

Chairperson for the Victims of Financial Fraud (VOFF)
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Thursday 5th July, 2012

Regarding: V.O.F.F. Questions to the Minister for Financial Services and Superannuation, APRA, ASIC and ATO.

To:
The Hon. Bill Shorten, Minister for Financial Services and Superannuation
Mr. Ross Jones, Deputy Chairman, APRA
Mr. Greg Medcraft, Chairman, ASIC
Mr. Michael D'Ascenzo, Commissioner of Taxation, ATO

Dear Sirs,

Further to the meeting between the Minister, and representatives of APRA and ASIC with the "Victims of Financial Fraud" (V.O.F.F.) on Thursday 5th July, 2012, we advise of the attached questions on notice that we request a formal, written response.

Yours Faithfully,



David Bridge
Chairperson – V.O.F.F.

Attachments:
Appendix A – Overview
Appendix B – Alarm Bells
Appendix C – APRA
Appendix D – ASIC
Appendix E – ATO & Minister Shorten

Cc:
Hon. Julia Gillard, MP Prime Minister of Australia
Mr. Tony Abbott, MP Leader of the Federal Opposition
Mr. Stephen Jones, MP
Ms Sharon Bird, MP
Ms Deb O'Neill, MP
Senator Mathias Cormann
Senator Concetta Fierravanti-Wells
Mr. Paul Fletcher, MP
John Telford - Secretary V.O.F.F.
V.O.F.F. Media Contact List

APPENDIX A - Overview

1. Introductions:

We are a group of Trio Capital Victims of Financial Fraud”, colloquially known as VOFF. Office bearers are as follows:

David Bridge – Chairperson VOFF

John Telford – Secretary VOFF

VOFF Executive members Des Scott, Paul Matters, Andrew Gray

VOFF advisors Bill Thompson, David Blackall

2. VOFF objectives are:

- Full compensation without discrimination as this is a failing of Australia’s financial regulatory oversight to identify and prevent organized crime from deliberately setting out to steal retirement savings of ordinary Australians
- Sustainable changes to regulatory oversight of the Australian financial system
- All criminals in this Trio Capital transnational crime gang brought to justice.

3. Question To The Minister Regarding Compensation

Minister, the Trio Capital matter has clearly demonstrated that the Australian financial system had weaknesses that were deliberately exploited by an organized criminal gang. If the Regulators with their experience, knowledge, regulatory authority and powers could be fooled, what hope have ordinary mum and dad investors.

It is disingenuous for anyone to say that self managed or direct investors are responsible for spotting fraudulent or criminal behavior.

Even if this is deemed an extra-ordinary event, the distress, trauma and anxiety that this has caused 690 investors demands in the public interest that our socially democratic government, and self proclaimed champion of the ‘Aussie battler’, immediately rectify what our Regulators failed to detect and their shortfalls in oversight responsibilities.

Therefore will you as the Minister responsible, under your authority provide without delay or discrimination full compensation for all Trio Capital investors?

4. Opening Statement

Transnational organized crime has infiltrated the Australian financial system by setting up seemingly legitimate business structures and investment vehicles with the express intent to steal Australian’s of their retirement savings.

APRA and ASIC apparently investigated, approved and licensed the Trio Capital criminals and their various investment products to operate within Australia's regulated financial system, and therefore gave the green light for Australian investors of all types to invest in these products.

What's more, AUSTRAC apparently gave the organized criminal gang a 'flat waiver', thereby providing an opportunity for the electronic trail of money movements much harder if not impossible to trace, particularly after the theft had occurred.

Some have said that the Trio collapse was designed to take advantage of the vulnerabilities of the superannuation system. The recent PJC Report clearly demonstrated that that every level, the Australian financial system failed in its capacity to protect investors. This includes APRA, ASIC, ATO, the responsible entities, AFS licensees, custodians, auditors, rating agencies and financial planners and professional advisors.

VOFF has many questions to ask of the role of APRA, ASIC and the ATO allowing this organized criminal gang to infiltrate the regulated financial system of this country, despite the fact that these same players being previously involved in the same type of activities in the UK and the US, and whose names came to the attention of our judicial system almost a decade ago.

These questions remain either unanswered or unsatisfactorily answered by APRA, ASIC and the ATO.

Given the propensity of the Minister, APRA and ASIC in your public and media statements to unfairly single out self managed and direct investors as having to accept that our money is lost and there is no recourse for compensation, VOFF will issue to the public and media all of our questions that require satisfactory responses, and to redress the public perception of this matter.

APPENDIX – B – Alarm Bells

Following are four alarm bells where it appeared ASIC and APRA failed to properly or fully investigate. Our financial system was made easier to compromise and infiltrate as a result. VOFF demand explanations from APRA and ASIC as a result.

1. Timeline Actions did not spark an alarm!

1.1 VOFF demand that APRA demonstrate whether the following incidents warranted a more thorough investigation? What action did they take? If not, why not?

In 2005 APRA forced Shawn Richard from the board of Trio because of alleged conflict of interests - (as both owner and investment manager for the fund). (ref-2)

1.2 This event suggests Mr Richard did not know his responsibilities regarding ownership and management of a fund. Why were his credentials not validated at this point, given that it surely raised suspicions?

In 2006 APRA had direct involvement with another Trio fund, ARP Growth, forcing it outside the superannuation entities it regulates. (ref-2)

1.3 Mr Richard and his connection with Trio seemingly made errors in 2005 and again in 2006, serious enough to come to the attention of APRA (forcing it to act). Would this not be reason enough to investigate both responsible entities and directors of the Trio fund more thoroughly? Why did APRA not see these errors as a warning sign, signaling that someone might be masquerading in the financial system?

In 2008 ASIC interviewed Richard under its compulsory examination powers about an alleged \$500,000 secret payment from Trio and Trio-related companies to a financial planner. (ref-2)

1.4 Did ASIC communicate this matter to APRA?

Would this alleged secret payment warrant further investigation to substantiate the authenticity of the fund manager? Was a further investigation carried out in this particular and somewhat suspicious incident if indeed it were true?

In 2008 August APRA raised concerns about the fund manager Trio Capital's valuation of its two hedge funds. As a result of its "prudential review" of the Albury-based fund manager, the superannuation regulator unsuccessfully sought further information about the valuation of the funds. (ref-2)

In October 2008, APRA was told there were no "available valuations" of two offshore hedge funds registered in Caribbean tax havens, St Lucia and the British Virgin Islands. APRA took no action against Trio Capital until after the scam was exposed by Bronte Capital blogger John Hempton in September 2009. (ref-2) and (PJC report p39)

1.5 Is it reasonable to say the above warnings were signs of smoke from a burning building?

PPB Advisory, Mr Robinson in submission to the PJC ('26sub_PPB' 19.8.11) found:

Trio in its capacity as Responsible Entity and its directors and officers did not undertake appropriate due diligence in respect of the value, existence and realizable value of the underlying investments.

