

Open Letter To the Acting Chairman, Peter Kell

Victims of Financial Fraud (VOFF Inc)

February 5th 2018

Dear Mr Kell,

Victims of Financial Fraud (VOFF Inc) thank you for your letter dated December 12th 2017 in response to the VOFF November 20th 2017 Press Release.¹

Firstly, VOFF would have always preferred to work in partnership with the Australian Securities and Investment Commission (ASIC) over this matter, as it is the victim's funds that were stolen and the victims who continue to pay a very heavy price for the Trio Fraud to this day. However, we feel (under the Chairmanship of Mr Medcraft) ASIC has been very adversarial, unhelpful and even combative and secretive over the more than 8 years since this crime was uncovered.

It is now 2018 and after many years and many setbacks VOFF insist ASIC and APRA take responsibility for their actions and in this case inactions to assist in gaining traction to attain compensation for this fraud. VOFF urge you Mr Kell to consider going back over the information ASIC has received concerning the Trio "Fraud" and re-visit their situation, particularly in light of the systemic failure of the Australian financial system and the unique way the Trio "fraud" exploited weaknesses in the financial system, including the ASIC's limited powers to act in international jurisdictions.

[a. Where is the evidence that ASIC took all reasonable steps to pursue these stolen funds?](#)

The Trio Fraud found the Australian financial system wanting. Significant legislation changes were made after the Trio Fraud to strengthen the weaknesses but the convenience of pointing the blame at mum and dad investors is the glaring injustice that is left unresolved. VOFF have ample evidence of the systemic failure of Australia's financial system, also the failures by ASIC and APRA starting from a period well before the Trio scheme was established. This includes information that suggests a collaboration between the then Minister for Financial Services and Superannuation, Mr Bill Shorten and ASIC to bring down the financial advisor who recommended Trio products to the Australian Workers Union (AWU) Officer's Election Fund (slush fund).

In particular the failures by ASIC are:

1) ASIC approved of the conservative Astarra Strategic Fund with a return to investors of about 8%, and a risk profile better than Government Bonds (as described by the proponents) but once the Trio fraud was discovered, ASIC insisted the fund was a high-risk investment.

2) ASIC travelled to Hong Kong in 2002 to secure 100,000 documents from the Hong Kong based company, Zetland, owned by James Sutherland and Jack Flader. The documents assisted in a court trial concerning "fraud". Flader and Sutherland's names were already on ASIC's company registration database, owners of the 2001 ASIC registered company that eventually purchased the fund which became Trio Capital Limited.

[b. What steps and actions have been taken to prevent a recurrence of this clear failure to detect known fraudsters operating in the Australian financial market?](#)

¹ Open 1 page letter to ASIC's new Chairman, James Shipton.
<http://tinyurl.com/yd76znlf>

3) The same company registration document on ASIC's database, besides Sutherland and Flader's names include Frank Richard Bell, Matthew Littauer and Shawn Richard. Some were named by financial authorities in the United States and Europe during the period 2002 – 2004 for operating out of unlicensed companies such as New World Financial (NWF) and Millennium Financial, Ltd. (Millennium).

c. Why were ASIC and even APRA unaware of these links and what has been done to prevent a recurrence of another Trio type crime?

In light of ASIC's collaboration with Mr Shorten:

4) VOFF recently learnt that the AWU had direct links at the highest level with the Trio scheme. The AWU's Officer's Election Fund is the union's war chest and its campaigning money. For the union fund money to be exposed to the Trio fraud is a blow to the heart of the AWU. This now explains the absurdity of attacking two family businesses (Tarrants in Wollongong and Seagrims in Adelaide) out of the 155 financial advisors who had placed their clients into the Trio scheme. Vigorously attacking the family business that had recommended Trio to the AWU is more suggestive of outright retribution against an individual rather than addressing a serious crime against 6,090 clients.

d. Were the many other Financial Advisors working at Industry Super Funds and other firms investigated?

5) ASIC's website states that its role is,

'... an independent Commonwealth Government body. We are set up under and administer the Australian Securities and Investments Commission Act 2001 (ASIC Act), and we carry out most of our work under the Corporations Act 2001 (Corporations Act)'.

