

**Open Letter to Federal Treasurer Josh Frydenberg**  
**Victims of Financial Fraud (VOFF Inc)**  
**24<sup>th</sup> October 2018**

Dear Hon Josh Frydenberg MP,

The Hon Prime Minister Scott Morrison voted 26 times against the need for a banking royal commission. Ms Kelly O'Dwyer voted 23 times, Peter Dutton, Michelle Landry, Barnaby Joyce, Bert van Manen, Ken O'Dowd, Luke Howarth and Warren Entsch voted between 22 to 24 times against a banking royal commission. Had Ms O'Dwyer et al succeeded, the unconscionable conduct in banking and the financial services industry would have remained opaque.

In 2016 Ms O'Dwyer said the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulatory Authority (APRA) carried out their roles in regulating and licencing Trio Capital appropriately in accordance with the law and the regulatory framework. Ms O'Dwyer succeeded to keep the Trio matter covered up and opaque.

Victims of Financial Fraud (VOFF) vehemently disagree with Ms O'Dwyer's non-evidence based statement. It's time the government acknowledge the litany of failures by both regulators, which in turn, endorsed the perpetrator's underlying dishonesty and fabrication and inadvertently facilitated the crime. Some of ASIC's failures are highlighted in this letter.

In the light of the Banking Royal Commission interim report, you Mr Frydenberg acknowledged ASIC's shortcomings.<sup>1</sup>

Kenneth Hayne's Banking Royal Commission has shown that over the last fifteen years APRA and ASIC were reluctant to act against thousands of breaches in banking and the financial services industry. The regulators' reluctance to act in the banking and financial services industry is the same reluctance to act against the Trio fraudsters, however, ASIC had no hesitation to orchestrate events surrounding Trio after the fraud was uncovered.

This Open Letter sets out four factors that resulted in the systemic failure of the financial system. The letter closes with an argument for compensation.

- a. ASIC's Failures.
  - b. No warning or guidance information about "fraud" or the weaknesses in the financial system.
  - c. Trio Fraud and the AWU slush fund.
  - d. Public servants meeting community expectations.
- Argument for Compensation.

**a. ASIC's Failures:**

1) ASIC withheld vital information about the Trio scheme from the Parliamentary Joint Committee, assigned to investigate the Trio fraud. Information from the Hong Kong based Global Consultants and Services Limited (GCSL), obtained by the Hong Kong Securities and Futures Commission and released to ASIC under a Memorandum of Understanding (MoU) remains confidential. ASIC is bound under the MoU to respect confidentiality of the GCSL documents but ASIC failed to inform the PJC Inquiry of the documents existence.

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<sup>1</sup> Michael Janda, Stephanie Chalmers and Andrew Robertson Banking royal commission interim report released; blames greed for misconduct 28 Sep 2018  
<http://www.abc.net.au/news/2018-09-28/banking-royal-commission-interim-report-kenneth-hayne/10315908>

GCSL was owned and operated by American lawyer Jack Flader. In 2011 the NSW Supreme Court named Mr Flader as the architect and ultimate controller of the Trio scheme.<sup>2</sup> GCSL received all monies from Australia and distributed the assets into Trio's underlying funds. The omission of the GCSL documents casts doubt on the PJC Report's understanding of the Trio crime.

2) ASIC withheld information about Trio from the NSW Supreme Court. In March 2010 Mr Flader sent evidence to the Sydney Morning Herald to correct details about his role in operating Trio. Mr Flader wanted to set the public records straight, alarmed that the news media had portrayed him incorrectly.

Another piece of information concerns the correspondence between ASIC with a former Trio overseas fund manager Mr Carl Meerveld. Mr Meerveld was based in Hong Kong but now lives in Guernsey. The Guernsey Financial Services Commission (GFSC) are the mediator of the letter dated 3 September 2010, in which Mr Meerveld offered to assist ASIC in the Trio investigation. ASIC declined. VOFF acquired the letter in early 2017. Two overseas Trio operators, Flader and Meerveld, offered their assistance to ASIC to investigate the largest superannuation theft in Australia's history but ASIC showed no interest.

