

# Open Letter

Standing Committees on Economics

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17 October 2022

To Committee Secretary,

The Australian Securities and Investments Commission (ASIC) appeared before the House of Representatives Economics Committee last week and the issue about the analysis by the John Adams Report concerning ASIC's handling of complaints was made to appear as no problem.

Over the past 16-years Australians have lost billions of dollars to collapsed and frozen funds. Australians lost money in Trio Capital, Storm Financial, Sterling First and the Wolf of Woy Woy to name a few. ASIC received complaint letters about each of these but in each case, ASIC took no further action.

While the Victims of Financial Fraud cannot identify if ASIC act in the public's best interest, it can offer the Committee information to highlight ASIC's actions / inactions.

1. No one is entitled to know what a complaint is about or why ASIC decide not to take further action. The 2005 letter by a former Trio director, David Millhouse is an example. Mr Millhouse pointed out concerns to the Trio management and lodged his letter with ASIC and APRA. In reply to a Freedom of Information request for the letter, ASIC said it could not find it but found another complaint letter dated 2008 but refused to release it. APRA found the Millhouse letter and refused its release. See 2-page of correspondence & links to ASIC's and APRA's replies: <http://www.mysuperrights.info/resources/Millhouse%E2%80%99s%202005%20complaint%20letter.pdf>

The 2005 letter is potential evidence of the events leading up to the fraud 4 years later. Although a court uncovered Trio's deceptive and misleading conduct, ASIC and APRA continue to protect the confidentiality of the dissolved Trio company.

2. ASIC claimed at the Parliamentary Joint Committee Inquiry into the Trio Capital Collapse Hearing that it communicates with its overseas counterparts. ASIC appears to have failed to see the warnings from 2002 to 2004, posted by The Netherlands Authority for the Financial Markets (AFM); The Financial Supervision Commission of the Isle of Man (FSC); The Austrian Financial Market Authority (FMA); The Comisión Nacional del Mercado de Valores (CNMV) Spain; Securities & Futures Commission of Hong Kong and Financial Markets Authority (New Zealand). They had all posted warnings of individuals operating unlicensed funds that sold worthless stock. They named individuals; some of those same individuals were on ASIC's database and held company registration documents linked to the Trio scheme. By ASIC failing to notice the warnings, the due diligence and 4-years of quantitative and qualitative analysis by consumers and advisers was ineffective against an insidious fraud that deceived the entire financial system. ASIC's Chair Greg Medcraft said the Trio fraud found the Australian financial regulatory system wanting.

3. In 2002 ASIC went to Hong Kong (two years before the Trio Capital scheme started in Australia) to the office of American lawyer Jack Flader and Scottish accountant James Sutherland. ASIC subpoenaed 100,000 documents. It was enough evidence to secure a conviction and send

the perpetrator of a Fraud against the Commonwealth of Australia to prison. Already in 2002, Flader and Sutherland had their names on ASIC's company registration database. They owned a holding company that in late 2003, purchased the Australian company Tolhurst Capital Limited (later change its name to Astarra Capital then Trio Capital).

4. For two years ASIC made no attempt to correct the Minister for Financial Services and Superannuation, Mr Bill Shorten for bastardizing the '*Swimming outside the flags*' term. It was an ASIC term and there was no justification for the term to be used negatively against the self-managed superannuation fund trustees and direct investors that lost money to the Trio fraud. At a meeting with the Mr Medcraft, APRA's Ross Jones and a VOFF delegation (5 July 2012) Mr Shorten apologised for using discrediting comments, '*rogue investors*' and '*swimming outside the flags*'.

ASIC is a consumer protection regulator, so why did it allow a bastardized term politicise a crime, mislead the public, shift the focus away from regulatory failure and deny the victims any legal remedy?

5. ASIC compromised its integrity as an independent Australian Government body when it followed the directive from Mr Shorten's office, to 'bring down' financial adviser Mr Tarrant. Mr Tarrant was one of the 155 advisers who had clients that had invested in Trio products. He was singled out because he was the adviser that had recommended Trio products to the Australian Workers Union slush fund called 'Officers Election Fund'. See ASIC company record of the AWU Officers Election Fund page 3.

