Open Letter

Hon Dr Jim Chalmers MP
Treasurer
8 February 2025

Dear Jim Chalmers,

1. **Do people exposed to systemic issues that allowed financial crime deserve justice?**

The Victims of Financial Fraud (VOFF) perceived it was unlawful for the Minister for Financial Services and Superannuation Mr Bill Shorten to have allegedly politicized the Trio Capital crime. Mr Shorten mischaracterized the self-managed superannuation fund trustees with statements such as, "swimming outside the flags" and claimed the union operated super funds were **victims for no fault of their own** but the SMSFs **put money into troubled funds**.

The Australian Securities and Investments Commission (ASIC) did not act as an independent agent but was driven by Mr Shorten. The following points are examples where the victims and public were unlawfully distracted by the omission of evidence, obfuscation and cover up of facts about the crime. Victims denied evidence are also inevitably denied justice.

2. Legislation

The Australian Treasury Department and the Australian Prudential Regulation Authority (APRA) helped draft the Part 23 of the Superannuation Industry (Supervision) Act 1993 [SIS Act]. The legislation offers protection from financial fraud to consumers in APRA regulated superannuation but not for self managed superannuation funds. Consumers were not warned or informed about the Part 23 of the SIS Act. They could not have learnt because there was no publicly available information about Part 23 of the SIS Act. Was it the responsibility of the government to have warned consumers about Part 23 of the SIS Act?

The government had a responsibility to inform consumers about Part 23, especially since it provided financial fraud protection to only a sector of the market. Transparency is a fundamental principle of good governance, and failing to disclose such crucial information created an uneven playing field, where some consumers unknowingly bore more financial risk than others.

Since superannuation is a compulsory savings system in Australia, all participants should have had access to clear and publicly available information about how protections were applied—and, more importantly, where they were lacking. Without this awareness, consumers outside the protected sector were left vulnerable without the opportunity to make informed decisions about their investments or push for regulatory changes.

In this case, the lack of disclosure prevented fair and informed participation in the system. While individuals have a responsibility to stay informed about financial matters, the government has an obligation to ensure that essential protections—or gaps in protections—are publicly known.

3. ASIC's background with the people that owned and operated Trio

Around 2001 ASIC went to the Hong Kong office of American lawyer Jack Flader and Scottish accountant James Sutherland to get documents about the Australian citizen who was a client of Flader and Sutherland. The documentation helped ASIC lay a charge of Fraud against the Commonwealth. ASIC knew the type of tax minimization business the Hong Kong office provided but two years later, ASIC issued an Australian Financial Services License when Flader and Sutherland started a company in Australia. The AFSL allowed them to handle superannuation money. Should ASIC have considered the safety of Australian consumers before it allowed the new owners (Flader and Sutherland) operate an existing business?

ASIC has a responsibility and accountability toward consumers and should have considered the safety of Australian consumers before allowing the new business to operate in Australia. ASIC's role is to regulate financial services and protect consumers from misconduct, fraud, and financial harm. Given that ASIC was aware of the Hong Kong business's involvement in providing financial services to an individual who was later convicted of fraud against the Commonwealth, it should have exercised greater scrutiny when the same business owners applied for a financial services license in Australia.

ASIC has the authority to assess the background and track record of applicants before issuing licenses. VOFF found red flags did exist see Trio Fraud Manual pp 75 to 100. Red flags in Europe, United States, Hong Kong and New Zealand signaled past associations with fraudulent activities but there is no evidence ASIC paid attention to the international warnings. ASIC did use part of a warning for a publication but why was ASIC oblivious to the potential harm the red flags presented?

ASIC had a duty to conduct thorough due diligence to ensure that the new company would operate within Australian laws and not pose a risk to consumers. By granting the Financial Services License without apparent concern for past business activities, ASIC may have failed in its duty to prioritize consumer protection and market integrity. Even if the new business met the formal licensing requirements, additional safeguards, such as closer monitoring or stricter conditions, could have been warranted.