3) The NSWSC trial of Shawn Richard, August 2011, 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'*.<sup>3</sup>

ASIC failed to inform the NSWSC of the two cooperative witnesses from overseas who did offer assistance. Without the facts, the court possibly overvalued the significance of Mr Richard's assistance to ASIC. The court rewarded 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.<sup>4</sup>

Whatever assistance Mr Richard provided to ASIC is contained in a confidential document tabled 'Exhibit B'. The document was written by Mr Richard despite that he was sentenced for *'providing misleading information to those entitled to accurate information'*.<sup>5</sup> No one has verified the Exhibit B document.

4) ASIC failed to check its company registration database:

In 2002 ASIC went to the Hong Kong office of American lawyer Jack Flader and his business partner Scottish accountant James Sutherland to secure a tranche of documents (100,000) that would be used as evidence to help lay criminal charges against a Queensland accountant charged with Tax Fraud against the Commonwealth. ASIC has never explained how it found incriminating evidence at Jack and James's office in HK while at that same time, ASIC's company registration data system held their names after registering a holding company in 2001. The holding company in late 2003 went on to purchase the Tolhurst business, which was a Superannuation Master Trust, as well as a private investment trust for non-super investors. In 2004 ASIC licenced Trio, failing to realise the same Hong Kong Jack and James were part of the Trio scheme.

5) ASIC orchestrate events to suit a desired outcome by withholding information, disseminating misleading information, and by distracting attention from the fact that it couldn't act against the international perpetrators who were based in overseas jurisdictions - beyond ASIC's jurisdictional reach. Laying charges against 1 out of the 155 financial advisors who had clients in Trio provided benefits even if the benefits had nothing to do with the Trio crime.

6) ASIC misled everyone about the Trio fraud:

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<sup>2</sup> Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011) before Garling J.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

The Trio perpetrator Shawn Richard was jailed for dishonesty over his part in the fraud yet ASIC relied on Mr Richard's lies for its account of Trio to bring down the financial advisor. ASIC's interactions with Trio can be found in a document called Appendix 4 that ASIC submitted as a "confidential" document to the Parliamentary Joint Committee Inquiry into the collapse of Trio Capital Limited. VOFF tried to access Appendix 4 under the Freedom of Information Act but the document remains exempt.

7) ASIC failed to carry out background checks:

ASIC failed to prevent known criminals from entering the Australian financial system and failed to check the people behind the licences ASIC approved Trio. ASIC failed to adequately regulate the Trio scheme and failed to safeguard the Australian financial markets from known weaknesses that *'enabled crime figures to open individual or company accounts or deposit funds with minimal or false identification, and quietly move millions of dollars'*<sup>6</sup> to undisclosed overseas locations.

8) ASIC didn't know whether two men were indeed the same man:

In October 2009 during an ASIC Section 19 Examination, a Trio Director was questioned about whether Paul Richard Bell and Frank Richard Bell are the same character. ASIC jailed Paul Richard Bell - alias Dr King, in 2001, for his part in a Thailand boiler room scam. On the other hand Frank Richard Bell was one of Trio's underlying fund managers. Frank Richard Bell first appears on ASIC's company registry and Trio documents about 2001 through to about 2008. Over this same period he appeared before the United States courts for several serious breaches of financial security laws, issued with several major fines, even permanently barred and yet he remained on ASIC's company registration database.

9) ASIC failed to see early warning posted by its New Zealand counterpart:

In 2010 investigative journalist Stuart Washington noted that the New Zealand Securities Commission in 2001 named Shawn Richard (the perpetrator who was jailed for his part in operating Trio) as an associate of the unlicensed broker Millennium Financial that operated in the Philippines. From 2001 no one saw the connection until in September 2009 when Mr Richard's name appeared in the Australian press in relation with the Trio fraud. Then the warning was subsequently removed from the NZ Securities Commission website.<sup>7</sup>

Mr Washington questioned whether Richard's name was removed from the NZ Securities Commission website as a result of the commotion in the Australian news about the Trio fraud? The Securities Commission refused to provide a reason for its removal.

10) ASIC failed to see warnings posted by its international counterparts that identified some of the people who at the time of the warnings were operating the Trio scheme. Those same people had been barred from operating in the United States or had operated / owned unlicensed funds and/or came to the attention of financial authorities in Spain, Austria, the Netherlands, the Isle of Wight, Hong Kong and New Zealand.

