



March 2012 (Rev 2)

The Trio Capital Astarra Fraud

The Victims of Financial Fraud Find Their Voice

1. Preamble

We the “Victims of Financial Fraud” (V.O.F.F) are concerned that the Minister for Financial Services and Superannuation Bill Shorten’s often repeated public statements on the Trio Capital matter has or will prejudice the findings or recommendations of the Parliamentary Inquiry into Trio Capital.

There is no distinction between what financial advisors recommended to SMSFs, non superannuation investors and those inside his self titled ‘regulated (or retail) superannuation funds’ did in respect to investing in Trio’s Astarra.

We believe his comments are incorrect, misleading and disingenuous and designed to cover the magnitude of the problems with the investment regulatory framework .

Further, we believe comments from others clouds and thus confuses the issue by claiming this is a case of an investment gone wrong. It is not. It is a clear case of funds being stolen.

It has also being made out to be ‘just a superannuation matter’. It is not. Funds were invested in Astarra via self managed super, retail superannuation and private investment.

Subsequently, we the V.O.F.F. have no choice now but to initiate our own media agitation to challenge the Ministers comments and to draw the public’s attention to the facts of this matter, and that they too could find themselves in the same situation as us.

Bill Shorten has promised compensation to approx 5300 investors from so called regulated (or retail) superannuation funds, representing \$55m of the \$123m stolen by Trio Capital. The balance of \$68m is the savings of 690 SMSF / private investors, who will not be compensated.

V.O.F.F. are seeking full compensation for all lost funds.

2. Overview and Summary

- Minister for Financial Services and Superannuation Bill Shorten’s ‘outside the flags’ comments are outrageous, misleading, disingenuous and designed to mask the massive holes in the regulatory framework.



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- The 'outside the flags' comments creates a distinction where no distinction exists, that is, between one group of investors, who are promised compensation, and to another who will not be compensated.
- The Gillard Government, via it's Minister responsible Bill Shorten, is creating an image of rogue investors and financial advisors, to hide the truth around the inadequacy of the regulatory safeguards.
- Bill Shorten's comments prejudice the findings and recommendations of the Parliamentary Enquiry.
- Tony Boyd's AFR article dated 9th March 2012 is a must read for every Australian with savings
- We say to all Australians – take notice and that this could happen to you. \$1.3 trillion is at risk of theft.
- We, like all investors, had faith that APRA, ASIC, the banks, Auditors and the fund directors would be our 'watchdog'. How naïve we were to trust them.
- How safe is the \$1.34 trillion of Australian's retirement savings? Clearly, there are no effective safeguards in place, and Bill Shorten admits it.
- Bill Shorten is effectively saying to 770,000 SMSFs with over \$400B in assets 'you're outside the flags, therefore you're at risk, and we haven't done enough to prevent this theft'.
- Bill Shorten is the Minister responsible and it's his watch. We say to him "all care, no responsibility".
- The public is yet to hear of the human side to this Trio Capital story, and the devastating heartbreak it has caused.
- People have lost their retirement savings, and some their homes. Marriages have failed and retirees forced to return to work.
- The authorities discussions with Jack Flader Jnr have been made confidential and the Federal Police have not tried to extradite him. We ask "Why?, What has been hidden in this confidentiality agreement with him?"
- APRA advises SMSFs that they are 'regulated superannuation funds under the Superannuation Industry (Supervision) Act 1993'. This contradicts Bill Shorten's public comments that we are "outside the flags" and not "regulated super funds".
- The Cooper Review explodes the myth about the Governments message that our savings are effectively safeguarded against fraud and theft.
- The Trio Capital fraud demonstrates the ease at which fraud can occur, and the inability of the regulators and watchdogs to prevent it.
- It also demonstrates the inability of the Gillard Government to address the issues.
- It also demonstrate the Gillard Governments lack of compassion to compensate those victims who had faith and trust in those who are responsible for protection of retirement savings against theft.
- To quote Nick Birrell (*) to the Cooper Review *"In the 20 years from March 1991 to March 2011, superannuation assets grew from \$123 billion to \$1314 billion. These assets now represent a tremendous store of wealth upon which millions of Australians expect to draw to fund their retirement. But will these assets be there when they are most needed or does super have the characteristics of a Ponzi scheme..."* (1) (* Nick Birrell, Adjunct Professor and Founding Director of the Monash Asia Pacific Centre for Science and Wealth Creation, Monash University.)



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- SMSFs who take the view, “that won’t happen to me”, we say this – it can and will happen again. Trio Capital has proved how easy it can be to steal invested funds. And there is no recourse for compensation.
- Australian SMSF Members Association chair Grant Abbott does not speak on our behalf. Surveying just 100 fund trustees does not represent the views of 770,000 SMSF’s.
- For SMSF’s to have ‘control over their actions’, they can only make informed decisions based on facts accurately presented to them, and a faith and a reliance that Banks, Auditors, Rating Agencies, APRA, ASIC and Fund Trustees and Directors are doing their job diligently and effectively. In the case of Trio Capital, this clearly did not happen.

