

# Open Letter

Stephen Jones MP  
Member for Whitlam  
Shadow Assistant Treasurer  
Shadow Minister for Financial Services  
21 February 2022

Dear Stephen Jones,

I write to commend you on your plea in Parliament in regards to the Government's attempt to rush through the Religious Discrimination Bill. No one wants to see people wrongly characterised and/or restrained by inappropriate legislation.

Also this week financial adviser Mr Ross Tarrant received a much deserved award for his knowledge of the Trio fraud and his experience in such dreadful circumstances. Mr Johnstone, Executive Director, The Association of Independently Owned Financial Professionals (AIOFP), and now the industry is calling for the separation of advice from product. How profoundly pathetic; a financial advisor and his clients; blamed for investing in an APRA regulated public offered fund! What is Apra's reason for being if not protecting investors?

The following extracts are from 4 articles published 16 February 2022:

1. Karren Vergara in Financial Standard writes, *The Labor party said it supports the bill (CSLS) but is concerned by the narrow focus of excluding managed investment schemes.*

- the Stockbrokers and Financial Advisers Association said, *We don't think that the CSLR should extend to wholesale investors. They have financial resources to be able to take matters through the court.*

The above claim is flawed. The courts are prohibitive. Mum and Dad superannuation account holders can't go after thieves. Also the documentation of the overseas funds (where Trio's money vanished?) is tightly held by ASIC. ASIC refused to release certain documents to Trio's Administrator PPB Advisory and APRA refuse to release documentation of its prudential reviews.

2. Miranda Brownlee, Deputy Editor of SMSF Adviser, writes, *Labor has called for managed investment schemes to be included in the compensation scheme of last resort, with failed MIS such as Trio severely impacting consumers in the past.*

- SMSF Association Deputy Chief Executive Peter Burgess said, *"I think that if they are included we are less likely, of course, to see situations like that of Trio, where clients who suffered substantial losses have had no avenue for compensation" ... "Including managed investment schemes, in our view, should improve confidence in the overall financial sector, and we think that's an important objective of the last resort compensation scheme itself."*

- Brad Vermeer from the Financial Planning Association of Australia (FPA), suggested, *that managed investment schemes should be included.*

- FPA chief executive Sarah Abood said, *the government should expand the base of its proposed CSLR..."*

3. Michael Read in the Australian Financial Review writes,  
- Choice Chief Executive Alan Kirkland said, *it was a "grave concern" that the compensation scheme of last resort and the financial accountability regime remained unlegislated, more than three years since the government committed to implementing the recommendations of the Hayne royal commission.*

*These two recommendations go to the heart of the royal commission's findings. People deserve to be compensated where they have lost money due to misconduct, and executives need to face consequences for overseeing financial scandals,* said Mr Kirkland.

4. Chris Dastoor in Professional Planner noted,

- Labor senators Anthony Chisholm and Jess Walsh said, *consumers will be worse off if MISs are excluded from the scope of the scheme. ...*

- Senator Andrew Bragg – a former head of policy for the Financial Services Council said, *the CSLR should not be expanded and the government can't "legislate away risk, nor should it".*

- Senator Jane Hume, Minister for Superannuation, Financial Services said, *the CSLR will not include managed investment schemes, and primarily cover personal advice.*

- Association of Financial Advisers chief executive Phil Anderson said, *that the expansion to include MISs would only be to cover misconduct, not poor investment performance.*

Concerning the above quotes: Senator Bragg shows he doesn't understand financial crime, regulatory failure and systemic issues and Senator Hume sees personal advice as being responsible for financial crime.

Mr Jones, you may appreciate, a wrong characterisation of an event can create a negative chain reaction. Senator O'Neill's comment at the November 2021 Senate Economics References Committee inquiry into Sterling Income Trust is an example. Ms O'Neill 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."*

What legal basis did APRA rely on for it to use obsolete legislation that benefits criminals and disadvantages victims? Why is the Government failing to acknowledge Taylor v Hamer, 31 July 2002 court of appeal that found **'caveat emptor has no application where contract is induced by fraud'**.

It's ludicrous blaming the buyer and ignoring the people who design and introduce dangerous products into the financial markets. The scapegoating of financial advice must stop immediately. It would be unimaginable if Ronald Biggs gave evidence against the train driver over the Great Train Robbery of 1963. But that's exactly what happened in ASIC's case against Mr Tarrant, where ASIC's key witness was the Trio perpetrator Shawn Richard. Jailed for being dishonest, yet he helped ASIC establish 3 of the 4 counts against Mr Tarrant. ASIC ignored the evidence of 7 creditable and reliable witnesses. ASIC's wrong characterisation of Mr Tarrant reflects badly on all other types of funds and direct investors in Trio other than the APRA regulated funds. Isn't this a classic example of anti-competitiveness behaviour?

The CSLR was written in the context that Australians are at risk of financial harm because ASIC and APRA are not good at explaining what they do or what they can't, or won't do. Mr Hayne recognised that fleeing criminals leave victims with no avenue for justice, that's why the spirit of a CSLR is urgently needed.

Mr Jones, you have finally found a voice, however, many politicians still can't decide whether to include losses from Managed Investment Schemes (MIS) despite the loss of \$40 billion to Australian's over the last 15 years. Australians want to hear the Government discuss a CSLR that's operational from January 2008 as originally intended. The Government needs to apologise to SMSFs, direct investors and financial advisers over the misleading characterisations ASIC made which some politicians and much of the media unquestionably embraced.

Will Labor use the same flawed structures set up by Scott Morrison? Remember in his 2018 speech he blamed bank victims for bank crimes, saying they are "complicit" for being too "passive." Voted 26 times against a royal commission then in 2019 he slammed the Banking Royal Commission as a 'populist whinge'

The Australian Citizens Party said in the 16 November 2021 Media Release, *Treasurer Josh Frydenberg used a contrived expenses scandal to get rid of ASIC's James Shipton and his deputy Daniel Crennan. They were replace with "business-friendly" Chair, Joe Longo so that a deliberately dysfunctional regulator continues the charade of faux regulation that has allowed financial predators to run riot in Australia, fleecing everyday Australians at will.*

Mr Jones, is the Labor Party set to go down the same perceived corrupt path that the Morrison Government built?

Will Labor serve in the public's best interest and fix Frydenberg's broken CSLR?

**The Compensation Scheme of Last Resort must be backdated to 2008 as a matter of urgency and the blame game brought to its ugly end immediately.**

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