11) After the Trio fraudulent scheme was closed down, ASIC failed to carry out a proper investigation of the crime, failed to question overseas directors who managed Trio's underlying fund where \$70m had disappeared. ASIC misled the public by orchestrating events to give the impression Trio was about 'poor financial advice'. Public attention was redirected away from the systemic failure of the financial system.

#### **b. Trio FRAUD and the AWU slush fund:**

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<sup>6</sup> N McKenzie, R Baker, G Mitchell It's not just CBA: all the banks are exposed to millions in money laundering Sept 15 2017

<http://tinyurl.com/yag9yk2l>

<sup>7</sup> [http://www.smh.com.au/business/how-investors-in-trio-backed-the-wrong-horse-with-\\$426-million-Stuart-Washington-March-27-2010](http://www.smh.com.au/business/how-investors-in-trio-backed-the-wrong-horse-with-$426-million-Stuart-Washington-March-27-2010)

Bill Shorten, Minister for Financial Services and Superannuation, 14.9.10 to 1.7.13, while in charge of the Trio fraud investigation, never disclosed his connection / history with the Australian Workers Union's (AWU's) slush fund called the Officer's Election Fund (OEF). OEF had invested in the Trio Capital products and consequently lost money to the fraud.

Mr Shorten's office gave a directive to ASIC to "bring down" the financial advisor who had recommended and subsequently invested the AWU's money into Trio - he was 1 out of the 155 advisors who had clients in Trio. VOFF perceived Mr Shorten's handling of this matter as revenge.

While Julie Gillard was Prime Minister, 2010 to 2013, the Trio fraud matter was still before the courts. At no point did the courts or ASIC reveal that the AWU's Officer's Election Fund was caught up in Trio and whether the AWU "slush fund" Ms Gillard set up in 1991 was the same fund. Information about OEF remains hidden behind the corporate veil.

In 2014, the AWU's "slush fund" was found to have allegedly embezzled and misappropriated money to purchase property and carry out renovations on Ms Gillard's home. Ms Gillard denied having received monies but in 2014 Commissioner Dyson Heydon acknowledged Ms Gillard was a beneficiary of a union election slush fund.<sup>8</sup>

Only on 30 October 2017 did VOFF learn about the OEF and that it had lost money in Trio.

Mr Shorten's handling of Trio divided people who should have been united over their commonality at being exposed to Australia's worse financial fraud. Mr Shorten and ASIC's handling of Trio had no interest to solve the crime or claw back proceeds of crime because the Part 23 of the SIS Act restored the APRA-regulated funds, which was good news for the union run funds, while at the same time knocking down their market competitors - the self managed super funds.

Mr Shorten's union bias can be found elsewhere, such as:

- i) On 14 January 2014 Radio 2GB Michael Smith's interview with Bob Kernohan provided an insight into Mr Shorten's role in keeping quiet about the AWU slush fund;<sup>9</sup>
- ii) AWU - Cleanevent deal that cost 5000-odd workers as much as \$400 million<sup>10</sup> and
- iii) Attempt to destroy the small business trucking industry by forcing the little guys to join the trucking giants.<sup>11</sup>

Mr Shorten's alleged union bias was noted in a letter by VOFF dated August 2017 to the Hon Michaelia Cash. Her Chief of Staff, Ben Davies, replied on 6th September 2017 saying, "the actions of Mr Shorten when he was the Minister responsible for Superannuation consistently fell short of the standards of unbiased conduct that Australians are entitled to expect."

Learning that one's savings have been stolen is shocking news. The devastation drove two victims to the point where they ended their life by suicide. Could their fates be different if Mr Shorten reported Trio accurately? But he made a distinction without a difference by saying, '*we will compensate victims who are victims through no fault of their own*'...adding '*no compensation was available for non-superannuation investors who placed their money directly into troubled funds.*'<sup>12</sup>

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<sup>8</sup> [https://en.wikipedia.org/wiki/AWU\\_affair](https://en.wikipedia.org/wiki/AWU_affair)

<sup>9</sup> <http://tinyurl.com/y7d3jxlg>

<http://michaelsmithnews.typepad.com/files/bob-kernohan-interview-2gb-7-january-2014.pdf>

