

Australia is failing to meet basic human rights obligations for people harmed by malfeasance in the financial system. 07.07.2021

The Australian Government has done nothing [nor do they have a plan in sight] to help the people who are exposed to malfeasance in the financial system. The Trio Capital fraud is an example where Government covered up a wrongdoing and blamed the victims of crime for the sake of maintaining confidence and to keep up the appearance of a robust financial system.

Kenneth Hayne's Banking Royal Commission recommendation number 7.1 confirmed Ramsey Commission Part 2 Recommendation for a Retrospective Recovery Fund. The head of the Hayne Recommendation Committee said 'categorically no retrospective recovery fund'. Where is the Compensation Scheme of Last Resort?

Will the CSLR have the power to determine restitution and compensation for consumers exposed to system issues and regulatory failure?

Below are the three main arguments, used to blame the trustees of self-managed superannuation funds (SMSFs) and direct investors for their loss in Trio:

1. [Five official reviews looked at issues surrounding the Trio fraud and found no cause for remedy for the uncompensated victims.](#)

The Trio victims argue that the 5 official reviews were based on the compromised Parliamentary Joint Committee Inquiry Report. Compromised because the Australian Securities and Investments Commission (ASIC) withheld vital evidence from the Committee. Thus the 5 reviews were also compromised.

2. [SMSFs and direct investors chose not to be covered by Part 23 of the Superannuation Industry \(Supervision\) Act 1993.](#)

The history of Part 23 shows that the market and consumers were never informed or warned of the 'fraud' protection clause in the Part 23 of the SIS Act. It's impossible to make a choice when the options are concealed.

It's alarming to learn that the Australian Prudential Regulation Authority (APRA) helped write the discriminatory structure into the Part 23 SIS Act legislation, knowing that it only benefits the APRA-supervised superannuation funds. Also knowing that the legislation would harm other superannuation types including direct investors but APRA chose to say nothing.

Part 23 undermines any need or necessity to solve financial crime. Part 23 means the public pay for company crimes and the damaged done by dangerous products. The Trio fraud shows that not all criminals are brought to account, yet every super fund pays for the criminal's crimes.

Part 23 protects the likes of industry funds that herd members and spends tens of millions of dollars of members' money on advertising and political lobbying [unknown to members]. Trio is an example of people, disadvantaged because they exercised their right of freedom of choice.

3. [Former Australian politician, Kelly O'Dwyer MP, either knowingly or by gross negligence, misled the Trio victims and the public when she released the 1 April 2016 statement saying APRA and ASIC carried out their roles appropriately in the handling of Trio.](#)

There are many examples where both regulators failed to act against misconduct in the financial sector but Ms O'Dwyers' statement overlooked these. For five years ASIC failed to act against an ASIC licenced corporation that seriously breached the Corporations Act. APRA issued Trio with a show cause notice to verify Trio's assets, but never acted when Trio didn't comply. Had the regulators acted in the above examples, the fraud would have been stopped.

Government and Trio consumers disagree.

The Government's rhetoric blames the victims of financial malfeasance, saying they are "complicit" for being too "passive". The victims on the other hand, perceive an incestuous and cosy relationship between ASIC, APRA, and Treasury. It's as if ASIC, APRA, and Treasury don't know how to act in the public's best interest, making the Government appear to be collaborating and complicit in the financial crimes.

There are about 1,000 uncompensated Trio victims none to VOFF's knowledge are involved in financial malfeasance. Whereas, without mentioning names, there are many politicians, including a Prime Minister, who faced an ICAC hearing over serious allegations of fraudulent conduct. Malfeasance by some politicians resulted in prison sentences.

If a car is stolen, the owner reports it to the police. If a house, shop or office is burgled, the police are notified. Physical assault and serious property damage is also reported to the police. But theft of superannuation is not a police matter! Imagine a Police investigation of a serious securities crime and they reported spin and misinformation. That's precisely what ASIC, APRA, Treasury and some politicians did concerning the Trio fraud. Right from the start, it became apparent that the government had no interest in giving an accurate account of the Trio fraud, or pursue the letter or the spirit of the law.

From 2010 to 2016, the Trio victims waited for the so-called investigation to run its course, but ASIC remained opaque by telling oversight hearings,

'As you will appreciate, our investigations are ongoing and we are constrained in what we can say publicly about those investigations.'

The victims perceive ASIC had no interest in solving the Trio crime once Part 23 was accepted. Part 23 provided a huge benefit to the APRA-supervised funds simply by leaving some Trio investors uncompensated. The unresolved damage to some investors was a market signal, informing the public to keep-clear of SMSFs while simultaneously warning the APRA-supervised fund members not to change their super fund. It's interesting to note that Part 23 of the act allows compensation only if a fraud has taken place, that's why APRA regulated funds got their Compensation, because it was considered a fraud. SMSFs were not included in receiving Compensation because they were accused of being greedy and as Mr Shorten said, "they were swimming outside the flags" for being in exactly the same investment. Please explain!!!!