4. Conflict of interest

The Minister for Financial Services and Superannuation Mr Bill Shorten issued a directive for ASIC to charge the financial adviser Mr Ross Tarrant. Mr Tarrant had recommended a Trio product to the Australian Workers Union (AWU) slush fund. That product turned out to be a fraud. The AWU slush fund lost its money and that money might have supported Mr Shorten's campaign to run as the next Prime Minister of Australia. Such details were never made public. The Superannuation Minister failed to disclose his connection with the AWU. VOFF perceived the Minister's directive was revenge. Is this fair to the victims of the financial fraud that all these details have remained secret?

Transparency is crucial in maintaining public trust in both financial regulation and government decision-making. If the Minister for Financial Services and Superannuation had a past connection to the AWU but did not disclose it when directing ASIC to charge the financial adviser, this raises concerns about potential conflicts of interest and the fairness of the legal process.
The secrecy surrounding the case also denies victims and the public the opportunity to fully understand what happened, who was responsible, and whether proper regulatory oversight was in place to prevent such fraud. It would undermine the integrity of financial regulation to charge the adviser as an act of revenge. For the sake of justice, accountability, and public confidence, these details should have been disclosed. Financial fraud affects not only direct victims but also the broader financial system.

Mr Shorten's unionism background (dealing with union slush funds, kickbacks and bribes) enabled him to find something benefiting from the Trio Capital fraud for the unions. The deal he struck in the Cleanevent matter while he was leader of the AWU saw the unions benefited at the expense of low-paid cleaners.

5. Fund manager John Hempton

Mr Hempton informed ASIC of potential fraud in the Australian registered Trio Capital scheme. He was concerned about the connection between Trio Capital and the New York fund called 'Paradigm', that was owned and operated by Hunter Biden. Mr Hempton was aware that someone at Paradigm had come to the attention of the United States authorities. ASIC took the warning seriously and found the Trio Capital scheme was operating fraudulently. Hunter Biden was the son of Joe Biden, Vice President of America. ASIC never mentioned 'Hunter Biden'. The PJC Report makes no mention of the Hunter Biden connection.

The omission of the name of the New York fund and its politically connected owner raises serious concerns about honesty, accuracy, and transparency in public governance and financial regulation. When a financial crime is uncovered—especially one with international ties and high-profile individuals involved—the public has a right to full disclosure of the relevant facts.
By not mentioning 'Paradigm' or its politically connected owner 'Hunter Biden', both ASIC and the PJC may have shielded key details from public scrutiny. This can create the perception of political influence, favoritism, or a lack of accountability, which can damage public trust in regulatory bodies and the government. The connection to a well-known political figure might have influenced decisions about what information was disclosed, raising concerns about impartiality. In cases of serious financial crime, full disclosure is essential to maintain trust in the financial system and regulatory institutions. Without it, there is a risk that fraud and misconduct will continue unchecked, with those in positions of power avoiding scrutiny.

6. Trio manager Mr Carl Meerveld

At the Supreme Court of New South Wales trial of Shawn Richard, (the perpetrator of the Trio fraud) the court noted that Mr Richard had assisted ASIC by providing information that saved ASIC from, '*significant time and resources seeking to gather*

independent admissible evidence, including evidence from uncooperative witnesses from numerous overseas jurisdictions'.
ASIC never informed the court that it had received an offer by the overseas Trio fund manager, Mr Carl Meerveld to help with ASIC's investigation although ASIC did decline the offer. Could the reward by the Supreme Court of New South Wales of Mr Richard's pleas of guilty with a discount of 25% off his sentence with an additional 12.5% discount (allowed for the utilitarian value of the pleas of guilty) have been influenced by ASIC's omission of Mr Meerveld's offer?