<sup>10</sup> Anthony Klan 'Cleanevent staff lost \$400m under deal by Bill Shorten's AWU' July 8, 2015 <http://tinyurl.com/hwqmqae>

<sup>11</sup> Grace Collier Union, Gillard rules driving owner-truckers out of business March 5, 2016 <http://tinyurl.com/l9nsuxw>

<sup>12</sup> 'Fraud victims get \$55m back, but some left empty-handed' 13.4.2011

<http://www.thecourier.com.au/news/national/national/general/fraud-victims-get-55m-back-but-some-left-emptyhanded/2132235.aspx>

This portrays one group at no fault of their own, while another group were foolish to place their money in to a trouble fund! Hearing it's the victim's fault along with other disingenuous and misleading comments aimed at SMSF trustees, such as suggesting, "greater choice brings greater risk", "swimming outside the flags", "do your homework" and 'buyer beware' would not have helped a distressed mind.

'Beyondblue', is Australia's leading mental health awareness body, and since 2017 is chaired by Ms Gillard. In May 2018 at the Public Health Prevention Conference, she said she 'wants suicide to emerge from the shadows into everyday conversation....'<sup>13</sup>

The two loving human beings destroyed by the Trio fraud remain deep in the shadows. No one formally acknowledged that the Trio fraud was a contributing factor that directly led to death. It's not ASIC or APRA's role to recognise that financial hardship can lead to suicide.

### **c. Public servants meeting community expectations:**

Mr Tony D'Aloisio

ASIC's chair Tony D'Aloisio (2006-2011) came under scrutiny over an alleged "conflict of interest" after he purchased an asset from a listed company that had been going through financial distress.<sup>14</sup> The Trio fraud happened on Mr D'Aloisio's watch, then when D'Aloisio departed ASIC, he became a non-executive director of the PPB Advisory Board, and given millions of dollars by ASIC to liquidate Trio.

Mr Greg Medcraft

On 13 May 2011 Mr Medcraft was given a five-year term without first advertising the job as *'Prime Minister Julia Gillard granted an exemption from her government's policy promising "open and merit-based" senior public sector appointments to allow former banking executive Greg Medcraft to head Australia's corporate regulator without first advertising the role.'*<sup>15</sup>

Mr Medcraft worked in investment banking at Société Générale in Australia, Asia, Europe and the Americas. He rose up the ranks to the position of global head of securitisation at the New York branch. After leaving Société Générale in late 2007, the bank was accused by the US government of breaking corporate laws and engaging in misconduct. The allegations arose of impropriety, inside SocGen's residential mortgage-backed securities (RMBS) team, that had been created by Mr Medcraft and overseen by him until June 2007. In the team's rush to expand its share of the subprime securitisation market and "increase revenue and profits", the team was negligent, misled investors and failed to conduct proper due diligence. Apparently the lawsuit aimed to claw back billions of dollars from several US financial institutions on behalf of the government-owned home-lending businesses Fannie Mae and Freddie Mac.<sup>16 & 17</sup>

Mr Medcraft was not named in the lawsuits but he oversaw the US residential mortgage-backed securities businesses during 2005 and 2008, the period it is alleged to have engaged in misconduct and breached corporate laws.<sup>18</sup>

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<sup>13</sup> beyondblue Chair Julia Gillard delivers 2018 Public Health Prevention Conference speech 3 May 2018  
<https://www.beyondblue.org.au/media/news/news/2018/05/02/i-beyondblue-i-chair-julia-gillard-delivers-2018-public-health-prevention-conference-speech>

<sup>14</sup> Scott Rochfort, Michael West, Ian Verrender The watchdog, his wife, and their winery March 31, 2011  
<http://www.theage.com.au/business/the-watchdog-his-wife-and-their-winery-20110330-1cgca.html>

<sup>15</sup> Richard Baker, Nick McKenzie and Simon Mann Gillard gave ASIC chief appointment exemption 12 November 2011  
<https://tinyurl.com/ydf534cf>

<sup>16</sup> Nick McKenzie, Richard Baker and Simon Mann Watching the watchdog 11 November 2011  
<https://www.smh.com.au/national/watching-the-watchdog-20111110-1n9so.html>

