudential Regulation Authority and another FOI to the Office of the Prime Minister. They both replied saying, 'no such document exists'.

VOFF contend it's unlawful to use caveat emptor in a fraud matter and there's no shortage of politicians disrespecting the law. For example when Scott Morrison was Treasurer, he blamed bank victims for bank crimes in a speech to the Australian British Chamber of Commerce in 2018, stressing, they are "complicit" for being too "passive". That would make the dead "complicit" and "passive" for being in a health insurance scam.

Did the following agencies and officers entrusted to keep Australian superannuation safe ensure entities in the financial system adhere to the law?

Former ASIC Chairman Mr D'Aloisio in December 2007 purchased a winery from the receivers and due to the lack of information, creditors and shareholders didn't know the company had

failed. Mr D'Aloisio rejected any notion of a conflict of interest in purchasing an asset from a listed company in financial distress while chairman of ASIC. In 2010 Mr D'Aloisio said Australians lost around AUD\$66 billion between 2007 and 2009 due to the Global Financial Crisis. A lot was lost under his watch. Mr D'Aloisio is now Chairman of Perpetual Ltd, managing hundreds of billions of dollars of other people's money in big superannuation funds.

In 2013, former Deputy Chairman of ASIC, Jeremy Cooper (2007-2011) made disingenuous comments about self-managed superannuation funds (SMSFs) saying, *"you can't have your cake and eat it too"*. As former Deputy Chairman of ASIC he would have known that prior September 2009 no warnings were available about organized crime gangs stealing superannuation or that criminals use legislation weaknesses to steal money. Mr Cooper is now the Chairman of Challenger Limited, \$115 billion in assets (as at 31 December 2021).⁶⁵

Former Prime Minister Julia Gillard and former Superannuation Minister Mr Bill Shorten had connections to the alleged fraudulent conduct of the 1990s Australian Workers Union (AWU) slush fund. Mr Shorten kept quiet about the allegations that Ms Gillard embezzled and misappropriated Union fund money to purchase property and carry out renovations. In December 2014, Ms Gillard faced The Royal Commission into Trade Union Governance and Corruption Commissioner where *"Commissioner Dyson identified key concerns about the use and operation of union election slush funds. They include that they operate largely in secret, have deficient or non-existent record-keeping and that candidates commonly plead ignorance on how money is raised and spent. ... Justice Dyson Heydon said there were no grounds for prosecuting Ms Gillard, but agreed with counsel assisting Jeremy Stoljar's submission, that her conduct as a solicitor had been 'questionable'."*⁶⁶ & Ref.

The Trio victims were unable to approach the Gillard Government to seek justice and compensation for the Trio fraud knowing Gillard and Shorten had involvement in fraud.

Suicide prevention became Ms Gillard's goal when in 2017 she became Chair of Beyondblue. In May 2018 at the Public Health Prevention Conference, Ms Gillard said she wants suicide to *'emerge from the shadows into everyday conversation...'*

Two people after discovering Trio stole their savings took their own life by suicide. Ms Gillard was PM at the time. Australia's white-collar crime paradise has no mechanism to inform of the deaths the fraudster's scam caused. Replies to Freedom of Information requests to ASIC and APRA, stated they had no information of suicide deaths due to the Trio fraud. Deaths by financial hardship remain deep in the shadow of secrecy.

Superannuation Minister Mr Shorten was in charge of the so-called Trio investigation (Sept 2009 –2012) and there is no evidence that he submitted to Parliament a disclosure of his history and connection with the AWU.

In 2012, Mr Shorten, APRA deputy chairman Ross Jones, MLC chief executive Steve Tucker and Jeremy Cooper, travelled to Israel to examine ways to help kick-start the Australian venture capital business. Shorten touted superannuation money as if it was his. Israel, according to the Financial Action Task Force (FATF) was one of the 15 jurisdictions considered non co-operative in the fight against money laundering. Then in 2013, Shorten and Prime Minister Julia Gillard went to China where Shorten touted, it's time for Australian fund managers to *"let go of the side of the pool"* and invest in China. He had Australians' \$1.3 Trillion in individual superannuation savings that he described as *"our sovereign wealth fund"*, a *"significant national asset"* at his

⁶⁵ <https://www.challenger.com.au/about-us/challenger-group>

⁶⁶ https://en.wikipedia.org/wiki/AWU_affair

Ref. Royal commission takes aim at CFMEU, recommends charges against senior officials; The Age; 19 December 2014

disposal. The clutch on superannuation started when superannuation became compulsory in 1992. Former Prime Minister Paul Keating *'urged the trade union movement to use the billions of dollars generated, by superannuation over the next 20 years, to increase its own industrial clout...'* Mr Keating wanted superannuation to strengthen union *'institutional muscle'*.