Further, Trio and its officers and directors did not undertake appropriate due diligence in regards to assessing the capabilities of various parties engaged to be investment and underlying fund managers, nor did they monitor the performance of these parties during their engagement.

1.6 Both ASIC and APRA appear to have let the Trio Capital fund deteriorate to the above condition. This does not reflect Section 1 of the ASIC Act, whereby ASIC has a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system. Please explain why it was so seriously deteriorated?

2. Warning on New Zealand Securities website did not ring an alarm!

Investigative financial journalist Stuart Washington in 2010 reported, *Richard was named in 2001 by the New Zealand Securities Commission as being an associate of the unlicensed broker Millenium Financial which operated in the Philippines.* (ref-3) Washington adds that, *the warning was subsequently removed from the NZ Securities Commission website. The Securities Commission could not provide a reason for its removal.*(ref-3)

Had Richard come to the attention of the Australian authorities in 2001, the Trio crime could have been nipped in the bud before it flourished into a national crisis.

At the PJC Oversight of ASIC in Sydney 22 June 2012

Tony Smith asked ASIC if they looked to overseas experience.

Mr Tanzer said "...We speak a lot to our counterparts in the UK and New Zealand and to a degree in places like Singapore and Hong Kong and so on."

2.1 VOFF demand the Australian regulators shed light on this particular unresolved incident.

- On what basis did ASIC believe the New Zealand Securities Commission to issue a warning?
- In the opinion of ASIC, why was the warning removed?
- Does ASIC believe that threats of legal action were made against the New Zealand Securities related to this warning?
- Are the powers of the Australian and New Zealand Securities weakened by legal threats initiated by persons who unknown to the authorities may have a criminal intent?

3. Easy Issuing of Licenses!

At the Oversight Hearing Friday 22nd June in NSW Parliament House, Sydney, ASIC Chairman, Mr Greg Medcraft pointed out that under present legislation they are more or less obliged to issue a licence once criteria are met by the applicant. Mr Medcraft stated also that it should however be a privilege to manage other peoples money.

VOFF claim this weakness in the licensing system was exploited by the transnational organized crime gang network, thereby enabling it to infiltrate the Australian regulatory and financial system. With a license the gang set up a seemingly legitimate business with the intent to siphon retirement savings out of Australia. Their activity may not have come to the attention of the Australian Crime Commission and the Australian Federal Police because they had a valid license and thus were deemed as suitably screened.

In other words, it was easier for Shawn Richard to get a license to handle superannuation savings than for a someone to get a job in Australia, as most employers undertake a suitable backgrounding, including a police check.

3.1 VOFF ask why this weak link in the chain was allowed to remain unchecked? If it was too easy to obtain a license, what did ASIC do to help tighten the requirements?

4. Investors have lost their savings time and time again!

At the PJC hearing on April Wednesday 4th 2012, Senator Sherry expressed his concern to APRA that 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 subentity, the subinvestment entity. There is nothing there that relates to that. Does that surprise you?”

Mr Brunner of APRA said,

“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.”

Senator Sherry, added that,

“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?"

What Senator Sherry touched upon is very alarming. The PJC hearing found there was a break down in communication between ASIC, APRA, ATO, ACC and the AFP, and certainly to all investors, particularly self managed ones. This break down in communication must certainly include the investors they serve.

4.4 Why did APRA continue to support a policy that exposed consumers/customers to such dangers? Why did APRA not take more interest in the security of investor's money?

Senator Nick Sherry concluded the 4 April Hearing by saying to APRA:

"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.....literally hundreds of people who are not compensable in the event of theft and fraud in the SMSF sector.

4.5 VOFF would like to know this answer.

ref-1 <http://www.smh.com.au/business/another-black-mark-against-asic-20100718-10fzv.html>
July 19, 2010 Another black mark against ASIC

ref-2 <http://www.theage.com.au/business/raised-concern-on-hedge-funds-20110704-1gz2p.html>
Raised concern' on hedge funds Stuart Washington July 5, 2011

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

APPENDIX C - Questions for APRA

1. APRA carried out 5 prudential reviews of Trio Capital between 2004 and 2009. All Trio's investor types would have assumed that APRA had carried these out effectively, thoroughly and competently including enforcing Trio's requirements under the relevant Acts and regulations. APRA has reported to the PJC that from 2008, it increasingly sought more detail from Trio's trustees including investment valuations, but Trio was unable to furnish this detail. However, in October 2009 when the trustee could not supply all the information requested (Ref: PJC Report 4.24) APRA commenced an investigation. This is in spite of the fact that Trio's correspondence of 23rd October 2008 to APRA (Ref: PJC 4.49) did not appear to have been sent to ASIC. This underscores several key points that APRA has so far not fully explained;
 - a. Despite reporting to the PJC (Ref: PJC Report 4.22) that these were 'fairly comprehensive reviews', why could it not firstly identify, then quickly react to the various trigger points of dubious information or non compliance?
 - b. If a competent fund could or should be able to provide valuations within a couple of weeks, why did it take APRA so long, in this case years, for APRA to react to Trio's non compliance?
 - c. Why did APRA not send to ASIC Trio's correspondence of 23rd October 2008, as this one year gap could have been crucial to a combined APRA / ASIC collaboration regarding Trio? It is vital APRA and the Minister understand that most of the Wollongong based Trio investors did so from about mid 2008, so APRA could have helped limit the magnitude of the losses
 - d. If APRA and ASIC claim that there were always good lines of communication between the two regulators (Ref: C&FS Oversight minutes, 22nd June 2012, p3 Mr John Price), how does APRA and for that matter ASIC explain the lack of communication or collaboration between the organisations regarding Trio?
2. In 2004/5 The Trust Company withdrew as a custodian because they apparently had issues and concerns. Did APRA question why they withdrew, and if so, what was the response and should that have triggered further investigation by APRA into Trio?
3. Those running Trio obviously didn't know of their requirements regarding conflicts of interest, so why didn't this highlight issues regarding qualification and competence of Trio's management and or trustees. Why did APRA not act sooner?
4. In and around 2006 Trio were moved to "oversight" highlighting there were some concerns and issues. When combined with the afore mentioned issues, there is an accumulation of red flags APRA could have acted on. Why didn't APRA act on these?
5. Did APRA carry out any probity checks on Shawn Richard or any of his associates? NAB as a custodian state they do probity checks on clients, so did APRA do any background checks? NB: It is common practice to check backgrounds on potential employees, let alone someone being handed over millions of dollars to manage on behalf of others. Why would APRA or ASIC not do the same?