<sup>17</sup> N McKenzie, R Baker and S Mann 'Questions being asked over ASIC chief's previous role' November 11, 2011.  
<http://www.smh.com.au/national/questions-being-asked-over-asic-chiefs-previous-role-20111110-1n9nz.html#ixzz1n6spWvea>

<sup>18</sup> Richard Baker, Nick McKenzie and Simon Mann Gillard gave ASIC chief appointment exemption 12 November 2011  
<https://tinyurl.com/ydf534cf>

In 2013 while ASIC was under scrutiny over its handling of several corporate collapses Mr Medcraft spent 50 days visiting Beijing, London, Dublin, St Petersburg, Toronto, Washington, Montreal, New York, Delhi, Brussels, Basel, Paris, Madrid, Luxembourg, Wellington and back to Paris and London. The \$250,000 extensive taxpayer-funded travel caused Mr Medcraft to miss crucial parliamentary hearings and distracted attention away from the Trio crime.<sup>19</sup>

In April 2012, Minister for Superannuation Mr Shorten, APRA's deputy chairman Ross Jones, MLC chief executive Steve Tucker and Challenger Group retirement income chairman Jeremy Cooper travelled to Israel to examine Australian venture capital business. Three from this group actively discredited the SMSFs exposed to the Trio fraud. According to the Treasury Department there is no record of government expenses for the Israel trip or did Mr Shorten submit a report.

Jeremy Cooper a former Deputy Chair of ASIC was heavily quoted by journalist Gareth Hutchens in the March 2013 Sydney Morning Herald article, *"No safety net" on SMSF losses*. Mr Cooper attacked the creditability of the self-managed trustees who lost their superannuation in Trio, suggesting, *"you can't have your cake and eat it too"*.<sup>20</sup>

The article appeared in Google Search as exactly the same header, with 10 or 12 hits per page and at least 10 pages deep. Totalling of over 100 identical articles (with different web-links) - not even 9/11 or Lady Di's fatal car crash repeated the same header to this extent.

Mr Cooper is now the Chairman of Challenger Limited (Challenger) managing over \$57.4 billion in assets (as at March 31st 2016).<sup>21</sup>

Mr Graeme Thompson

APRA's Chairman 17 Aug 1998 - 30 Jun 2003 Graeme Thompson, according to The ABC Four Corner's story 'Cover Up' Mr Thompson was part of the biggest bribery case in Australia's history.<sup>22</sup> He was deputy governor of the reserve bank of Australia, and Chairman of Note Printing Australia and Securrency, (note printing business selling polymer bank notes worldwide), 1998 and 2008. The Reserve Bank paid tens of millions of dollars in bribes to military arms dealers in Malaysia, a known fraudster in Nepal and met with Saddam Hussein's brother in law in Iraq. Four Corners contacted Thompson but he refused to talk. According to the 4 Corners transcript, Mr Thompson is now part of AMP superannuation.

Ms Florissa Villavert

Former APRA's Assistant Director of Compliance, she became Head of Legal Compliance for Trio Capital management. Her knowledge of knowing exactly what the Government Regulators required became a useful asset for the perpetrators of the Trio scheme.

Mr David Knott

David Knott was appointed Chairman of ASIC on 18 November 2000 and retired at the end of 2003 just three years into a five-year contract. His reason for retiring was to be with his family, however, the reason for his departure was said to be because his business partner was involved in a tax avoidance scandal that became news and an issue that was raised in parliament.

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<sup>19</sup> Adele Ferguson, Ben Butler, Ruth Williams ASIC Globetrotting Greg Medcraft in Coalition's firing line Nov 23, 2013 <http://www.smh.com.au/federal-politics/political-news/australian-securities-and-investments-commission-globetrotting-greg-medcraft-in-coalitions-firing-line-20131122-2y1j5.html>

<sup>20</sup> <http://www.smh.com.au/money/planning/no-safety-net-on-smsf-losses-20130326-2gs7u.html>

<sup>21</sup> <http://www.challenger.com.au/about/index.htm>

<sup>22</sup> ABC 4 Corners Cover Up 30 Sep 2013 <http://www.abc.net.au/4corners/cover-up/4990074>

**d. No warning or guidance information about “fraud” or the weaknesses in the financial system:**

After the Trio fraud was discovered VOFF carried out an extensive search to find whether there was any information, guidance material or warnings that existed before September 2009 to inform consumers about:

- a) Fraud by organized crime gangs;
- b) International fraudsters targeting superannuation;
- b) Weaknesses in the financial system exploited;
- c) Superannuation savings siphoned to undisclosed overseas locations;
- d) ASIC and APRA powerless to act against fraud in international jurisdictions;
- e) Flouting money laundering and counter-terrorism financing laws (AML-CTF).