In 2013, when Mr Rudd became Prime Minister for the second time he announced he would serve the everyday hard working people. The Trio victims wrote to Mr Rudd calling for justice. Shortly after sending the letter, the victims discovered Mr Rudd's son Nicholas Rudd worked at Clayton Utz, the law firm that administered the \$55m in compensation under the Part 23 of the SIS Act. Clayton Utz received \$17m. Mr Rudd never replied to the VOFF's letter.

Former ASIC Chairman Greg Medcraft (2009 to 2017) held one of the highest paid Government jobs, (annual wage for ASIC Chair in 2020-21 was \$775,910). Mr Medcraft started work as a Chartered Accountant with KPMG (one of the big auditing firms sued in 2022 for £1.3bn over Carillion audit; for \$600m in 2021 over alleged sloppy auditing in Dubai's Abraaj scandal; and for 84m in 2021 after failing to spot fraud at a Chinese timber company). Mr Medcraft worked for 30 years at global investment bank Société Générale in Australia, Asia, Europe and the Americas, including key leadership roles in securitisation and structured finance. He co-founded the American Securitization Forum and was Chairman from 2005 until 2007. When he returned to Australia in 2008, Société Générale trader Samarth Agrawal faced the US District Court in New York charged with stealing code for SocGen's lucrative high-frequency trading system. In 2007 - 2008 Jérôme Kerviel working in Société Générale's compliance department lost approximately €4.9 billion. He was regarded as a rogue employee who had executed a series of "elaborate, fictitious transactions" that cost Société Générale more than \$7 billion, the biggest loss ever recorded in the financial industry by a single trader. Mr Medcraft was not named in the lawsuits but he oversaw the US residential mortgage-backed securities businesses during 2005 and 2008, the same period that it is alleged the bank engaged in misconduct and breached corporate laws.⁶⁷ Journalist Patrick Durkin in the Australian Financial Review (8.07.2016) said, Mr Medcraft - the poacher-turned-gamekeeper made his name during the decade he built \$20 billion in commercial and residential mortgage backed securities - the financial instruments that gave birth to the GFC.

A poacher is someone who trespasses or steals. On 13 May 2011, *'Prime Minister Julia Gillard granted an exemption from her government's policy promising "open and merit-based" senior public sector appointments to allow former banking executive Greg Medcraft to head Australia's corporate regulator without first advertising the role.'*⁶⁸ He had been at ASIC as a Commissioner since February 2009. Was the poacher's skill in demand? A skill capable of building a financial structure designed to collapse. It may have appeared Mr Medcraft investigated Australia's largest superannuation theft in history but was his attention on his numerous overseas trips? Holidays disguised as business? Did he hold the bargaining chip because his holidaying increased to over a dozen holidays in 3 years, all expenses paid by public money?

Mecraft's 11 international trips, to numerous countries in 2013

Hong Kong

Brussels, London

Beijing, London, Dublin

Washington DC, New York, Delhi

Panama

St Petersburg

⁶⁷ Richard Baker, Nick McKenzie and Simon Mann Gillard gave ASIC chief appointment exemption 12 November 2011 <https://tinyurl.com/ydf534cf>

⁶⁸ Richard Baker, Nick McKenzie and Simon Mann Gillard gave ASIC chief appointment exemption 12 November 2011 <https://tinyurl.com/ydf534cf>

Montreal, Toronto, Paris, Basel, Madrid
 Madrid, Wellington, New Zealand
 Luxembourg, Paris, Basel
Total expenditure for January 2013 – November 2013 \$246,490.99

Mecraft's International Travel January-June 2014
 Hong Kong
 Kuala Lumpur
 London, Frankfurt
 Madrid, London
 Basel, Madrid
Total \$82,653.05

Medcraft's International Travel July-December 2014
 London
 Milan
 Rio de Janeiro
Total \$45,429.51

In 2015 he spent more than one in four workdays travelling overseas on the public purse.

