

Open Letter

Josh Frydenberg – Treasurer,
Senator Jane Hume - Minister for Superannuation, Financial Services and Financial Technology,
Joseph Longo, Chair - The Australian Securities and Investments Commission,
Stephen Jones MP - Shadow Assistant Treasurer, Shadow Minister for Financial Services, and
Bill Shorten MP.
18 March 2022

A major contributing factor in the Trio Capital fraud was the Australian Securities and Investments Commission's (ASIC's) gross negligence that allowed international fraudsters to exploit weaknesses in legislation so they could siphon money to location only known to the fraudsters. ASIC did not have the tool kit to stop fraud, pursue Trio's mastermind or carry out a proper investigation. Bureaucrats, to protect their jobs, created a misleading narrative about Australia's biggest superannuation scandal in history. The narrative was spiced up with an attack on the victims and advisers. Important elements such as the gatekeeper's responsibilities, Trio's Product Disclosure Statement produced by Baker McKenzie lawyers and the \$55m transfer of a single transaction in February 2009 – all were ignored. ASIC, the Australian Prudential Regulations Authority (APRA), Treasury and the Senate Economics References Committee embraced the misleading narrative. Brandishing caveat emptor, the Government reminded, intimidated and bullied the Sterling and Trio victims. The perceived inference is that as buyers they need to pay better attention and don't invest in scams. Note Acting Chair (Senator O'Neill's) statement in November 2021, at the Economics References Committee, said,

'People understand the purchase of a physical good is something that they need to be careful about but they have a certainty degree of a sense of protection provided by the government. With financial products, Australians are subject to, as they've written: '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."' ¹

Scott Morrison's, Josh Frydenberg's, and Wayne Byers' support doesn't alter the fact that, **'caveat emptor has no application where contract is induced by fraud'**.²

10 March 2022 APRA said in reply to a Freedom of Information request that it has no document showing a legal basis for its use of 'caveat emptor'. See APRA's FOI reply.

<http://www.mysuperrights.info/resources/FOI%2022-46%20Notice%20of%20Decision%2010%20March%202022.pdf>

The Government relied on s23 of the SIS Act that differentiated between the people caught up in exactly the same Trio crime. One group was compensated the other was not. Victims of financial crimes do have Rights according to the World Health Organization, but the uncompensated were denied their Rights simply because the Government used the caveat emptor law when there is no case in law for it to be used. Using caveat emptor unlawfully distracted from the breach by the seller and the remedies available for fraudulent misrepresentation. No one informed the victims that if the misrepresentation occurred in the context of a business transaction, a plaintiff may action it under section 18 of the Competition and Consumer Act 2010 (Cth) Schedule 2.

Trio and Sterling are examples where the Government bullied the victims of financial crime. Buyers are wrongly blamed and criminal sellers escape with the loot. Advisors are wrongly blamed and bad products built to steal other peoples' money (that ASIC license) go free. The Trio victims perceive that the financial regulators and the Government, knowingly or by wilful blindness, used 'caveat emptor' in a fraudulent matter as a diversion of any focus on regulatory failure or systemic issues. The Sterling and Trio victims deserve an immediate apology and compensation from the Government.

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¹ COMMONWEALTH OF AUSTRALIA Proof Committee Hansard, Senate, Economics References Committee - Sterling Income Trust (Public) 16 November 2021. Canberra - Page 12

² See Taylor v Hamer, 31 July, 2002 (Court of Appeal)