VOFF’s extensive search found that there was no information about the above points within the timeframe criteria. VOFF did receive one document under Freedom of Information law, a copy of the Part 23 of the Superannuation Industry (Supervision) Act 1993 (SIS Act). Had the SIS Act been made available to superannuation consumer(s) before September 2009, the Act alone would not have given the reader the type of information needed to avoid something like the Trio fraud.

Part 23 Application for assistance notes,

*(1) If:*

*(a) a fund suffers an eligible loss after the commencement of this Part; and*

*(aa) at the time it suffers the loss, the fund is:*

*(i) a regulated superannuation fund (other than a self managed superannuation fund);*

It is understood that Part 23 protects APRA-regulated funds because there are many hands handling a fund whereas SMSF trustees don’t steal from themselves. APRA and Treasury attended meetings where Part 23 legislation was discussed and even though the issues concern investor’s financial safety, the market was never informed.<sup>23</sup>

In addition with APRA attending the roundtable meetings, it also met on several occasions with the directors of Trio. By 2006, APRA reached the conclusion that the Trio directors were a “bunch of incompetents” but never informed the market. APRA said it’s not required to inform the market.<sup>24</sup>

The SIS Act was written in 1993 and it’s perceived the authors never considered ‘fraud’ within a Managed Investment Scheme (MIS) and the Managed Investments Act 1998 (MIA) commenced on 1 July 1998. Part 23 makes no reference to ‘fraud’ in a MIS, only within ‘fund’ that ‘*a person to pay contributions to the fund*’. Part 23 architects could not have anticipated a large-scale fraud against the Australian financial system and if they had, why protect one group without informing

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<sup>23</sup> First meeting July 17<sup>th</sup> 2003 called Review of Part 23 of the Superannuation Industry (Supervision) Act 1993 - Industry Consultation. 12 attendees - APRA 4 attendees, Association of Superannuation Funds of Australia 3, Corporate Super Association 1, Institute of Actuaries 1, Investment and Financial Services Association, Law Council of Australia 1, Treasury 4 and Trustee Corporation Australia 1. No indication the above organisations represented SMSFs or direct investors. Second meeting July 21<sup>st</sup> 2003 called *Review of Part 23 - Industry Roundtable Meeting*. 10 attendees - APRA 4, Association of Superannuation Funds of Australia 3, Australian Institute of Superannuation Trustees 1, Corporate Super Association 1, Law Council of Australia 1 and Trustee Corporation Australia 1. No one represented the interests of self-managed investors. Whatever was discussed at these important meetings was not made public. Self-managed trustees were never consulted about the decisions made that directly related to financial security issues. APRA is perceived as having interest to protect APRA-regulated funds. Information released to VOFF under FOI request to Treasury March 2015.

<sup>24</sup> July 5, 2012 meeting APRA’s office in Market St. attendees VOFF delegation, the then Superannuation Minister, Bill Shorten, APRA’s Ross Jones and ASIC’s Greg Medcraft. Also see, Hansard, Parliamentary Joint Committee on Corporations and Financial Services, Collapse of Trio Capital. (30.8.2011) - Sydney p 38

anyone or allowing market choice?

Prior Sept 2009, investors starting a superannuation fund were not aware of the protection offered by Part 23. This was not a failing by financial advisors to inform clients. Some financial advisors said they were in the industry for decades and never heard about Part 23 of the SIS Act.

Post 2009 Trio fraud, the public were not informed about how the fraudsters exploited the weaknesses in the financial system and how APRA's and ASIC's powers were rendered useless due to the fraud crossing international jurisdictions. Instead, after the Trio fraud, one sector of the market was discredited, suggesting, *'they are responsible for their own choices'*.<sup>25</sup>

Are money laundering and counter-terrorism financing laws (AML-CTF) being flouted? VOFF understand the PJC's 2012 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"* <sup>26</sup> to mean that the responsibility stops with the RE.