Seoul, South Korea
 Tokyo
 Frankfurt
 London
 New York, Washington DC
 London
 Return to Australia
Total International Travel for January-June 2015 \$74,691.79

Medcraft's International Travel July – December 2015
 New York
 Luxembourg
 London, Madrid, London
 Toronto
Total \$60,832.02

His International Travel January – June 2016
 Davos-Klosters, London
 London, Madrid
 Tokyo
 Washington DC
 London, Madrid
 Lima, Peru
 Salzburg
Total \$121,471.47

Medcraft's International Travel July – December 2016
 Hong Kong
Total \$17,698.74

In Grand total cost for his overseas trips was around \$649,275.57 (public money). He didn't improve the safety of Australia's financial system, despite the 2013 Parliamentary Joint Committee Statuary Oversight's statement,
"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."

Or did the Sydney Morning Herald's 2013 statement come to fruition, *Medcraft's role as the head of the International Organisation of Securities Commissions, (IOSCO), will have benefits as IOSCO does important work fighting cyber crime and reforming capital markets.*

Did he place his own career before ASIC and jeopardized the so-called Trio fraud investigation? How could he head ASIC and head an investigation into the Trio crime while on holidays? Both official reports, *The Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital* (May 2012) and the *Treasury's Review of the Trio Capital fraud and assessment of the regulatory framework* (2013) were compromised due to the amount of information ASIC omitted to provide:

- ASIC failed to warn the Australian financial markets of known weaknesses that '*enabled crime figures to open individual or company accounts or deposit funds with minimal or false identification, and quietly move millions of dollars*'⁶⁹ in Trio's case, to undisclosed locations;
- ASIC failed to correct Minister Bill Shorten's misuse of ASIC's brochure title, 'swimming between the flags' and weaponized it as suggesting investors were 'outside the flags' and
- ASIC failed to inform victims of their right to submit a Victims Impact Statement to the court.

The Trio victims perceive ASIC did deals concerning the Trio fraud. Such as the deal made between Trio's liquidator and Shawn Richard's parents. Two liquidators travelled to Canada to claw back the money Shawn had sent his parents. They couldn't pay the full amount back, so a deal was struck. What percentage was paid back is unknown. The victims are not entitled to know (although it's the victim's money).

The perceived deal when Mr Richard signed his personal statement (written by ASIC). The statement dumbed down the crime. Coincidentally Mr Richard got the lightest sentence possible and became ASIC's key witness in the case against Mr Tarrant.

ASIC denied VOFF's question about deals, stressing that ASIC doesn't make deals.

Another perceived deal was when ASIC acted on Mr Shorten's directive to 'bring down' Mr Tarrant. Medcraft helped Shorten realise political aspirations of being Australia's next Prime Minister. Pitting one group against another was Mr Shorten's Union acquired talent. By not investigating the Trio crime thoroughly, the Union run super funds would benefit from seeing SMSFs destroyed and at the same time, promoting APRA-supervised funds as safe.

Was ASIC conflicted over policing Trio Capital? Fraud and corruption in Trio invites the question of whether Tolhurst was purchased using money from the proceeds of crime. The people behind Trio had run boiler room scams for years before they purchased Tolhurst.

Proceeds of crime means any property that is substantially derived or realised, directly or indirectly, by any person from the commission of a serious offence.⁷⁰

Were the Australian Financial Services Licence and company registration costs paid for by the proceeds of crime?

If ASIC received stolen money wouldn't that give ASIC an excuse to avoid digging into the crime?