6. In late 2003 there was fraud involved with the Commonwealth Super Scheme (CSS) involving approx \$160m. A spokesperson for APRA said at the time that CSS had notified it of the attempted fraud. But APRA apparently commented further that it was not a matter that warranted any intervention as members of the fund had not lost any money, as the fraud was identified and action taken to prevent the loss of the fund's assets. A spokesperson for the Association of Superannuation Funds of Australia said the matter was the responsibility of APRA and the Federal Police. This, together with other issues, shows a possible lack of commitment to checking, or follow-up on important issues relating to the competence of those handling Australian's super savings amounting to hundreds of millions of dollars. APRA need to comment on this matter and how it could have learned from the earlier episode to help prevent a Trio from occurring.
7. If valuations were requested at the 4th prudential review in August 2008, these usually would take about a month to be supplied, and VOFF's understanding from discussions with those in this line of work, that it could be done much quicker, however a month could be a reasonable length of time in most cases. As mentioned at the PJC hearing on 30 August 2011 Mr Ross Jones's own words regarding valuations were; "In most circumstances they come back in a month's time or in whatever the time periods and give you the relevant information." If a month would be a reasonable length of time for the valuations to be provided to APRA, why wasn't something done in September 2008 when the first valuation did not come, or even October 2008, and for that matter, every month after that? Why did APRA not act sooner?
8. Why does it take someone like John Hempton, who is removed from the oversight process to highlight the problem, when APRA are dealing with it first hand and yet for years seem to not suspect anything, or if id did, why not act sooner? APRA must comment on this.
9. APRA failed a basic principle of any organisation, which is communication with stakeholders. APRA must explain why it allowed this to occur?
10. What were APRA's regulatory checks, investigations and findings prior to approving operating licenses to Trio Capital and its directors and trustees, and more specifically the Astarra Strategic Fund in relation to its intended investment strategy, investment structure, liquidity levels and process for redemptions? When was this carried out, and by whom exactly, and what checklists were utilised?
11. Did APRA understand that Trio Capital / Astarra Strategic Fund was essentially a 'fund of hedge funds' at the time prior to approved licenses being issued, and that its primary intent was to utilise offshore 3rd party fund managers? If not, why was this not understood by APRA?
12. If APRA and ASIC have no jurisdiction to follow the trail of 'fund of fund' types, then they need to be graded as potential high risk and due warnings need to be mandatory information made available to investors. Why does APRA and ASIC not issue this alert?
13. Why is there so little transparency in the regulatory oversight of hedge funds, specifically 'fund of fund' types?

14. Prior to approving these licenses, why did APRA not seek out and request Trio Capitals / Astarra Strategic Fund list of underlying assets in these 3rd party hedge funds, and demonstrable proof of the valuations of those assets?
15. The Federal Government publishes documents relating to operating a self managed super fund and it says in part “*you need to make sure all investment decisions are made according to the investment strategy of your fund*”. Those documents also clearly state the consequences for non compliance, and this can include prosecution. However, if SMSF’s invest in APRA, ASIC and ATO approved funds where those same regulatory authorities have not thoroughly checked where, what type, proof of valuation and liquidity of offshore or 3rd party investments which is fundamental to SMSF’s making ‘informed’ investment decisions, why should SMSF’s be held to account and accept losses incurred by fraud and deception with no recourse for recovery against those same regulatory authorities for poor oversight, or against insurance provisions?
16. Had there been more substantive checks carried out by APRA, the use of tax havens such as the Caribbean or the Cayman Islands could have raised the alarm regarding the legitimacy of 3rd party investments or the intended use of investor funds. APRA must explain why this was not determined?
17. Why did APRA, ASIC and ATO consider it unnecessary to let investors know about potential high risks they are getting into by entering a tax haven?
18. High risk zones around the world should have an appropriate category assigned to them so the investor is clearly presented with the warnings. What is APRA’s response on this? Why are questionable tax havens even permitted in the Australian financial system?
19. Had there been more substantive checks carried out by APRA, the use of tax havens such as the Caribbean or the Cayman Islands could have raised the alarm regarding the legitimacy of 3rd party investments or the intended use of investor funds. In future, will APRA upon identifying the use of tax havens inform and communicate with investors, so that investors can assess the risk it may pose to their investment strategy?
20. APRA & ASIC gave the green light for industry, retail and self managed super funds, plus direct investors to invest in Trio Capital. Trio Capital was not some rogue fund not covered by the Australian regulatory framework. The Superannuation Safety Amendment Act 2004 was implemented to improve the following:
 - a. Trustees were required to be licensed by APRA by June 2006 if they wished to remain trustees of APRA regulated superannuation entities
 - b. A mandatory risk management framework was introduced for both the trustee and funds under trusteeship
 - c. New operating standards covering fitness and proprietary, adequacy of resourcing and outsourcing
21. VOFF demand that APRA explain why it believed that they were dealing with incompetence and not fraud?

22. VOFF demand APRA explain that if it believed incompetence was involved and not fraud, why did it and the Trio Capital managed investment scheme regulator ASIC not act immediately on behalf of all Trio Capital investors to address that incompetence? If APRA and ASIC believe that it did, then VOFF request details be provided to demonstrate that they had done this?
23. VOFF demand that APRA explain that if incompetence was involved, why did it not enforce compliance by Trio Capitals Directors under various legislation and regulatory requirements?
24. VOFF demand APRA explain why it failed to communicate to ASIC and investors it's upgraded risk rating of Trio Capitals after finding valuation irregularities? Why the several month delay in informing the MIS regulator ASIC?
25. When APRA changed and upgraded the risk profile of Trio Capital / Astarra Strategic Fund, when were ASIC and the ATO advised? Why is it that investors were not promptly informed so that those same investors could make informed decisions regarding continuing to invest or seek redemption if their individual risk profile changed as a result?
26. VOFF demand that when the irregularities were found, why did APRA or ASIC not force Trio Capital to immediately advise investors that there were no valuations or a methodology to do so?
27. VOFF demand APRA explain why self managed investors are singled out and discriminated against as having the responsibility for scrutinising fund details? Why did it not include industry and retail investors and their so called professional advisors as having this same responsibility?
28. APRA states that they take a risk based approach, and regularly analyse the financial condition of institutions and reviewing their risk management'. In 2004 / 2005, when it was discovered that there was poor governance and unit valuation problems with Trio Capital (source??) and later in 2008 when APRA discovered valuation methodology problems, VOFF ask the following:
 - a. Where is the evidence that APRA carried out a risk based approach in investigating Trio?
 - b. Where is the evidence that APRA, when having the Trio Capital Directors replaced as early as 2005, checked the existence of the assets, their locations, valuation and valuation methodology?
 - c. Did APRA have follow up checks to ensure their existence?
 - d. Were ASIC informed? If not, why not? Why was there such a long delay?
 - e. Why was a notice not sent to investors, or their advisors of these irregularities?