VOFF argued that ASIC's omission of Mr Carl Meerveld's offer might have influenced the SCNSW in its assessment of the extent and uniqueness of Shawn Richard's cooperation, which ultimately contributed to his sentence reduction. However, whether this omission directly affected the court's decision would depend on several factors:

1. Court's Reliance on ASIC's Representation – The court appears to have heavily considered ASIC's submissions regarding the value of Richard's cooperation. [Mr Richard's statement to the court remains publicly unavailable. Bo one checked if his statement is accurate]. If ASIC had disclosed that another key figure, Mr. Meerveld, had offered assistance but was turned down, the court might have questioned whether Richard's cooperation was as indispensable as ASIC suggested.

2. Evaluation of 'Utilitarian Value' – Richard's additional 12.5% discount for the 'utilitarian value' of his guilty plea was based on saving court resources. If the court had known that alternative sources of evidence were available (but not pursued by ASIC), it might have reassessed the extent to which Richard's pleas truly streamlined the process.

3. Impact on Sentencing Discretion – Sentencing judges exercise discretion based on the information before them. If ASIC's omission led the court to overestimate the difficulty of obtaining evidence without Richard's help, this may have led to a more favorable sentencing outcome for him than if the full picture had been presented.

While it is speculative to say definitively that ASIC's omission caused Richard's sentencing discount, it certainly had the potential to shape the court's view of his cooperation's significance. If the court had been fully informed, it might have either reduced the additional discount or scrutinized ASIC's reasoning more closely.

7. Blame fraud victims for being deceived by fraud

Mr Shorten in an article about the SMSFs caught up in the Trio fraud stated, *"I believe in caveat emptor; Latin for "let the buyer beware" meaning you need to take responsibility for your own decisions, if you buy something without doing your homework, well, you're an adult, that's your responsibility."* Mr Shorten never questioned any of the SMSF trustees about their homework, and the reply he gave to the question by investigative journalist Stewart Washington suggests he didn't care that SMSFs were never informed about the Part 23 of the SIS Act. Mr Washington asked Mr Shorten whether DIY super investors, who account for a third of the $1.3 trillion in Australian superannuation savings were

aware of their lack of a safety net, Mr Shorten said: "*I would say they are going to become a lot more aware.*"

In the Trio fraud matter it may be illegally and ethically misguided, to invoke *caveat emptor*. While *caveat emptor* is a valid principle in contract law, it does not absolve fraudulent parties of liability, and applying it broadly to victims of financial fraud is legally weak and ethically dubious. If victims are publicly blamed in a way that falsely implies they were negligent or complicit in a financial fraud matter, carries a defamation risk. Victim-blaming can discourage reporting fraud and seeking justice. Also blaming victims may ignore power imbalances, such as expert predatory fraudsters exploiting vulnerable individuals.

Acting Chair Senator O'Neill at the November 2021 Senate Economics References Committee inquiry into Sterling Income Trust didn't think that applying caveat emptor broadly to victims of financial fraud is legally weak and ethically dubious when she 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*."'

When victims are blamed (e.g., "they should have known better"), they may feel ashamed and avoid reporting the fraud. This helps fraudsters by keeping their crimes under the radar. If authorities or institutions do not acknowledge fraud as a serious issue, regulatory actions remain weak. Fraudsters thrive in environments where oversight is lax or non-existent. The Trio Capital fraud is a good example where the fraud was downplayed and dismissed as just "bad investments" and "buyer negligence," allowing the fraudsters to maintain a clean reputation, and continue their schemes.

8. Commissioner Hayne found criminality

Commissioner Hayne found criminality and recognised the need for a Compensation Scheme of Last Resort (from January 2008) to redress the victims harmed by financial crimes. Former Treasurer Josh Frydenberg, before departing politics for a top position in banking rejected the Hayne recommendation.

Over the last 20 years, the government's failure to:

- Combat financial crime effectively,
- Enforce laws as a deterrent,
- Deliver justice for victims, and
- Provide adequate redress has contributed to systemic issues and ongoing harm in banking, insurance, superannuation and financial services industry. The Australian Financial Complaints Authority (AFCA) was established to provide fair, independent solutions for financial disputes. VOFF submitted a complaint to AFCA. AFCA said it isn't able to hear VOFF's complaint because Trio Capital Limited is not a member of AFCA.