Medcraft's legacy was to drop bombshells, 'Australia is paradise for white-collar crime'; 'Australia could have an Enron-style corporate collapse if the 4 big accounting firms don't improve their auditing standards'; and 'Gatekeepers must be made accountable'. He made no acknowledgement that his bombshells related directly to the Trio fraud. Medcraft did state at a VOFF meeting that *Trio found the Australian financial system wanting.*

⁶⁹ N McKenzie, R Baker, G Mitchell It's not just CBA: all the banks are exposed to millions in money laundering Sept 15 2017

<http://tinyurl.com/yag9yk2l>

⁷⁰ Crimes Act 1900 No 40 version for 1 January 2022 to 28 March 2022 (accessed 25 April 2022 at 22:05) Part 4AC 193A(c)

He had a lot to say about the role of gatekeepers. The Australian commercial law firm 'Bright Law' and the Parliamentary Joint Committee on Corporations and Financial Services noted that Mr Medcraft said,

'Investors and financial consumers rely on gatekeepers to act with the utmost integrity. Where gatekeepers fail in their role, this can have a serious consequence for retail investors and financial consumers'. And 'ASIC is not a prudential regulator, not a conduct and surveillance regulator. The system we have is based on gatekeepers doing the right thing and it is self-executing. It is quite important in understanding what we are currently resourced to do. We are not resourced to be looking at everybody, and that is a very important message.'

Mr Medcraft's concerns about auditing often hit the headlines, *"Appalling" audit quality could lead to next Enron*' (Australian Financial Review 31.10.2017), *'Call for rules shake-up to avoid 'Enron style' collapses in Australia*' (Sydney Morning Herald 3.08.2019) and *'Weak auditing could spark another Enron*' (ABC radio story 6.08.2019) but despite Medcraft's accountancy background, he failed to publicly announce that Trio Capital was Australia's Enron.

Medcraft's sweeping statements about gatekeepers are misleading. He paints Auditing / Banking with the same brush used to paint Research Houses / Star-Rating firms. He refers to gatekeepers as if the Gatekeeper is Checkpoint Charlie at the Berlin Wall. Trio had various levels of oversight, including the Government regulators ASIC and APRA, trustees and custodians NAB and ANZ banks, internal auditors KPMG and external auditors WHK. As well as the research houses Morningstar, Van Eyk, Aegis and Van Mac, the in-house investment committee, members' board of directors, 55 staff members and 156 financial advisors. To this day the Trio victims have no explanation whatsoever from ASIC or the custodians as to how \$194.5 million⁷¹ vanished from the \$3.3 trillion Australian superannuation system, nor would Australians generally invest if they knew this was even possible.

VOFF perceive ASIC's cosy relationship with the banks, (identified by the Banking Royal Commission) allowed the banks to palm off the Parliament Joint Committee and the Trio victims with misleading information such as the following defence,

'The custodian does virtually nothing to protect the funds of investors. It makes no independent checks before transferring money offshore. Instead, the custodian simply acts on the instructions of the responsible entity.'

The Banking Royal Commission highlighted the custodian's responsibilities and obligations under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. VOFF found no evidence that the custodian's responsibilities and obligations were thoroughly investigated. The same can be said about Trio's auditors.

Once the Abbott Government was elected (18 September 2013) they invited the Trio victims to lodge a submission for compensation. A 46-page submission was delivered (29 January 2014) to the office of the Assistant Treasurer, Senator Arthur Sinodinos. While the victims waited for a response, Mr Sinodinos was called to face the NSW Independent Commission Against Corruption (ICAC) inquiry. He was under suspicion over a \$20 million benefit he stood to gain if Australian Water Holdings (AWH) won a lucrative contract with the state-owned Sydney Water. Mr Sinodinos claimed he didn't know he was going to get \$20 million over the contract deal. The victims received no reply from the Abbott Government regarding their submission to Mr Sinodinos.

⁷¹ Financial System Inquiry: Submission by the Australian Securities and Investments Commission April 2014 Page 192

Questions over how the Government handle money:

Amid backstabbing, Parliamentary eligibility crisis, Choppergate, Robodebt (which has cost \$1.8bn in victim settlements) and the Sports Rorts affair. The NSW Premier's office shredded documents that were used to sign off on a pork-barrelling scheme. The \$30m paid by the Federal government for land worth \$3m, and the \$444m Great Barrier Reef grant which was awarded without a tender process. Then there's the 'car park rorts' affair, the 2018-2019 Banking Royal Commission findings of vast misconduct in the financial sector. Not to forget the 2019 water buybacks scandal termed "Watergate" that saw companies established in tax havens where the beneficial owners have access to the money without being formally recorded as an owner and the 2019 \$423m Manus Island housing and security for asylum seekers, the 2021 Bushfire safety recovery funds for Coalition seats including the 2022 JobKeeper spending of \$130b with some businesses profiting when they didn't need support nor did they return the money.

