

ASIC LOOK AFTER ASIC !

Where is the evidence that ASIC was prudent and diligent in its role to protect consumers, investors, and creditors by ensuring that companies and financial institutions adhere to company and competition law?

The 3 main groups of Trio victims, VOFF, ARP Growth and VOICCE, consist of approximately 655 ordinary honest hard-working Australians, who had their superannuation and investment savings stolen from the fraudulently operated Trio Capital Limited scheme. Both the Australian Prudential Regulatory Authority (APRA) and The Australian Securities and Investments Commission (ASIC) regulated and licenced Trio and its entities. Just what ASIC's or APRA's actions / inactions during the period 2004 to 2010 concerning their governance of Trio remains unknown.

While VOFF aren't sure, and cannot prove exactly what ASIC did with regards to Trio, it is a given that ASIC looked after itself and was not the prudent and diligent regulator one would expect and should be able to depend on from a Government agency. An online letter writer succinctly noted in referring to the ASIC Chair, "These so called leaders are good at two things, self promotion and landing plum gigs. Neither of which benefit anybody else."

The Trio fraud occurred during the period 2006-2011 while Tony D'Aloisio was Chair of ASIC. Mr D'Aloisio landed a "plum gig," as after departing ASIC he became a non-executive director of the PPB Advisory Board, this organisation was then given millions of dollars by ASIC to liquidate Trio.

It is easy for ordinary people to perceive a conflict of interest between preventing fraud and reaping from the aftermath of fraud. During the period Mr D'Aloisio was Chair of ASIC he 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.¹

The Accounting Academic, Jeffrey Knapp, from the University of NSW did add his say over this seemingly self-interest event, Mr Knapp said, "It looks bad when ASIC issues an unusual exemption in the early days of the company's administration, the company subsequently loses its financial records and then releases an annual financial report that is not true and fair and not in accordance with accounting standards."²

The Gillard government and Wayne Swan breached Labor's senior public service appointment standards when they appointed Mr Medcraft on 13 May 2011 for a five-year term without first advertising the job. Shadow Assistant Treasurer Mathias Cormann said that Wayne Swan ignored the government's own processes designed to ensure a merit-based appointment and "made the appointment based purely on party political allegiance instead of a proper and competitive assessment of merit."³ In fact, '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.'⁴

¹ Scott Rochfort, Michael West and Ian Verrender 'The watchdog, his wife, and their winery'
The Age - Business Day March 31, 2011

<http://www.theage.com.au/business/the-watchdog-his-wife-and-their-winery-20110330-1cgca.html>

² 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>

³ Ibid

⁴ Richard Baker, Nick McKenzie and Simon Mann Gillard gave ASIC chief appointment exemption 12 November 2011
<https://tinyurl.com/ydf534cf>

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. Société Générale was pursued in court by the US Federal Housing Agency over allegations it was negligent, did shoddy due diligence and seriously misled American loan providers Fannie Mae and Freddie Mac.⁵

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.⁶

The allegations arose of impropriety inside SocGen's residential mortgage-backed securities (RMBS) team, created by Mr Medcraft and was 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.^{7 & 8}

In 2013 during a Parliamentary Joint Oversight Committee hearing, a new piece of information was presented, as The Committee made the following revealing statement,

5.12 "Fraudulent activity where money is siphoned to other jurisdictions is an international problem. The committee is of the view that Mr Medcraft's new position as head of the international corporate regulator provides an opportunity to negotiate measures that would close the loopholes in international fraud detection and response. The committee recognises that these efforts may require more than a commitment between regulators and that a more formal agreement may be required. This agreement should include various national crime commissions, as well as the various financial and securities regulators.

*5.13 The committee will continue to inquire at future oversight hearings into the circumstances and the aftermath of the Trio Capital collapse. The committee reaffirms its bipartisan determination to ensure that the utmost is done to address the systemic concerns that the Trio fraud has exposed. "*⁹

This new piece of information is extremely important as it acknowledges some important points:

1. ASIC's limitations in international jurisdictions.
2. Systemic failures.
3. Trio is acknowledged by the PJC Report to have been in fact a "fraud" yet this Committee still maintains it was a "collapse".