VOFF's complaint wasn't about Trio it was about systemic issues. AFCA suggested VOFF re-register Trio Capital and then it would accept the complaint. VOFF made inquiries to one of the big-4 auditors and was given a quote of $50,000 to re-register Trio. VOFF contacted ASIC to check about re-registering Trio. ASIC said it might not re-register considering the past history of the company. Unsure how to proceed, VOFF wrote to AFCA and asked if a determination granted compensation for the victims, would the re-

registered Trio become liable? Again AFCA said it is unable to answer because Trio is not a member. VOFF was suspicious and perceived AFCA wanted to harm the Trio victims by sending them off in a costly no-win useless direction.

Evidence of ASIC's failure to serve the public

• The 2012 Report by the Parliamentary Joint Commission Inquiry into the Trio fraud, and

• *The 2013 Treasury Department's 'Review of the Trio Capital Fraud and Assessment of the Regulatory Framework, identified areas where regulatory actions were insufficient, raising concerns about systemic failures and the adequacy of regulatory responses*.

• The 2015 8-page Aide Memoire document that circulated within government was damning of ASIC.

• The 1 April 2016 media statement released by the Minister of Small Business and Assistant Treasurer Ms O'Dwyer, said ASIC and APRA had acted appropriately in handling Trio. Ms O'Dwyer failed to acknowledge the Aide Memoire document and failed to acknowledge the Financial Sector Advisory Council (FSAC) investigation.

• In May 2016 the findings of the inquiry into the performance of the regulators, ASIC, APRA and the Reserve Bank by FSAC was presented to the Government, (4 weeks after the release of Treasury's statement).

• In 2017 the Productivity Commission found ASIC not fit for purpose.

• The [Dec 2017 – Feb 2019] Banking Royal Commission found ASIC and APRA reluctant to act against misconduct in the financial sector.

• In Oct 2022 the Parliamentary Joint Committee on Corporations and Financial Services began an inquiry into ASIC's capacity and capability to respond to reports of alleged misconduct. Senator Andrew Bragg said in July 2024, "*It is clear that ASIC has failed.*
"We need regulators to be responsive and transparent but most of all to be focused on enforcement." [1]

• Also no one questioned whether Gatekeepers contributed to the systemic issues. Take for example the PJC Report statement, *"The custodian does virtually nothing to protect the funds of investors. It makes no independent checks before transferring money offshore. Instead, the custodian simply acts on the instructions of the responsible entity".*[2]
Compare the PJC's statement to the reply by Mr Shayne Elliott Chief Executive Officer ANZ when asked if the *AML-CTF" Act* applied to the ANZ or not. Mr Elliott said, *"I refer to the letter by email dated 16 October 2018. ANZ is "not exempt from AML-CTF" laws and is required to, and does, meet its reporting obligations to AUSTRAC including the obligation to report all cross-border funds transfers."*

[1] Laura Dew What does Bragg's final ASIC inquiry report recommend? 4 JULY 2024
https://www.moneymanagement.com.au/news/financial-planning/what-does-braggs-final-asic-inquiry-report-recommend
[2] Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital May 2012 Page 132

• In regards to the handling of the Trio fraud matter, the PJC committee noted it was *'unable to obtain clear answers or evidence from ASIC, APRA or the Australian Federal Police as to whether any attempts have been made to bring charges against* [American Lawyer Mr Jack] *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. There have been no examinations on oath of Mr Flader .....'*

• The committee asks '*why one of the largest financial frauds in Australian history has not been more thoroughly investigated by agencies such as the AFP and the Australian Crime Commission? .... Australia's crime fighting agencies seem to have deferred responsibility to other agencies: the AFP to ASIC, and the ACC to the AFP among others. Notwithstanding the progress that the AFP, the ACC and AUSTRAC have made in coordinating their detection and response to international financial fraud, in the case of Trio and Mr Flader, there do not seem to have been satisfactory investigations*.'