That the Government has an interest in the superannuation pool should alarm Australians. APRA is able to keep secrets behind a firewall where access to documents is refused under Section 37 of the FOI Act and Section 56 under the APRA Act. The APRA Chairperson position in 2019/20 had an annual wage of \$998,081. Could that pose nine hundred thousand reasons for APRA to support opaqueness so it protects APRA jobs?

APRA had at least three chances to deal with the Trio management issues but the public is not aware of the opportunities. The public is not entitled to know APRA's actions/inactions in how it handled those three opportunities. The cloak of secrecy around certain events means that the public is prevented from scrutinizing events that led to a crime. The secrecy shields ASIC and APRA from accountability and responsibility and the Government's response to a financial crisis or massive fraud like Trio is to shower ASIC and APRA with additional funding. Thus both regulators are better off because of the Trio fraud.

Where to draw the line between self-serving politicians and those that serve the public? In 2012 former British Prime Minister Tony Blair acted as a mediator in a business deal that took less than three hours work and received \$1m. Mr Blair exploited loopholes in the law to keep details of his earnings secret (\$20m in 2011 and estimated \$90m). According to the Pandora Papers, many rich and famous people around the world have opened companies in low-tax regimes. Mr Blair benefited by tax avoidance and he also purchased property via an offshore firm eliminating the need to pay stamp duty.

In regards to ASIC's handling of the Trio fraud, was ASIC grossly incompetent?

Was it poor decision-making that led ASIC to support misinformation about the Trio fraud?

Or is ASIC flagrantly corrupt?

Money and corruption is not uncommon and ASIC did meet the Trio mastermind in Hong Kong 2 years before Trio started in Australia. Australia's fall from grace include former New South Wales Police Force detective sergeant Roger Rogerson, charged in 2014 with the murder of 20-year-old student Jamie Gao, and supply of drugs and Assistant Director of Investigations with the NSW Crime Commission - Mark Standen, charged in 2008 for alleged involvement in a \$120 million drugs importation conspiracy. In 2014, Wikileaks released a suppression order issued by the Victorian Supreme Court forbidding the Australian media from making any mention of an ongoing corruption case involving Securrency, the troubled banknote printing company and a former subsidiary of the Reserve Bank of Australia, and a list of high-ranking politicians in Southeast Asia.⁷²

⁷² Jarni Blakkarly Wikileaks Reveals 'Unprecedented' Media Silencing in Australia 04.08.2014
<https://thediplomat.com/2014/08/wikileaks-reveals-unprecedented-media-silencing-in-australia/>

Wikileaks Julian Assange, called the suppression order, *"the worst [gag order] in living memory."* The Australian government, Assange said, *"is blindfolding the Australian public to cover up an embarrassing corruption scandal involving the Australian government."*⁷³

The Four Corners - ABC story 'Cover Up' highlighted concern that the Australian financial regulators did nothing over the biggest bribery case in Australia's history.⁷⁴ One of the people involved was Graeme Thompson who was APRA's Chairman (1998-2003). He was deputy governor of the reserve bank of Australia, and Chairman of Note Printing Australia and Securrency, (1998-2008) selling polymer bank notes worldwide. The Reserve Bank paid tens of millions of dollars in bribes to military arms dealers in Malaysia, a known fraudster in Nepal and met with Saddam Hussein's brother in law in Iraq. Four Corners contacted Thompson but he refused to talk.

Dr David Chaikin, University of Sydney Business School said, *"This is the worst corruption scandal in our history, not because of the amount of money that's been involved, but because the most respected institutions of our country have failed to discharge their responsibilities to the public."*⁷⁵

ASIC found no case to answer over the bribery allegations but The Greens said they *"will ask ASIC to explain to Parliament why it has failed to investigate serious and repeated claims of illegality within the RBA's corporate activities."*⁷⁶

According to James Shelton, Senior Sales Manager, Securrency 2007-08, that while the investigation was underway in Australia, *'millions of dollars were still being approved to offshore bank accounts in Seychelles and Switzerland'*. According to the 4 Corners transcript, Mr Thompson is now part of AMP superannuation.