From the very beginning ASIC have inferred that the Trio victims lost their savings due to poor financial advice, but excused the auditing failures as due to "systemic failure".¹⁰ ASIC were directed by Mr Shorten's office to "bring down" the single advisor who had recommended Trio to the Australian Workers Union and consequently laid charges against this one lone advisor, he was only 1 out of 155 advisors who had clients in Trio. There was no mention of Mr Shorten's interest and close connection with the AWU yet he directed public attention by suggesting the Trio victims lost their savings because they were "swimming outside the flags". While ASIC and Mr Shorten whipped up misinformation, the PJC and NSW Supreme Court had clearly identified Trio as a "fraudulent scheme"?

It is not known whether Mr Medcraft negotiated measures to close the loopholes that are endangering the savings of over 16 million Australians. It is also unknown whether his job to strengthen the financial system was lodged as an official government request. What is known is, that in 2013 he spent at least 74 days travelling overseas for conferences and meetings, with the majority of the places visited in his

⁵ Ibid

⁶ Ibid

⁷ 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>

⁸ Nick McKenzie, Richard Baker and Simon 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>

⁹ Parliamentary Joint Committee on Corporations and Financial Services, Statutory Oversight of the Australian Securities and Investments Commission, Number 2, May 2013. page 47

¹⁰ PJC Report May 2012 Op Cit page 129

capacity as Chairman of The International Organization of Securities Commissions (IOSCO), spending \$246,409.99 on international travel. In the first half of 2014, while still ASIC's Chairman, he spent more than \$82,000 on travel.¹¹ Amidst the criticism about his overseas trips, he posted a YouTube video justifying his travels and his role as the chair of IOSCO.¹²

On 2nd October 2014 while still Chair of ASIC, Mr Medcraft was re-elected Board Chair of IOSCO. The Board is made up of 34 securities regulators and IOSCO comprises securities regulators from over 110 countries representing 95% of the world's capital markets worth approximately AUD\$136 trillion.

It is easy to perceive that ASIC only looks after ASIC and the top end of town while being contemptuous to all others. The ambitions, the self promotion and the landing of an International Chair does not reflect that anything was carried out in the interests of the ordinary people who were exposed to the Trio fraud.

Where was the government in regulating the regulator? Could the government have been focused on its own damage control?

When the Trio fraud needed to be investigated, government was busy dealing with political scandals:

- *June 2010 – the backstabbing saga when Gillard ousts Rudd in a bloodless coup.*
- *March 2013 MP Bishop raised PM Gillard's role in the Australian Workers Union slush fund of the 1990s.*¹³ (No mention of the AWU slush fund holding investments in the Trio funds).
- *August 2014 the Independent Commission Against Corruption exposes the NSW Legislature as the most corrupt parliament in Australian history.*¹⁴
- *September 2014 Transparency International's corruption perception index noted 'Australia's slide into corruption in political parties'.*¹⁵
- *2017 – 2018 dual-citizenship fiasco.*

Far too busy to carry out a proper investigation of the Trio fraud. Far too busy to worry about the approximately 655 ordinary honest hard-working Australians who were robbed due to ASIC's incompetence.

VOFF say the government got it wrong when it said that Australia's big four banks did not need a Banking Royal Commission.

VOFF maintain the government got it wrong when it said ASIC and APRA fulfilled their roles appropriately in the Trio matter. Where is the evidence to support that they did their job properly?

The role ASIC fulfilled was to mislead the public by focusing on financial advice, leaving most interested parties misinformed that Trio was caused by poor financial advice, when again there is ample evidence that Trio was a "fraud".

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¹¹ Cara Waters ASIC jumps to defend its jet-setting chairman January 15, 2014

<https://www.smartcompany.com.au/business-advice/legal/asic-jumps-to-defend-its-jet-setting-chairman/>

¹² ASIC Chairman Greg Medcraft talks about his role at IOSCO

https://www.youtube.com/watch?time_continue=18&v=d2hnnKl6t04

¹³ Hansard House of Representatives March 18 2013 page 52

¹⁴ Miles Godfrey The Daily Telegraph August 29, 2014. <http://tinyurl.com/ycfrfg5p>

¹⁵ 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>