- f. Regardless of whether incompetence or the suspicion of fraud, doesn't APRA believe that it should be regularly analysing the financial condition of institutions and reviewing their risk management approach, systems and the detailed contained within? This would demonstrate that they have acted on behalf and best interests of all investors?
29. At the PJC hearing on April 4th 2012, APRA stated that they had other higher priorities than the Trio Capital matter. For what reason is this matter not one of APRA's highest priorities given the serious nature of the allegations of poor regulatory oversight provided by APRA? Why is this so, and why would APRA not find the financial security of mum and dad investors their top priority?
 30. Further, upon application and election to operate as a self managed super fund, APRA issues notification stating that the "self managed superannuation fund is now a regulated superannuation fund under the Superannuation Industry Act 1993." APRA however, constantly states that self managed super is not APRA regulated. This is a contradiction to the letter previously referred to. In light of this contradiction, APRA is contributing to misinformation regarding self managed super and how it is regulated. What is APRA's response on this?
 31. VOFF demand that APRA explain why it believes that it is up to self managed fund trustees and their planners to scrutinise investment fund details? Why did it single out self managed investors and not include so called professional advisors of industry funds?
 32. Why is there no framework to verify the legitimacy and valuation of 3rd party investment managers to check whether the Australian Fund Manager is delivering to its intended strategy, risk profile and liquidity guidelines?
 33. SMSF are continually informed, particularly by the Minister responsible Bill Shorten, that SMSF's are not APRA regulated funds. What is the process by which APRA upon approving licenses to entities like Trio Capital passes on responsibility and oversight to the ATO? And what is that regulatory process from that point and how does APRA, ASIC & the ATO interact to ensure proper oversight and protection is provided to investors?
 34. Note: Although the ATO hold the responsibility for 'regulating' SMSFs - however, to start and run a superannuation fund requires ASIC and APRA to issue licenses, and execute their role in the superannuation industry as they are required under legislation. Saying the ATO is responsible for a SMSF functioning and to eliminate ASIC and APRA involvement is near impossible under the present structures. The superannuation industry would need a complete overhaul if SMSF investors relied solely on the ATO. Until that happens, the roles between the APRA, ASIC and ATO need to be understood more clearly by both the investor and industry and the opportunistic use of passing the blame needs to be prevented.

APPENDIX D - Questions for ASIC

At the Corporations and Financial Services Oversight Committee hearing held on Friday 22nd June, and the earlier testimony to the PJC, ASIC reported that the various gatekeepers came up short with their responsibilities (Ref: PJC 4.47). This raises several crucial points that so far ASIC has not adequately answered, specifically:

1. What did ASIC do prior to issuing AFS licenses and the granting of approvals for the various Trio MIS's to operate within the Australian financial system to prove whether a) the assets existed and b) whether the valuations were correct, or c) that the persons applying for an AFS licence were of good character and indeed appropriate to be issued one? (Ref: PJC 4.46)
2. What collaboration did ASIC have in relation to APRA's prudential reviews, and vis-a-vis between 2004 and 2009?
3. Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system. VOFF demand ASIC explain how it fulfilled its responsibility under the ASIC Act to Trio Capital investors?
4. Can ASIC indicate what part in the Trio matter where it promoted 'confidence in the financial system'?
5. Did ASIC receive correspondence from an Adelaide financial planner in June 2009 in relation to Trio Capital, and if so, why did it not immediately trigger an urgent investigation into Trio Capital?
6. If Trio Capital came to the attention of APRA and ASIC much earlier, how come it did not react until John Hempton raised the alarm in mid September 2009?
7. At the Oversight Hearing of 22 June 2012, ASIC raised the fact that communication with APRA was not as it could be (Ref: Oversight Hearing Minutes 22/6/12, p3, Mr Price) and had already implemented some remedial actions to improve it. This is evidence is it not that communication inadequacies between ASIC and APRA and vis-a-vis, contributed by allowing the criminal gang to remain undetected and therefore continuing it's theft of investors money? However, this contradicts later comments made by ASIC at the Oversight Hearing that "there were always good lines of communication" (Ref: Oversight Hearing Minutes 22/6/12, p3, Mr Price). Which statement is the factual one?
8. At the hearing, ASIC reported that it is now building a stronger skill set, particularly in relation to investment banking and fund management. Is this not evidence that the skill set was not sufficient enough to detect and act against organised crime infiltrating the part of regulatory oversight ASIC is responsible for?
9. Upon questioning regarding sufficient resourcing at the Oversight Hearing of 22 June, ASIC reported that it does the best with what we've got (Ref: Oversight Hearing Minutes, p13 Mr Medcraft). Is this not evidence that the skill set and resource levels was not sufficient enough to detect and act against organised crime infiltrating the part of regulation oversight ASIC is responsible for?

10. APRA deputy chairman Ross Jones said to a recent Senate Estimates hearing “...*that the fraud did not occur in an APRA regulated entity, but in an offshore hedge fund, beyond the reach of Australia’s regulators*”. APRA say that they can’t reach offshore hedge funds. However, ASIC say they are proactively surveilling the hedge fund sector!! (Ref: PJC 4.45) VOFF believe this is yet another case of the left hand not knowing what the right hand is doing. Who is safeguarding Australian investor funds? Where are the ‘good lines of communication’ that ASIC have stated existed between them and APRA?
11. ASIC seem intent to publically claim that self managed investors should sign a written declaration that they have no protection against theft or fraud. This is sending a message to all Australian investors that ASIC and APRA seem powerless to prevent it and sends a market signal that self managed super is somehow unsafe. Why would ASIC not state instead that it recommends new powers of regulation and once received ASIC will apply greater performance standards of regulation of the responsible entities, supervision and regulation of the AFS Licensing regime, supervision of the managed investment scheme environment, regulation of compliance plan adherence, and risk management compliance. Why instead does it seem ASIC has publically put up the white flag?
12. What information is ASIC holding on a subsidiary entity called “GCSL”. Investors request that this information be made freely available, as VOFF believe it would assist identifying not only how the theft occurred, but where the money went to and now resides.
13. If APRA and ASIC were true to their claim that there were always good lines of communication, why couldn’t ASIC have used it’s powers under the Corporations Act 2001, to have acted on or prevented criminal activity by those people exploiting loopholes or poor oversight on the AFSL process, regulation of the Trio Responsible Entity, supervision of the Trio MIS, regulation of Trios compliance plan or risk management arrangements?
14. Why can’t or won’t ASIC recommend compensation under section 50 of the ASIC ACT?

APPENDIX E – ATO & Minister for Financial Services and Superannuation

The Trio Capital Scam

Hindsight is always easy but is a bit of foresight too much to ask?

I (William Thompson) was an ATO officer for 26 years but called it quits, partly as a result of reading Stuart Washington's series of articles in 2010 on the Trio Capital fiasco. I decided that this was finally one scandalous failure too many. Here were two guys – Washington & the whistleblower, John Hempton, with no arsenal of statutory powers, no legions of field staff & no myriad of official databases – and they could reveal the whole mess with just a few internet & other public enquiries!