Trio's RE Shawn Richard deceived the Australian financial system, he misled ASIC and APRA, he misled the Custodians Banks, ANZ and NAB, the auditor, research houses and star-rating firms. The financial services industry continued to carry on with business for 5 years, no one reported suspicious money transactions.

Following the Banking Royal Commission's release of its Interim Report, Shayne Elliott, Chief Executive Officer, ANZ, invited disgruntled bank customers to email him directly.<sup>27</sup> On 16 October 2018 VOFF asked Mr Elliott why the ANZ Custodian Services of Trio Capital over a three to four year period, sent nearly \$200m overseas but are exempt from AML-CTF law?

Mr Elliott replied 16 October 2018 saying, "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."

Why didn't the PJC Report mention that banks as custodians have obligations under AML-CTF laws? The Report said, *"The committee strongly supports ASIC's program to review custodian businesses and identify those issues requiring regulatory reform. In particular, the committee urges ASIC to consider the safeguards that a custodian could put in place to ensure it is able to identify and report suspicious transfers that do not trigger the anti-money laundering provisions."*<sup>28</sup>

VOFF understand that the above statement is recommending *"ASIC to consider the safeguards that a custodian could put in place"*.

Surely ASIC must have known that banks had responsibilities and obligations under AML-CTF laws, so why didn't ASIC clarify the issue?

### **Argument for compensation**

In 2012 to 2013 the government was prepared to have an honest appraisal of the roles played by the ASIC and APRA in licensing and regulating Trio Capital Limited and its entities. Due to the

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<sup>25</sup> Main, Andrew 15-year director ban on former Trio CEO Rex Philpott uly 05, 2011  
<http://www.theaustralian.com.au/business/year-director-ban-on-former-trio-ceo-rex-philpott/story-e6frg8zx-1226087486466>

<sup>26</sup> The Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital, May 2012 Report Page 132

<sup>27</sup> Peter Ryan ANZ boss Shayne Elliott urges disgruntled customers to email him directly 12 Oct 2018  
<http://www.abc.net.au/news/2018-10-12/anz-boss-shayne-elliott-fronts-parliament/10368460>

<sup>28</sup> PJC Report May 2012 pp 132 & 133



unique characteristic of the Trio fraud VOFF anticipated a move toward compensation. For example:

- In May 2013 at the Ceda Superannuation Update Forum in Sydney, Mathias Cormann said,

*'...the recent Trio fraud – we do think that there are a series of unique circumstances which justify a closer look at what government could and should do in that circumstance. Essentially, there are people who invested through Trio who didn't invest in particularly risky investments. They channelled their funds into investment schemes that were licensed by ASIC, that were supposed to be scrutinised by ASIC and APRA and others. There was, in our view, a comprehensive failure of regulators to do their job.'*

Mr Cormann added,

*In all of the circumstances, we do believe that there is a case for the government to look more closely as to whether there would be some justification for a level of compensation, if not for the full amount of the loss, but at least a level of compensation.'*<sup>29</sup>

- In June 2013, a VOFF delegation travelled to Canberra and met with Senator Connie Fierravanti-Wells, Senator Mathias Cormann and Mr Paul Fletcher MP. The meeting agreed to an independent investigation into the unresolved Trio issues, offering a more efficient and expedient process than a protracted government inquiry.

- In September 2013 with the Tony Abbott Government in office, VOFF was invited to present the government with a submission arguing a case for compensation. In January 2014 VOFF hand delivered our 46-page submission to the office of The Assistant Treasurer, Senator Arthur Sinodinos. But before VOFF received a reply, the Independent Commission Against Corruption (ICAC) required Mr Sinodinos to face a corruption inquiry in respect to his salary from Australian Water Holdings (AWH).

Mr Sinodinos's appearance before ICAC added to a list of disruptions:

- *June 2010 – the backstabbing saga when Gillard ousts Rudd in a bloodless coup.*
- *March 2013 MP Bishop raised PM Gillard's role in the AWU slush fund of the 1990s.*<sup>30</sup>
- *August 2014 ICAC exposes the NSW Legislature as the most corrupt parliament in Australian history.*<sup>31</sup>
- *September 2014 Transparency International's Corruption Perception Index noted 'Australia's slide into corruption in political parties.'*<sup>32</sup>

The above events showed that the government's focus was on its own damage control and the approximately 655 ordinary honest hard-working Australians who were robbed due to ASIC's incompetence was a less important issue.