APRA facilitate fund mergers. It is in the position where it can encourage large funds to invest in greener technology or ethical investments. APRA has the power to check if the big super funds are earning good returns for their members. This may appear to be in the public's best interest, but history shows the Government serves the Government before it assists victims of a financial crisis.

Even genuine politicians that tried to help the Trio victims didn't have law enforcement or forensic accountancy skills. They were at a disadvantage as ASIC withheld large amounts of evidence about Trio. Evidence denied to the Parliamentary Joint Committee, the Police, the victims and Australians. Seemingly the Government and Public Servants emboldened by the lack of transparency, banded together to protect systemic issues and regulatory failure while remaining wilfully deaf, dumb and blind.

The Government can't accurately explain what happened to the missing \$194.5 million and the more than 80,000 pages⁷⁷ of regulations around superannuation did not help the victims. The financial services industry earns over \$32 billion per year, donates to both sides of Government to earn protection from any misconduct while consumer damage is ignored. The Australian Citizens Party claimed ASIC is kept weak so the banks can strip assets from the elderly.

The level of corruption in Australian politics means the Government is no longer capable to carry out an objective assessment of how Australia is handling white-collar crime. The Trio victims propose that under the unique circumstances surrounding Trio; the regulatory failure; the

⁷³ <https://www.asiasentinel.com/p/australia-gags-massive-banknote-scandal>

⁷⁴ ABC 4 Corners Cover Up 30 Sep 2013
<http://www.abc.net.au/4corners/cover-up/4990074>

⁷⁵ *ibid.*

⁷⁶ <http://www.abc.net.au/news/2013-09-30/rba-owned-company-attempts-business-deal-with-saddam-hussein/4986726>

⁷⁷ David Millhouse 'Corporate Governance in Non-Bank Financial Entities' LexisNexis Australia 2019

systemic issues; the politicization; conflicts of interests; victimization etcetera, a remedy is urgently needed. Starting with an independent inquiry into ASIC's and APRA's handling of Trio by someone like the former bank regulator and Associate Professor of Economics and Law at the University of Missouri-Kansas City, William Black. ASIC and APRA had their chance to serve justice but they misled everyone.

The Banking Royal Commission saw the criminal malfeasance in superannuation and Kenneth Hayne used his High Court experience to restore some semblance of justice by recommending a Compensation Scheme of Last Resort where belated justice could be offered to the victims for the decades of crimes against them. But the Government's lack of transparency where ASIC got away with lies about Trio has emboldened the Government to continue as before the Banking Royal Commission. Emboldened beyond the point of seeing the need for a Truth and Reconciliation Commission, Australia's white-collar crime paradise benefits the enablers and denies justice for the victims. Denying justice keeps white-collar crime possible and under the radar.

In the Supreme Court case against Shawn Richard Justice Garling said,
It is admitted by Mr Richard that he represented himself to investors as being the controller of Trio, WGI and AAM, in circumstances where Mr Richard was aware that these representations were false.

Mr Richard accepted that an adequate description of that scheme was that it was a scheme designed to divert Australian investors' money from superannuation and managed investment funds into overseas hedge funds contrary to the interest of the investors in return for significant undisclosed payments.

the offences involved active concealment and misleading conduct on Mr Richard's part in order to disguise the true nature of the transaction, and the actual conduct which was occurring;

Mr Richard engaged in conduct amounting to systematic deception in order to conceal the receipt of funds by him, including using private email accounts and overseas bank accounts to facilitate the concealment of the receipt of his personal benefit....⁷⁸

Why didn't ASIC encourage the court to lift Trio's corporate veil as the requirements necessary to penetrate the corporate veil are found in the Trio case?

Both the courts and Corporations Act 2001 (Cth) have developed principles and provisions relating to piercing the corporate veil.