The AWU's investment in Trio disappeared due to the fraud. Potentially at the time, the stolen money would have funded Mr Shorten's upcoming campaign to be the next Prime Minister of Australia. The Government's disclosure records held no disclosure by Mr Shorten of his connection and history with the AWU. ASIC supported the perceived 'conflict of interest'.

6. APRA assisted in the writing of Part 23 of the Superannuation Industry (Supervision) Act 1993. The Act protects APRA-regulated superannuation funds from 'fraud' but no other investment types and APRA did not inform the market of the legislation.

Investigative journalist Stewart Washington, aware that no one in the market knew about the Part 23 protection, 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 replied saying, "*I would say they are going to become a lot more aware.*"

7. Former Deputy Chairman of ASIC, Jeremy Cooper aimed disingenuous comments at SMSFs saying, "*you can't have your cake and eat it too*". The Trio victims were bombarded with discrediting comments despite the precedent, '*Fraud unravels everything...once it is proved it vitiates judgments, contracts and all transactions whatsoever*'<sup>1</sup>

Mr Cooper is now the Chairman of Challenger Limited, \$115 billion in assets (as at 31 December 2021).

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<sup>1</sup> LAZARUS ESTATES LTD -V- BEASLEY; CA 1956 Denning LJ, Lord Parker LJ  
<http://swarb.co.uk/lazarus-estates-ltd-v-beasley-ca-1956/>

29/01/2018

Current details for ABN 30 450 889 656 | ABN Lookup


**ABN Lookup**

## Current details for ABN 30 450 889 656

### ABN details

Entity name:	[REDACTED] <a href="#">name confidential</a>
ABN status:	Active from 13 May 2008
Entity type:	Other Partnership
Goods & Services Tax (GST):	Not currently registered for GST
Main business location:	NSW 2142

### Trading name(s)

From November 2018, ABN Lookup will cease displaying all trading names and only display registered business names. For more information, click [help](#).

Trading name	From
<a href="#">name confidential</a> OBO Officer's Election Fund	13 May 2008
Officer's Election Fund	13 May 2008

### Deductible gift recipient status

Not entitled to receive tax deductible gifts

ABN last updated: 11 Jul 2008

Record extracted: 29 Jan 2018

### Disclaimer

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8. In 2012, Mr Shorten, APRA deputy chairman Ross Jones, MLC chief executive Steve Tucker and Jeremy Cooper, travelled to Israel to examine ways to help kick-start the Australian venture capital business. Shorten touted Australian superannuation money as if it was his.

In 2013, Shorten and Prime Minister Julia Gillard went to China where Shorten said it's time for Australian fund managers to "*let go of the side of the pool*" and invest in China. He described Australians' \$1.3 Trillion in individual superannuation savings as "*our sovereign wealth fund*", a "*significant national asset*". The clutch on superannuation started when superannuation became compulsory in 1992. Former Prime Minister Paul Keating '*urged the trade union movement to use the billions of dollars generated, by superannuation over the next 20 years, to increase its own industrial clout...*'

Mr Keating wanted superannuation to strengthen union '*institutional muscle*'.

9. ASIC kept certain information about the Hong Kong based company Global Consultants and Services Limited (GCSL) secret. GCSL was owned and operated by American lawyer Mr Jack Flader. GCSL received money from Australia, to be diversified into 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). The documents remain exempt under the MoU and no one has learnt anything about their content or whether GCSL breached any laws.

A forensic investigator following the Trio money trail would start with the GCSL documents. But ASIC's stranglehold on information has adversely affected the Trio victims and denied Australia the right to know what happened.

10. Documentation from Guernsey<sup>2</sup> revealed that an overseas Trio fund manager had offered to assist ASIC in its investigation of Trio. ASIC declined his offer. ASIC did not inform the NSW Supreme Court. Consequently at the trial of Trio Director, Shawn Richard in 2011, the NSWSC said, 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>

The court was not informed about the offer to assist from an overseas jurisdiction. 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>

The issues mentioned in this letter are some of the many ASIC omissions in the Trio matter. Better transparency into what ASIC do to keep Australian consumers safe from deceptive and misleading conduct is long overdue.

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<sup>2</sup> Trio Fraud Manual 2 Pages 61 - 63

<http://www.mysuperrights.info/resources/Trio%20Fraud%20Manual%202.pdf>

<sup>3</sup> Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011) before Garling J.

<sup>4</sup> ibid