3. Questions

We pose the following questions:

Q: All SMSFs are issued notices from APRA upon election to become one, stating that it is now a ‘regulated superannuation fund operating under the Superannuation Act 1993’. Why does this contradict Minister Shortens comments that we operate ‘outside the flags’?

Q: What flags are they then? Are there different regulations that the minister has not made us and approx. 770,000 other SMSF holders aware of?

Q: If Bill Shorten knows that approx 770,000 SMSF holders with nearly \$400b in retirement investments and savings are operating outside the regulatory flags, and knows that each and every one could lose the lot, as the Minister responsible for providing the safeguards, what has he done about it on his watch?

Q: In effect, are you saying to every investor, ‘sorry I know about the problem with deficient legislation but myself and the Gillard Government has not done anything about it, and I can’t help you.’ Why have you waited until this Trio Capital fraud to occur before you were forced to make any comment?

Q: Since the Astarra funds operated under the jurisdictions of APRA and ASIC, and that Trio Capital were provided operating licenses from them, and organizations such as NAB, KPMG, ratings agencies were involved in assessing them, how did Trio’s operations fail to come to their collective attention? Mr Shorten, as the Minister responsible for ensuring the robustness, thoroughness and integrity of APRA and ASIC to provide effective safeguards, how did you allow this to happen?

Q: Why weren’t the issues surrounding irregularities in Astarra’s valuation that arose in August 2008 not followed up by the authorities? This is before most of us invested in Astarra!!

Q: Why can’t APRA answer the most basic questions posed to it by Senator David Bushby regarding Trio Capital at Senate Estimate hearings?



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Q: Given that fraud has been proven to have occurred, why has the Attorney General not initiated a federal police investigation into the person of interest that is based in Hong Kong?

Q: Why the need for a confidentiality agreement covering discussions with Jack Flader Jnr?

Q: Since coming to office in 2007, this Labor Government and it's Green coalition partners have preached the mantra that government knows best and has re-regulated many things. Why would the risk of theft of approximately 1.3 trillion dollars of retirement investment and savings of ordinary Australians like us not be at the very top of this government's priority list?

Q: If it's been established that current legislation does not have a levy system to cover SMSF's against fraud, then why not fix it? If you don't fix it, then the Gillard government needs to advise 770,000 SMSF's with \$400b in assets – 'you're not protected from fraud, nor will you be compensated if it occurs, and therefore you could lose the lot'. If Trio Capital has necessitated the need for some form of levy or a compensation scheme, you cannot leave those 690 investors without compensation, when 5300 Trio investors are promised compensation and future fraud victims would be.

Q: Jack Flader Jnr has come to the attention of authorities before. How has it come to pass that those people who have been involved in fraudulent activity in any jurisdiction, be provided licenses to operate by APRA & ASIC? What failure of process or investigation occurred to allow this to happen?

Q: How long will Prime Minister Gillard and Minister Shorten leave out the welcome mat to fraudsters like Jack Flader Jnr and Shaun Richard to help themselves to the savings of ordinary Australians, with no proper safeguards in place and no recourse for recovery of our money?

Q: Why can't APRA answer the basic and simple questions posed to it in Senate Estimates hearings into this matter?

4. Public Meeting

We, the "Victims of Financial Fraud" (V.O.F.F.) invite you to a public meeting to be held at the Pioneer Hall, Wollongong on Saturday 24th March at 10.00am.

Speakers will be from the Illawarra region who had superannuation and personal investment savings stolen in the Trio Capital "Astarra Fund" fraud, which has now been recognised as Australia's largest theft of investment funds.

Our group represents those people who were denied compensation from the Federal Government's promised bailout package to other Trio Capital investors. This debacle may at first glance appear to affect only a small number of Self Managed Superannuation Fund (SMSF) investors, but we believe this case affects every Australian with superannuation and / or investments.



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The purpose of this meeting is to raise awareness of the deficiencies in current federal legislation and your rights as an investor. Most importantly, like us, you could have your retirement savings fraudulently taken only to discover that there is no recourse for recovery of those funds.

It is happening to us right now, but it could very easily happen to you!

The Minister for Financial Services and Superannuation, Bill Shorten has repeatedly placed on the public record that the superannuation industry act does not provide for self-managed super fund (SMSF) or private investors who had "direct control" over their investment decisions, and "could protect their own interests", that we were investing "outside and beyond the flags", must take "responsibility for their own actions", and thus "could not expect to be compensated"(2).