VOFF waited a long time for justice, then in April 2016 Ms O'Dwyer said, *"the investor groups are made up of direct investors and Self Managed Super Fund (SMSF) trustees, and neither of these groups are covered by the compensation framework under the Superannuation Industry (Supervision) Act 1993 (SIS Act)."*.....*"The Government considered the action taken by the financial regulators, ASIC and APRA, and is satisfied that in relation to the collapse of Trio, both regulators*

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<sup>29</sup> Senator Mathias Cormann, Shadow Assistant Treasurer  
Shadow Minister for Financial Services and Superannuation Senator for Western Australia Transcript Speech and Q&A  
Ceda Superannuation Update Forum

(Committee For Economic Development Of Australia) 7 MAY 2013 Hilton Hotel, Sydney

<sup>30</sup> Hansard House of Representatives March 18 2013 page 52

<sup>31</sup> Miles Godfrey The Daily Telegraph August 29, 2014. <http://tinyurl.com/ycfrg5p>

<sup>32</sup> Neville Tiffen Australia's slide into corruption must be stopped December 5, 2014

<http://www.theage.com.au/comment/australias-slide-into-corruption-must-be-stopped-20141203-11zso4.html>

*carried out their roles and responsibilities appropriately, in accordance with the law and the regulatory framework.”<sup>33</sup>*

Ms O’Dwyer’s statement was not evidence-based. There is no evidence to support ASIC’s vague account of what happened in Trio. In 2015 ASIC write, *“little, if any” credible evidence that the “purported” investments were actually made, or if they were, that they have any realisable value. Most of the assets invested were subsequently lost.”*<sup>34</sup>

The Banking Royal Commission uncovered the fees-for-no-services scandal but the Trio fraud victims were charged fees for no assets. Star Rating Firms, Research Houses, Custodians and Auditors all continued charging management fees for money that didn’t exist, ASIC and APRA behaved as if the money existed. The entire financial system continued billing the victims over assets that had long vanished.

It is incomprehensible that with all of the evidence against APRA, ASIC, the ANZ, the NAB and the research houses that has been tabled and accepted as evidence-based, that this whole disgraceful saga can be literally ignored and swept under the carpet. Government agencies allowed this fraud to be perpetuated because of lack of due diligence. Why should the good hard working people of Australia pay for incompetence which occurred at the highest level by Government agencies who, we put our faith and trust in? This is a disgrace and should not be ignored!

Mr Morrison made his position clear about bank victims at the Australian British Chamber of Commerce saying, the victims are *“complicit”* for being too *“passive”* *“Too often we, the customers, have also become complicit in allowing the deck to be stacked against us”, “You can guarantee it—the more passive a customer is, the worse deal they are going to get.”*<sup>35</sup> Opposition Leader Bill Shorten as the Minister for Superannuation, in regards to the Trio victims, said, *“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.”*<sup>36</sup>

Whether its misconduct or alleged criminal misconduct in the financial sector, victimization does not constructively address serious financial crime. In regards to the scandalous events outlined in this letter, VOFF expect your support for compensation / restitution for the Trio victims over the systemic failure of the Australian Financial System and the Government agencies involved. Their victim’s plight is not captured in the Banking Royal Commission Terms of Reference.

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<sup>33</sup> <http://kmo.ministers.treasury.gov.au/media-release/032-2016/>

<sup>34</sup> <https://asic.gov.au/about-asic/media-centre/key-matters/trio-and-astarra> Last updated: 28/05/2015.

<sup>35</sup> Citizens Electoral Council of Australia Media Release Thursday, 30 August 2018 and Malcolm Farr ‘More choice, more competition, more power’: Treasurer Scott Morrison on banking shake-up 3.08.2018 <https://www.news.com.au/finance/business/banking/more-choice-more-competition-more-power-treasurer-scott-morrison-on-banking-shakeup/news-story/9caafdca9aa92df50c15ffd8490ba770>

<sup>36</sup> The Assistant Treasurer Bill Shorten’s article “Clean-up time for financial advisers” (Telegraph 6 May ‘11 p34)