This was outright fraud by local & offshore scam artists, within a financial organisation that was purportedly subject to strict government & industry oversight & regulation. Over ***6,000 people lost \$176m in the largest superannuation fraud in Australian history & it was catastrophic for the ones who aren't yet being compensated!***

With lots of retirement time on my hands, I started making a few internet enquiries of my own & I shared what I found with as many people & agencies as I could imagine would, or even ***should***, be interested. The recipients of my findings included:

- Inspector General of Taxation – I got no response
 - Australian National Audit Office – I got no response
 - The Commonwealth Ombudsman – I got no response but Allan Asher later resigned, after being outed for speaking with the Greens. On 13 October 2011, the Australian newspaper stated that Asher had: 'also suggested Senator Hansen-Young invite him to reflect on 'systemic problems' with the ATO...' – **Mr Shorten, I now formally ask you to determine whether the 'systemic problems' alluded to by Allan Asher included the ATO's handling of matters relating to Trio. (Q1)**
 - The Treasurer; The Prime Minister; The Leader of the Opposition; The Shadow Treasurer – **Mr Shorten, I received a response from you, dated 3 November 2011, which I will discuss in due course.**
 - The Parliamentary Tax Forum – I received no response.
 - The Parliamentary Inquiry into the collapse of Trio Capital – I did receive a response, 6 months later, which was essentially – 'thanks, but no thanks'.

Mr Shorten, I now request that you ask the agencies referred to above to confirm receipt of submissions from me & what, if any, action they took in response. (Q2)

I won't go into the lengthy specifics of my submissions but they all made the following points:

- In a 2003 ABC '4 Corners' interview, then ATO Commissioner, Michael Carmody, spruiked the importance of **AUSTRAC** material as a tool to identify suspicious financial transactions.
- In late 2009, financial blogger John Hempton blew the whistle on Astarra.
- During 2010, journalist Stuart Washington's articles referred to:
 - Astarra channeling \$118m through the British Virgin Islands (a well known tax haven)
 - Astarra's Hong Kong-based owner, Century Investments Holdings, shared the same address as a firm called **Zetland Financial Services Group** until late 2008.
 - That address was: Level 13 or **13/F Silver Fortune Plaza** at 1 Wellington Street, Hong Kong (Hong Kong is also regarded as a potential tax haven)
 - **Zetland** and its chief executive, **James Sutherland**, were named in the British press as the Hong Kong-based owners of **Pacific Continental Securities**, a British broker that used high-pressure, "boiler room" tactics to sell risky and sometimes worthless US shares to British investors.
 - Astarra Asset Management directors, **Shawn Richard** and **Eugene Liu**, had **previously worked at Pacific Continental Securities**.
 - The British arm of **Pacific Continental Securities** collapsed in June 2007, with potential compensation claims against it of **£300 million (\$530 million)**.
 - All the money sent overseas by Astarra ended up in the pockets of Hong Kong lawyer **Jack W. Flader**, who channeled the cash into numerous funds with fancy names domiciled in **exotic Caribbean tax havens**.
 - The hearings showed Trio Capital was subject to numerous interventions by Australia's two corporate cops, APRA and ASIC.

I then went on to say – 'So in 2010, *7 years after Michael Carmody lauded the importance of Austrac material* and with Michael D'Ascenzo now running the ATO, it seems that it took a freelance financial blogger to blow the whistle on a *\$180m superannuation scam*, involving huge sums of Australian investors' funds being sent to offshore tax havens! What did regulators & investigative agencies, including the ATO, know & when did they know it?

Or, perhaps more to the point, when *should they have known it?*'

Mr Shorten, I now ask you the same questions I asked others in 2010 & 2011:

- **Were relevant Austrac reports available to the ATO regarding these international tax haven transactions? (Q3)**
- **If so, when did they arise? (Q4)**
- **How were they monitored? (Q5)**
- **Are there any automated or manual alert mechanisms, to highlight especially significant transactions? (Q6)**
- **Were there any such alerts generated in relation to these matters? (Q7)**
- **When? (Q8)**
- **If so, what was done? (Q9)**
- **If there were alerts but nothing was done, why not? (Q10)**

- **Is the ATO legally entitled/empowered to proactively review Austrac information, to detect potential tax evaders? (Q11)**
- **If not, why not? (Q12)**
- **If so, have they been devoting sufficient resources to this function? (Q13)**
- **If not, why not & have staff complained about it? (Q14)**
- **Could this debacle have been detected/prevented or reduced by prudent proactive review of Austrac material? (Q15)**
- **Who is responsible? (Q16)**

I now refer you to the ATO's current website, which includes the following reference:

AUSTRAC

AUSTRAC is a primary source of information that identifies Australian taxpayers who may be engaged in tax evasion using tax havens. AUSTRAC routinely monitors domestic transactions over \$10,000 as well as international transactions. There are currently five types of information reported to AUSTRAC:

Significant cash transactions reports. These reports must be submitted by cash dealers/reporting entities and solicitors for transactions involving A\$10,000 cash or more (or the foreign currency equivalent).

Suspect transactions reports. These are lodged by cash dealers/reporting entities when they have reasonable grounds to suspect that a transaction, actual or attempted, may involve the proceeds of crime, the evasion of tax, or other breaches of federal, state or territory laws.

International funds transfer instructions. These instructions must be reported by cash dealers/reporting entities for monies being telegraphically transferred or wired into or out of Australia. These instructions are reportable for any amount, whether paid by cash or otherwise.

Cross-border movements of physical currency (CBM-PCs)/international currency transfer reports. CBM-PCs are reports about the movement of physical currency into or out of Australia. All movements of A\$10,000 or more (or the foreign currency equivalent) must be reported.

Mr Shorten, I ask you to determine whether any of the entities or individuals who have been revealed to be the facilitators of the Trio scam have been referred to in any such AUSTRAC reports and if so, when & what was done about it? (Q17)

Mr Shorten, if not otherwise answered above:

- **Do Australian Customs, or any other Commonwealth agency, have a capability to monitor international passenger arrivals and/or departures via Australian international airports and/or maritime ports and to report movements by relevant individual to other agencies? (Q18)**
- **If there is such a capability, do any or all the agencies relevant to the Trio Capital case, namely ASIC, APRA, the ATO & AFP have the ability to request alerts in relation to the arrival/departure of individuals of interest? (Q19)**
- **Were any such arrangements undertaken in respect of Mr James Sutherland and/or Mr Jack Flader before the Trio case became public knowledge, in early 2010? (Q20)**

- **Were any such arrangements undertaken in respect of Mr James Sutherland and/or Mr Jack Flader after the Trio case became public knowledge, in early 2010? (Q21)**
(NB – This is particularly relevant, given the PJC Report’s comment at para 8.25)
- **What implications, if any, flow from the answers to the above questions? (Q22)**

Mr Shorten, if there *were* any instances of passenger alerts relating to any relevant person, what action resulted? (Q23)

I refer to the PJC Report, at pg xix:
The Trio Capital Fraud

... A key element of the scheme was to move the funds of Australian investors overseas. This had made it much harder for Australian auditors and others to verify the existence of the funds; for Australian liquidators to recover any remaining funds; and for Australian authorities to investigate and to pursue those who have carried out criminal conduct.