Under Mr Medcraft's watch, ASIC followed the directive from Mr Shorten's Office, to prosecute the financial advisor who recommended the Trio products to the AWU's Officer's Election Fund.

e. Did ASIC compromise its independent handling of the Trio matter to pursue the interests of the Minister's personal vendetta?

f. Did Mr Shorten conspire to benefit the AWU at the expense of SMSF's?

This is a serious question that VOFF are exploring and will shortly talk to expert investigators in the media.

g. After the Trio fraud was detected, were the links between Mr Shorten (previous National Secretary of the AWU) and the AWU funds investigated?

h. Did Mr Shorten, as a Minister of the Crown, (while he headed the Trio investigation) disclose his close ties with the AWU?

i. Is ASIC satisfied that independence from Government political interference was achieved in the Trio matter?

6) With no transparency about how the Trio money disappeared or where it went, Mr Shorten was able to turn communities against each other by blaming financial advice while ignoring the systemic failure of the Australian financial system. With no accurate account of the fraud, Mr Shorten exercised a union bias where one group benefitted at another groups' expense, similar to 'Cleavevent'. The Industry Funds benefitted with compensation while the non-APRA-regulated funds were accused of losing their own money because they placed it into troubled funds. This sent a very convenient (for Union dominated Industry Funds) market signal that SMSF's were high risk and fraud events like Trio would not be compensated for SMSF investors. Mr Shorten granted the APRA-regulated funds compensation as the status of their loss was "fraud". Those in SMSFs and other investors were not compensated as the status of their investment was deemed a "collapse".

j. How can two completely different causations be attributed to the same event?

k. Has ASIC commenced discussions with the Federal Government to address this serious issue over equality of risk attribution and compensation between the different types of Superannuation investments?

7) There is no evidence to show that ASIC investigated equally the 155 financial advisors that placed client funds into Trio, VOFF perceive ASIC's action against 2 or 3 financial advisors as an attack against self-managed superannuation funds (SMSFs). Mr Shorten's union bias fulfils what the former Prime Minister of Australia, Mr Paul Keating urged the trade union movement to do, (as early as 1989) that was to use the billions of dollars generated by superannuation over the next 20 years to increase its own industrial clout. Keating added, 'the development of union-run superannuation funds would give the union movement "institutional muscle" to supplement its already substantial industrial strength.'² Mr Shorten as a Minister of the Crown had an obligation to serve the community equally, without discrimination, not to serve the union run funds while discrediting the non-union funds by suggesting they were "swimming outside the flags". Mr Shorten's misleading statement failed to acknowledge that the investors fulfilled the requirement set down by ASIC, ensuring they were indeed investing between the flags.

l. The analogy used by a Minister of the Crown, suggesting the victims of a financial crime were 'investing outside the flags'. Why did ASIC allow the misleading comment 'swimming outside the flags' which is a distortion of ASIC's publication 'Investing between the Flags'?

m. ASIC's publication lays out how to invest between the flags. Investors in Astarra Strategic Fund and other Trio funds, met ASIC's requirements 'investing between the flags' appropriately. What action has ASIC taken to stop similar folly and insult in future against SMSFs?

n. Why did ASIC allow the Australian public to be misled over comments that have no place in a criminal situation?

8) There is no evidence that a proper forensic investigation was carried out into the Trio fraud. There is evidence starting from the very beginning of the Trio crisis that the finger was pointed at financial advisors. The victims of a serious financial crime deserve more than to be dismissed without evidence. Particularly in light of Mr Shorten and ASIC's handling of the Trio matter. Firstly they did not acknowledge the systemic failure of the financial system relating to Trio; secondly, relevant information about the fraud has seemingly been covered up; and thirdly Mr Shorten's politicization of the Trio matter resulted in the non-acceptance that a crime had been committed.

o. Why is the Federal Government and ASIC satisfied to leave the largest superannuation fraud in Australian history unresolved and uninvestigated?

In closing, VOFF wish to make ASIC aware that they are not going away. Rather, after years of intensive research, VOFF will be intensifying their efforts to seek justice over this matter. VOFF sincerely hope that ASIC similarly wish to seek justice for the victims and implement the required robust improvement in risk controls to ensure that no other Australian citizen has their life destroyed by another Trio type crime.

Yours Sincerely

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² Michael Millett Sydney Morning Herald *Keating sees super as union shield* Sept 28,1989 page 4.