Further, Australian SMSF Members Association Chair, Grant Abbott, after a survey of just 100 fund trustees representing nearly 770,000 SMSF's, is quoted as saying "*The whole rationale of SMSF's is that they are in control of their own investments, and because they do take that control, it is incumbent on the individual to look at the fund or underlying investment.*" (2) This unrepresentative survey found just 27% of respondents would support a SMSF levy scheme, with apparently typical responses being "*Why should others who take a more conservative view pay for other trustees mistakes*". We wonder what questions were posed to this group of 100 fund trustees, and would they respond differently if they knew all the facts, including advice to us and the retail superannuation funds that Astarra was not considered a risky investment, and that the regulatory framework as it currently stands doesn't protect them either!¹

This also implies that these people are confusing this issue as one of an investment gone wrong and we are seeking compensation, rather than fraud having occurred. This also ignores the fact that 5300 investors are being compensated and 690 are not. These people are being misled, ill informed, don't understand the distinction being made or are ignorantly believing "that will never happen to me".

The V.O.F.F. response to the above ill informed and disingenuous comments are that for SMSF's to have 'control over their actions', they can only make informed decisions based on facts accurately presented to them, and a faith and a reliance that Banks, Auditors, Rating Agencies, APRA, ASIC, Fund Trustees and Directors are doing their job diligently and effectively. Further, we pay financial planners and advisors to thoroughly check all this data before they present recommendations to a SMSF. In the case of Trio Capital, this clearly did not happen. Checks by all the above failed at every step. The comments by Bill Shorten and Grant Abbott that it's the SMSF's fault, and no one else's, is incredulous, inflammatory, grossly misleading and extremely insulting. We present to the Parliamentary Enquiry that these comments by them to be considered as such.

This also promotes the image that we are somehow rogue and high risk investors, and that we got burnt and now want government compensation. We however were led to believe that the Trio Capital "Astarra" investments were by definition defensive investments, and were advised as suitable during



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the GFC .

Mr. Shorten on behalf of the Federal Government appears to insist on blaming one group of investors for having made poor investment decisions and now seeks compensation while it sides with other investors as part of so called 'regulated superannuation funds' and extends its concerns that they were harmed by external events beyond their control, while further adding "we will compensate victims who are victims through no fault of their own." That group quite rightly, has been promised compensation.

The Government, through exploiting loopholes and deficiencies in current legislation or otherwise, has created a disingenuous distinction between two groups of investors, where no difference exists.

We point out the following facts regarding Trio Capital and the Astarra Fund:

1. A trustee of the Astarra Fund was a major Australian bank.
2. The Astarra Fund had a positive recommendation from leading investment rating agencies
3. The Astarra Fund was audited by well known and recognized auditing firms
4. The Astarra Fund came under the regulatory framework of APRA and ASIC, who indeed issued licenses to operate and to the directors of that Fund, one of whom is currently serving prison time for his part in the fraudulent activity.
5. The Astarra Fund was recommended to it's clients by a number of financial planners around Australia. Advisors within the Minister's so called 'regulated superannuation funds' did likewise.

Upon application and election to operate as a SMSF, APRA issues a notification stating that the "SMSF is now a regulated superannuation fund under the Superannuation Industry Act 1993".

To the Hon. Minister Bill Shorten, this appears to clearly contradict your public statements!

Further, if there is no current provision in the superannuation industry act to compensate SMSF's via a levy similar to that imposed on retail funds, then why not fix the loop hole?

We became exposed to fraud by unscrupulous operators exploiting loopholes in current legislation and the investment regulatory framework, where the investor seemingly has less rights than the superannuation industry in general.

The vision of earlier ALP Governments for Australian's to better provide for their retirement was a noble one, and something that should be applauded.

However, respected Sydney Morning Herald journalist Stuart Washington drew attention to this weak link in superannuation legislation when he said,

"More than 770,000 Australians with \$380 billion in savings are ineligible for compensation in the worst case of a theft or fraud occurring in their superannuation funds".³

An article he wrote in 2010 presents how and why a SMSF is used and he concludes by stating a need for, "putting a warning in large red letters on the front of their shiny self-managed super proposals."



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The warning should read: *"You could lose the lot."*³

To the Hon Minister Mr. Shorten, we say this – this fraud happened on your watch, and you have within your control the ability to address loopholes in legislation to tighten the regulatory framework and protect the rights and funds of the ordinary investor.

You also have it within your power to provide fair and equitable compensation for those who you erroneously and inaccurately claim to be 'outside the flags'. This must include compensation for private investors.

It is now time for the Federal Government to right these wrongs, and immediately address these matters head on.

To Mr Shorten and our other local Parliamentarians Sharon Bird and Stephen Jones, we look forward to hearing from you on the 24th March as to how you intend to address these matters.

Yours Sincerely

The Victims of Financial Fraud

References:

(1) Cooper Review

(2) SMSF Safety Net The Case for Compensation – Karin Derkley Spring 2011. + interview with ABC Raio – Ashley Hall circa 12th March 2012

(3) SMH No safety net for self-managed super Stuart Washington April 10, 2010

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