Mr Shorten, doesn’t this scenario absolutely place AUSTRAC at the forefront of our financial safeguards? (Q24)

I refer to the PJC Report, at pg 144:

AUSTRAC

8.21 AUSTRAC ... collects and analyses financial information provided by regulated entities through financial transaction reports. This information is disseminated ... to assist in the investigation and prosecution of serious criminal activity including ... organised crime and tax evasion.

The report states further, at pg 145:

8.23 The committee did not receive a submission, or take direct evidence from 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.
...

Mr Shorten, it may be that there have been occasions when agencies, such as the ATO, AFP, ASIC or APRA have *asked* AUSTRAC to provide a specific tranche of data, or some specific analysis but it may also be the case that most relevant agencies have their own staff with the capability to interrogate the AUSTRAC database, themselves. It may, or may not, be just as likely that AUSTRAC is *the instigator* of an alert, as it is to be the *recipient of a request* to check on someone.

Mr Shorten, why *didn't* the PJC Inquiry ask AUSTRAC for a submission & should they have done so? (Q25)

Is it possible that there *were* some Suspect Transaction Reports about Astarra, in the years before the Hempton letter in 2009? (Q26)

In the absence of Austrac coming to the rescue, was there anything else the ATO could reasonably have done to detect the Trio scam at an earlier stage?

A useful search tool for determining whether certain names have ever come to the attention of authorities is the website for the Australasian Legal Information Institute, or 'Austlii'. A query on that site for the names '**James Sutherland**' and '**Zetland**', for example, produces reference to a court case reported as: '**Commonwealth Director of Public Prosecutions v Hart [2010] QDC 457 (30 November 2010)**'.

There is insufficient time today to go through the published court report (which I invite you to do), however, I assure you it reflects a substantial, detailed & prolonged investigation, during the late 1990's to the early 2000's, by the ATO & AFP of complex offshore tax haven arrangements, INCLUDING SUPERANNUATION SCHEMES, which had resulted in multi-million dollar losses to Australian tax revenue. While Mr Hart was convicted in relation to these matters, it is reasonable to ask whether the ATO/AFP concurrently recognised the potential risks posed by the various offshore entities revealed to have assisted Hart to implement his arrangements. They included none other than these Hong Kong associates:

- **Zetland Financial Group**
- **James Sutherland**
- **Jack Flader**

Note that a 2004 email, from Jack Flader to Shawn Richard, a copy of which is freely available on the internet, identified Mr Flader as follows:

Jack W Flader, Jr
Managing Director and General Counsel
Zetland Financial Group Limited
13/F, Silver Fortune Plaza, 1 Wellington St.
Central, Hong Kong

Mr Shorten, given such a cornucopia of intelligence in relation to offshore tax avoidance schemes, what steps did the ATO & AFP take, during 1999 to 2009, to safeguard the revenue from further attacks by these guys? (Q27)

Mr Shorten, I now ask you the same questions I asked others in 2010 & 2011:

Note that the Silver Fortune Plaza address is the same as that quoted for Zetland, in Stuart Washington's January 5, 2010 newspaper article.

- **Were the ATO aware of that address during their Hart investigations? (Q28)**
- **Should they have viewed it as a potential hub of offshore tax minimisation/evasion? (Q29)**
- **Did they do Austrac searches on that address? (Q30)**
- **What were the results, if any? (Q31)**
- **What was done? (Q32)**

Did Australian investigators travel to Hong Kong, Mauritius, Vanuatu or any of the other named offshore jurisdictions as part of the Hart enquiries? (Q33)

- **If so, when? (Q34)**

- **Who went? (Q35)**
- **Did they visit the offices of Zetland? (Q36)**
- **Did they undertake Austrac searches for that name & address? (Q37)**
- **Did they visit premises of any other individual or entity? (Q38)**
- **Did they interview James Sutherland? (Q39)**
- **Did they undertake Austrac searches for that name? (Q40)**
- **Was the 'Flader' referred to at para [443], in the Hart case report, actually Mr Jack Flader, recently named as the man behind the Astarra scam? (Q41)**
- **Was 'Flader' interviewed by the ATO/AFP or anyone else associated with the investigation? (Q42)**

(The Hart case per Austlii includes a reference to a relevant annexure: [272] T 2-19 1.5 However, the hyperlink does not provide access to the relevant source document, for clarification.

I note a further extract from the Hart case summary, per Austlii:

[165] Mr Hart submitted that the CDPP had power to ... With respect to Mr Sutherland, there was evidence that several years ago he had a habit of travelling regularly from Hong Kong to Australia and that his wife and daughter then lived on the Gold Coast. There was no evidence as to Mr Sutherland's whereabouts at the time of trial or as to whether he was in Hong Kong and whether he could be compelled to give evidence.

Mr Shorten, I now refer you to Questions (17-23), above, and ask whether, if there *had* been a history of Mr Sutherland travelling between Australia & Hong Kong, or other international ports, for that matter, what intelligence might have been gained by specifically monitoring his arrivals/departures? (Q43)

Were there other missed opportunities for the PJC to have made reference to the Hart case in its report?

See pg 109:

Research houses and fraud detection

5.71 An obvious question arising from the Trio case is whether the fraud could have been detected earlier. ...

Perusal of the Hart case material suggests that the ATO/AFP investigators **knew** that relevant individuals/entities in Hong Kong had helped to facilitate tax fraud in Australia during the early 2000's.

Mr Shorten, should the heads of both the ATO & AFP be called upon to explain what action, if any, their organisations took at the time in relation to the ongoing potential risks posed to Australians by these offshore schemers? (Q44)

I refer to the PJC Report, at pgs xx - xxi:

(The committee) is particularly concerned that communication between ASIC and APRA was lacking in the months from late 2008 to mid-2009.

...

Mr Shorten, what if there had been proposals in 2009, or earlier, to bring together staff from the ATO, AFP & ASIC, so that they could work together, in the same office, on matters perceived to cross agency jurisdictions? (Q45)

Would information regarding the success or failure of any such proposed program be of interest to you? (Q46)

The committee also believes that the regulators missed key events that laid the platform for the Trio fraud. The first was the purchase of Tolhurst from its previous owners in late 2003 by interests associated with Mr Flader.

...

The need for further investigation

...

The committee has been unable to obtain clear answers or evidence from ASIC, APRA or the AFP as to whether any attempts have been made to bring charges against Flader and others, to have them extradited to Australia, or even as to whether their names are on a watch list for people passing through Australian airports.