The courts have stated that the courts are able to lift the corporate veil if:

- *A company is used as a vehicle for fraud,*
- *When a company is used as a sham,*
- *When directors knowingly and fraudulently breach their fiduciary duties.*

This means that if a company engages in any of the above conduct, the courts will intervene, lift the veil and effectively extend the companies liability and actions onto its directions, members or agents responsible.⁷⁹

At every step in the life of Trio, ASIC did nothing to safeguard consumers. No action against known fraudsters setting up business in Australia. No action during the life of Trio despite the red flags. No action after the crime was discovered. Failed to ensure the victim's rights were respected. No accuracy in the reporting about the Trio fraud. No assistance from the Police, the Parliamentary Joint Commission or the victims. Not even an inventory of the information that

⁷⁸ Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011) Garling J

⁷⁹ Adam Lewis The Corporate Veil and When it Can Be Pierced (2021 Update) 13.08.2021
<https://lawpath.com.au/blog/corporate-veil-can-pierced>

ASIC withheld. No hesitancy to mislead everyone about the Trio fraud. ASIC's unquestionable willingness to support Mr Shorten's opportunity for revenge. By default, the Trio fraud broaden ASIC's and APRA's control on the superannuation pool. The fraudsters can be forgiven if they think ASIC gave a blessing to the fraud and the fraudsters.

The Trio fraud is an example of a financial crime, politicised by Bill Shorten using Labor's union bias to discriminate and act against one group for the benefit of another group. The Liberal Government acknowledged it knew about financial crime in banking but saw no reason to stop or hold an inquiry into the bad behaviour. Scott Morrison said the victims of financial crime were complicit for being too passive. Both parties released misinformation and made misleading statements about the Trio fraud.

The Trio victims were not passive. They understood the value of the Australian dollar, unlike the irresponsible spending by politicians and public servants as illustrated in this document. The Trio victims saved over a lifetime working in mines, at the steelworks, as teachers, office workers, skilled tradespersons, truck drivers, some operated their own business. Some of the Trio victims lost their family home. Others were forced to re-locate to other regions. The trauma and suffering caused by the Trio crime was exacerbated by the way ASIC and APRA handled the crime. Before the Trio scheme started (2001) and during the operational life of Trio, (2004 to September 2009) there were warning signs from ASIC's counterparts which ASIC had authority to access. But no one provided an accurate account of how \$194.5 million disappeared or explain where the money went. Both financial regulatory agencies entrusted with preventing criminal behavior in the financial sector failed to protect Australian superannuation money.

A father in ill-health put his financial affairs in order to support his family and provide an education for his daughter. Directly after his passing, the family learnt that his money in Trio was possibly stolen. Uncertainty gripped the Trio victims for over six months. Trio victims were shell shocked not knowing whether Trio's money had indeed vanished.

During that period of uncertainty, ASIC and Mr Shorten ignored the insidious wrongdoings of an international crime gang and focused on going after the financial adviser who had recommended Trio products to the AWU.

CONCLUSION

Despite Trio's various levels of oversight including the Government regulators ASIC and APRA, trustees and custodians NAB and ANZ banks, internal auditors KPMG and external auditors WHK, as well as 4 research houses, Morningstar, Van Eyk, Aegis and Van Mac; an in-house investment committee, the board of directors, 55 staff members and 156 financial advisors, the Trio victims have still no explanation whatsoever from ASIC or the custodians as to how \$194.5 million can vanish from the Australian superannuation system.

ASIC's Trio narrative is not based on evidence, not based on logic, but more in line with Mr Shorten's union biased behind the politicising of the crime. No 'fraud' case anywhere in the world plays out like Trio, where the facts of a crime are compromised to suit a political and regulatory agenda.

The Trio Fraud Manual 2 shows dishonesty in the financial sector. It shows that some risks are covered up and hidden from consumers. If money does disappear, the financial industry is quick to remind consumers of 'let the buyer beware'. The financial market needs something stronger and less captured than ASIC. A Federal Independent Commission Against Corruption (ICAC), needs to have access to agencies equipped with forensic accountancy skills and law enforcement tools that enables the following of money trails across international jurisdictions. Dishonest politicians compromised ASIC resulting in less transparency, inaccuracy, no accountability and a financial system with no integrity. ASIC, APRA and the government are willfully blind and indifferent to financial crime and the damage done to Australians.

John Telford

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Victims of Financial Fraud (VOFF Inc)

Trio Fraud Manual 1 <http://www.mysuperrights.info/trio-fraud-manual.php>

VOFF Website <http://www.mysuperrights.info/>