• *'The committee wishes to see these agencies pursue criminal investigations into the key figures responsible for this scheme as a matter of high priority. ASIC must provide all necessary funding for PPB Advisory to pursue its investigation to a full conclusion, including where necessary conducting examinations on oath of figures such as Mr Flader and others it considers necessary as part of the investigation.'*[3]

• ASIC ignored the above '*committee wishes*' and also the following two recommendations:

Recommendations 10

8.13 The committee recommends that the Australian Securities and Investments Commission provide all necessary funding for PPB Advisory to pursue its investigation to a full conclusion, including where necessary conducting examinations on oath of figures such as Mr Jack Flader and others it considers necessary as part of the investigation. The committee recommends that ASIC fund the phase 2 investigation by PPB Advisory as a matter of urgency.[4]

Recommendation 11

8.26 The committee recommends that the Australian Federal Police, in cooperation with the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority, pursue criminal investigations into—and, where applicable, criminal sanctions against—the key figures responsible for defrauding investors in Trio as a matter of high priority.[5]

• ASIC remained secretive about the tranche of documents from Global Consultants and Services Limited (GCSL), the Hong Kong based company was owned and operated by Mr Flader. GCSL received money from Australia and diversified the assets through international investments. In 2010, GCSL handed documents to the Hong Kong Securities & Futures Commission and ASIC received the documents under the Memorandum of Understanding (MoU). No one questioned whether GCSL breached any

[3] PJC Report May 2012 Page xxi
[4] PJC Report May 2012 Page 142
[5] PJC Report May 2012 Page 145

laws. ASIC at least might have provided the PJC a summary. ASIC protected the confidentiality of Mr Flader's alleged fraudulent business while at the same time denying evidence in a fraudulent matter where the information might have helped recover stolen property.

• Mr Shorten discredited the SMSF trustees and 1 financial adviser out of 155 that had clients in Trio products. They had invested in an ASIC licensed company that was APRA regulated [prudentially reviewed by APRA] and Trio's custodians were the National Australian Bank and The Australia and New Zealand Banking Group Limited (ANZ). Its auditors were KPMG and WHK and the highly respected Morningstar and VanMac research firms. During the operational life of Trio, both ASIC and APRA held concerns about misconduct but they failed to communicate their concerns with each other or inform creditors. The law firm Baker McKenzie helped prepared the Product Disclosure Statement the Trio Capital director Shawn Richard [who was jailed for his part in the fraud]. Trio victims got no money back whereas the Bernie Maddoff Ponzi scheme consumers received most of their stolen capital. Why was the ASIC licensed and APRA regulated fund more dangerous than the Maddoff Ponzi scheme?

Is the omission of evidence in a serious financial crime acceptable?

1. **Misconduct in Public Office** – If officials knowingly concealed fraud or misled the public for political or other reasons, they could be guilty of misconduct in public office.

2. **Breach of Fiduciary Duty** – Regulators and government officials have a duty to act in the public interest. If they failed to take appropriate action or acted negligently, they could be held accountable.

3. **Obstruction of Justice** – If officials deliberately suppressed evidence or interfered with an investigation, they could be charged with obstruction of justice.

4. **Fraud or Collusion** – If they aided the fraudulent company in avoiding scrutiny or prosecution, they could be complicit in corporate fraud or corruption.

5. **Defamation and Misrepresentation** – If false narratives were used to damage reputations or protect certain interests, there could be civil claims for defamation or misleading and deceptive conduct.

6. **Political and Administrative Consequences** – Ministers and regulators could face parliamentary inquiries, dismissal, or loss of office if found guilty of misconduct.

John Telford
Secretary - Victims of Financial Fraud (VOFF Inc)
johntelford2021@gmail.com
Phone: 0404 388 525