Mr Shorten, do the matters lastly referred to, above, constitute a scandalous lack of co-operation with the committee? (Q47)

Would you like to arrange official interviews with individuals who could immediately furnish relevant information? (Q48)

The ATO encourages members of the public to furnish information relating to possible instances of tax evasion. Processing of this intelligence was previously called Community Information & Storage Communication (CISCO) & is now called the Tax Evasion Referral Centre (TERC).

Mr Shorten, were there any public referrals received by the ATO since 2003 - the year that Tolhurst Funds Management was taken over by the Trio scammers - which made any reference to any of the individuals or entities responsible for/involved in this fraud? (Q49)

If so, what happened to the referral(s)? (Q50)

What percentage of total public referrals per year, since 2003, have not received anything but cursory review – so-called ‘risk-rating’, with no further action occurring? (Q51)

What were the relevant ‘raw numbers’? (Q52)

Why does ATO management insist on regularly changing the names of processes or business lines? (Q53)

The PJC Inquiry report states at pg 127:

SMSF's and the role of the ATO

...

7.19 ... Given this remit, the ATO is indifferent to the risks of fraud and theft to which SMSF investors are exposed. **It is not its responsibility to minimize these risks.**

BUT, it is undoubtedly the ATO's responsibility to **'protect the revenue'** – that is, funds raised by the government. It appears that the government has been forced, as a result of the Trio fraud, to advance about \$55m as compensation for **some** of the effected victims and even if some or all of this amount is eventually repaid via the super fund levy, 'the revenue' is still going to be adversely impacted somewhere along the line.

Mr Shorten, do you think, in terms of protecting the Revenue, it could be even *remotely possible* that it is *NOT* the ATO's responsibility to assist in minimizing such risks? (Q54)

Mr Shorten, as referred to above, I received a letter dated 3 November 2011, over your signature, as Assistant Treasurer, Minister for Financial Services & Superannuation, which stated, in part:

Dear Mr Thompson

Thank you for your email of 14 September 2011 ...

As the matter relates to the administration of the taxation laws, I asked the Commissioner of Taxation for his comments. ...

The Commissioner advised that the ATO has a range of measures in place to detect and deal with those who evade their obligations. ...

The ATO is detecting more cases for action by analysing AUSTRAC data ...

There are a number of independent external scrutineers that regularly review the performance of the ATO. For example the ... ANAO ... Project Wickenby. The Commonwealth Ombudsman ...

As you will probably be aware, the Tax Forum was held in Canberra on 4 and 5 October 2011. ...

I can confirm that *not one* of the specific questions which I asked in my email to the Treasurer, dated 14 September 2011, was answered. The Taxation Commissioner's bland assurances that 'measures' are 'in place' flies in the face of repeated examples of long-term frauds, **including another case to which I referred, where two Australian accountants ripped off the tax system for 10 years, via fraudulent refund claims, before one of them finally arranged the murder of one of his clients, near the end of the scam.** If the ATO is detecting so many cases via AUSTRAC, why did it take a freelance finance blogger to blow the whistle on \$180m in Australian investors' funds being sent to known offshore tax havens? Further, you will also note that *I had already approached* the external scrutineers suggested by you & a fat lot of good it did me!

Mr Shorten, can you confirm whether the ATO Commissioner, in his response to YOU, actually addressed ANY of my specific queries? (Q55)

If not, why not & are you now going to insist that he do so? (Q56)

Further, I note that my September email was sent before I became aware that there was a Parliamentary Inquiry into the Trio collapse, or I would have sent them a copy, too. **On the other hand, I assume that members of YOUR staff would have known of the Inquiry at that time, so, given that my submission made specific reference to missed opportunities to nip the Trio scam in the bud, why didn't someone think it would be desirable to send copies to BOTH the Commissioner & the Inquiry? (Q57)**

It is perhaps intriguing that the Hart matter was not the only past occasion on which the name 'Zetland' has reached the public domain:

Company director charged over \$3m fraud

David Sexton

Tuesday, April 20, 2010

© The Cairns Post

ACCUSED fraud David John Morgan used a Hong Kong bank account to stash more than \$800,000 in cash, Cairns Magistrates' Court was told yesterday.

The \$800,000 is part of an alleged fraud of more than \$3 million relating to his time as the managing director of the defunct Benchmark Developments.

Mr Morgan is facing nine charges relating to the alleged fraud.

...

The court heard evidence from police officer Det Sgt Sheridan Heaton and Hong Kong real estate agent Cameron Donald-Oates.

Prosecutor Sgt Ash Gregg said between May 2007 and September 2008, \$844,770 was moved from Benchmark subsidiaries to an account belonging to Hong Kong company ISG Partners.

It is alleged Mr Morgan was the "beneficial owner" of ISG, which was set up by a company called Zetland, which operates companies for its clients.

Mr Donald-Oates ... denied any knowledge of ISG Partners Ltd and said he became concerned after Mr Morgan started talking about **using a company called Zetland to set up companies in tax shelters**

...

Police raided Mr Morgan's Bungalow home on April 1 last year, seizing a computer and IT hardware.

...

The first charges against Mr Morgan were reported a year ago and came at a time when CMC was in financial dire straits.

Mr Shorten, it therefore appears from the above report that almost \$850k was sent during 2007 to 2008 from Australia to a firm in Hong Kong, which had been set up by Zetland.

- **Was there a potential (or actual) risk to the Revenue in this case? (Q58)**
- **Were relevant Austrac reports available to the ATO regarding these international tax haven transactions? (Q59)**
- **If so, when did they arise? (Q60)**
- **What, if anything, happened? (Q61)**
- **If the ATO had, in 2005 or earlier, started monitoring ALL AUSTRAC reports involving Zetland, its address, or its known associates, is this another matter which might have been nipped in the bud? (Q62)**
- **What if it could be demonstrated, with this case, that authorities had ludicrously missed yet another opportunity to shine a light on the possible involvement of Zetland & its associates in abusive Australian financial arrangements? (Q63)**

On 8 February 2010, Stuart Washington reported, in part:

BusinessDay revealed last week that **Jeffrey Revell-Reade**, based in Austria, and **James Sutherland**, based in Hong Kong, owned Australian companies that received three financial services licences from the Australian Securities and Investments Commission. The licensed companies, which are based at the same Melbourne address, include Go Markets, a foreign exchange dealer; SMA Consultants, an administrator with more than \$500 million in super investments; and Endeavour Securities, a responsible entity managing \$57 million.

The last two are held within Mr Revell-Reade's Oz Group of companies.

Mr Revell-Reade and Mr Sutherland have faced questions about their involvement with a British broker called Pacific Continental Securities, which collapsed in 2007.

BusinessDay asked ASIC whether the two men could be regarded as being of "good fame and character", the necessary test to become a financial services licensee in Australia.

ASIC replied: "Neither person is a director or an officer of an AFSL holder under ASIC's jurisdiction."

On 22 June 2010, journalist Scott Rochfort reported that:

... to mark its break with the past, Oz Group has been rebadged as Super Managers Australia, acting as administrator for \$540 million of Australian superannuation money.