Had the police investigated the Trio crime, they wouldn't allow the direction from the Superannuation Minister, Bill Shorten's office to dictate their actions. They would not have gone after a financial adviser while ignoring the actual crime or the pleas of a Trio director who feared for his life. Police are able to investigate international money laundering and unlike ASIC, the police don't create spin for the sake of appearances.

APRA's Chairman Ross Jones informed an oversight hearing that APRA had direct contact with Trio directors throughout the operational life of Trio and in 2006 had formed the impression that the Trio directors were a 'bunch of incompetents'. When asked by VOFF why he didn't inform the market, he replied saying APRA has no responsibility or obligation to inform the market. Well whose responsibility was it? Who do we count on to inform the market?

Challenger Group retirement income chairman Jeremy Cooper made a disingenuous remark against SMSFs saying, *'you can't have your cake and eat it too'*. Why such a throwaway statement over a serious financial crime? Did Mr Cooper benefit by discrediting his opposition – the SMSFs

because his own interest in the management of a multi billion-dollar fund depends on industry super funds?

In the case of Trio, failed policy and regulation, including weaknesses of the financial system were not publicly mentioned. But evidence did arrive in an APRA's 4-page redacted letter dated 8 March 2018, addressed to The Freedom of Information Officer at Treasury. After a lot of contesting whether information can be released or not, the Information Commissioner released APRA's letter on 3 September 2018. In the clip below, APRA mention weaknesses but can't mention anything more because a person with malicious intent could exploit the weaknesses.

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.

The people that engineered, operated and exploited weaknesses in the financial system definitely had malicious intent to rob Australians of their superannuation. They outsmarted both regulators, remained untouchable and hidden from law enforcement and were able to maintain their anonymity. They were certainly not named in the 5 reviews or by ASIC's website.

ASIC's fingerprints are all over the Trio fraud crime scene but ultimately ASIC's reluctance to act against misconduct in the financial sector turned the Trio event into a diabolical debacle. ASIC was really just a pseudo big crimes investigator with no jurisdictional power to extend outside Australia's borders. The pathetic inaction by the financial cop prompted the Government to establish the multi-agency Serious Financial Crime Taskforce (SFCT) with a remit to target serious financial crimes such as, technology enabled tax crime (cybercrime), offshore tax evasion and illegal phoenix activity. Superannuation fraud is not mentioned.

Residents in Guernsey kicked up a stink when a Trio fund manager moved to Guernsey from Hong Kong and they discovered that he was named in court documents in Australia. VOFF provided the Guernsey authorities with court documents and reports by Trio's liquidator. Did this have an influence on the recent announcement of a new Economic and Financial Crime Bureau that will be directed by Kevin Davis, previously chief investigator for the UK Serious Fraud Office? The new Bureau will have the powers to seize ill-gotten cash and property and look at civil remedies – particularly around cash seizure and the seizure and forfeiture of criminal property.

A Guernsey resident wrote,

"I am concerned that it could be embarrassing for Guernsey and particularly for the finance industry to have a deputy named in Australian government papers as being involved in their largest fraud particularly the theft of pension money."

The new Bureau in Guernsey will act in the best interests of the 63,000 inhabitants and get their money back in the event of theft. The new taskforce in Australia protects Tax Crime and Tax Evasion. No mention about protecting the best interests of the Australian population or to seize stolen money.

The sentencing of Shawn Richard in the NSW Supreme Court was a trial that didn't invite the Trio victims or call for Victim Impact Statements.

During the trial, Justice Garling noted:

'The material tendered by the Crown did not establish the identity of any of the victims of the offences of Mr Richard. ... 'I am quite uncertain as to the detail of any of these victims who are not to be compensated by the Commonwealth Government and find myself unable on the present state of the evidence to make any specific finding about the personal circumstances of any victim of the offence.'

The right to equality before the courts and tribunals is a specific application of the right to non-discrimination. Article 26 of the International Covenant on Civil and Political Rights (ICCPR) states,

'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

The rights of the Trio victims were ignored, and there is no Equality of Arms in Australia, Legal Aid don't handle financial crime and the prohibitive costs prevent victims from taking legal action.

The SMSF trustees in Trio carried out due diligence, comforted by the fact that the Trio fund was ASIC licenced and APRA regulated, the Custodians were ANZ and NAB and reports from Research Houses and Star Rating firms showed that the fund was a conservative investment. The trustees sourced the necessary information to make an informed decision and they fulfilled their responsibilities and obligations; they acted honestly in all matters and in the best interest of their superannuation fund, but unknown to the SMSF trustees, APRA had not disclosed important information. Consumers were denied the very information that would cause SMSFs serious harm. Which is precisely what happened. APRA already knew this.

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