But it's nice to see that SMA has not ruled out all links to colourful business opportunities. A wholly-owned subsidiary, **SMA Super Pty Ltd**, has **picked up some administration duties for superannuation funds that were previously conducted by the collapsed Albury-based fund manager Trio Capital.**

Keen readers might remember that investigations into Trio Capital's missing \$123 million focused on the central role of a Hong Kong lawyer, **Jack Flader**, a former business partner of the Hong Kong businessman **James Campbell Sutherland**.

Mr Shorten, are you satisfied that Australian regulators have adequately protected Australian investors from any ongoing risks which might be posed by individuals or entities currently or formerly associated with Jack Flader and James Sutherland? (Q64)

Is it possible that certain foreign exchange dealers, or other financial institutions, some of which may have had connections with the individuals named above, have been granted waivers, or other exemptions, from reporting cash and/or international fund transactions to AUSTRAC? (Q65)

What might be the implications or risks if such waivers had been granted? (Q66)

On 23 September 2011, the PJC interviewed the Commissioner of Taxation, Michael D'Ascenzo, as part of the Trio Inquiry. The Hansard record includes the following exchanges:

CHAIRMAN: Moving to a completely different area, the Trio entity and related funds, Astarra Strategic Fund and others, would have paid, I am assuming, tax in any given year and would have met all its tax obligations. Would that be correct?

Mr D'Ascenzo: We do not normally go into individual circumstances. I do not have details of the company specifically. If parliament wants those—

...

Mr D'Ascenzo: No, I do not think it gets to an approving sense. It will still be on a self-assessment basis, basically, and then it is a question for the ATO to determine whether there seems to be a risk and whether that risk is a matter that we would follow up.

CHAIRMAN: That is fine. The reason I am asking is that if it is the case that a certain entity that has a tax obligation falsifies and manufactures its income, that would then of course mean that it falsifies its tax liability as well, so there is a direct relationship with the Australian Taxation Office. Now that we know with hindsight that parts of the Trio entity were fraudulent, I am interested to know what documentary evidence the tax office has to verify that the tax it is receiving from those particular entities is in fact the correct required amount.

Mr D'Ascenzo: We would not have any specific information other than what is provided in the particular taxpayer's return or the fund return. It then becomes a question of whether our analytics and risk assessment procedures identify that group or that company as requiring further attention. So really unless there is some indicator that enables us to discern that what they have said in their return is incorrect, we would not know until we did an investigation. **And we would not necessarily do an investigation until we had some indication that this was a high-risk company.**

Mr Shorten, the public record via the Hart case shows that in the early 2000's the ATO knew, or should have known, that people & entities who later turned out to be behind the Trio scam, were a significant risk to Australian taxpayers. How could the fact that these same people/entities had ANY later association with an Australian superannuation fund NOT have been an indication that this was a high-risk company? (Q67)

CHAIRMAN: So the obvious question is this: now that we do know it is a fraud, has the Australian Taxation Office carried out an investigation?

Mr D'Ascenzo: Again, if I could take that on notice as to what I can provide to you—

CHAIRMAN: That is fine. Gentlemen, unless there is anything more specific that you want to inform us of, I am more than satisfied with your submission and some of the recommendations and proposals you have put forward. But I am obviously very interested in trying to better understand the processes that took place in terms of the relationship of the ATO specifically with the Trio entity and its related funds, as well as the relationship with the SMSF structures.

Mr D'Ascenzo: Again, we will see what we can provide in taking those questions on notice. Subject to any legal issues that might arise we will try to be as helpful as we can to the committee. We do suggest in relation to specific taxpayer information that if it is provided it be considered in camera, at least, and due regard had to broader issues of privacy and confidentiality.

CHAIRMAN: Absolutely, and we thank you for that. Just to be clear, we are not after specific taxpayer information but information in regard to specific entities and funds. I am not sure whether the same rules apply in terms of privacy and other arrangements but we are certainly happy to meet any requirements the ATO has in providing any information.

Mr D'Ascenzo: I am taking it as a specific request from the committee to provide that information—is that right?

CHAIRMAN: It is, yes; it is a specific request from the committee to provide that information, in whatever form you deem necessary, to the committee for this inquiry.

Mr D'Ascenzo: We will try to accede to that request as best we can.

Mr Shorten, the PJC Chairman quite rightly notes that they: ‘are not after specific taxpayer information’, but if ANY current or former ATO officers had information that did not compromise taxpayer information, but merely shed light on ATO administrative processes which might not have performed adequately to protect Australians from the Trio scammers, why *WOULDN'T* you want to hear from them? (Q68)

Why not call for expressions of interest from relevant people to furnish information or present themselves for questioning by Parliament, on an ‘in camera’ basis? (Q69)

I refer to the PJC report at pg 3:

Privilege issue

1.14 ... The committee drew ... attention to the protections afforded to witnesses under the Parliamentary Privileges resolutions ...

Mr Shorten, would a subpoena to give evidence ‘in camera’, as well as Parliamentary Privilege, be sufficient to address the general proscriptions against ATO staff revealing official information? (Q70)

Mr Shorten, on 28 May 2012, I sent an email to Ms Annie Williams, a staff member of the Office of the Hon Julia Gillard MP, Prime Minister of Australia, which stated, inter alia:

Dear Ms Williams,

Thank you for speaking with me briefly on 26 May, near the Commonwealth Offices in Treasury Place, Melbourne. I attended that location on Saturday, after a Sky News report indicated that both Julia Gillard & Bill Shorten would shortly be making a media

presentation there. Unfortunately, although I live in nearby Southbank, I arrived a few minutes too late to ask either, or both of them, about the fate of written representations I had previously made to various government agencies, regarding the collapse of a firm called **Trio Capital**.

...

My only interest is in trying to ensure that crooks are stopped, whenever possible, before the damage gets out of hand. One of the ways we can produce this result is to recognise past shortcomings & fix them!

I have attached an updated version of the material I have circulated to all the above-mentioned entities, which differs from previous versions only slightly.

...

And now, to the PM, I add two more questions about the Trio Inquiry:

...

Mr Shorten, I now ask you those same questions + one more:

- **Why is it that in the PJC Report, all the references to various interviews of agency staff only seem to reflect the comments of individuals of Senior Executive Leader rank, or above – for example, see the references at pgs 75-87? Why was no apparent effort made to question staff at ‘operative’ levels, where there might not be such a potential culture of departmental butt-covering? (Q71)**
- **Given the Inquiry Report’s recognition at para 4.81 (pg 87) that: ‘*where fraudulent activity does occur, it is incumbent on the regulators to enquire what went wrong and what could be done to close any loopholes. ...*’, why wasn’t the Hart matter discussed by the committee & reported as a particular case in point? (Q72)**
- **When can I expect a response from the PM’s Office? (Q73)**