

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
9 April 2019

Reg: Banking System Reform (Separation of Banks) Bill 2019

Dear Committee Secretariat,

It is imperative that the '*Banking System Reform (Separation of Banks) Bill 2019*' protect taxpayers from banks risking monies in derivatives and speculative ventures. Australians should not have to depend or rely solely on The Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA) to carry out governance and oversight of the banking system. That the 2018 Banking Royal Commission found ASIC and APRA reluctant to act against banking, superannuation and the financial services industry misconduct is a red flag. A future crisis needs to be avoided by introducing the "Glass-Steagall" Act.

The cost of bad behaviour in banking, superannuation and financial services industry was estimated to pass \$7 billion.¹ The Trio Capital fraud, the largest superannuation fraud in Australian history, saw about \$200 million disappear. In the wake of such loss, the financial system was praised for being robust.

The system is designed for the system not the consumer. In the above two examples, none of the victims have found redress. The system ignores and covers-up unpleasant evidence then spins its own misleading narrative to mislead the public. Generally they are public servants who are misleading the public.

Questions need to be asked about the public servants who were part of the team that handled Trio. **Such as, questioning the policing regulator's integrity?**

In early 2017, Victims of Financial Fraud (VOFF Inc) received information about the former Trio fund manager Mr Carl Meerveld.

Mr Meerveld lived in Hong Kong throughout the 1990s to 2008, he was one of the Trio "underlying" fund managers. In 2008 he settled in Guernsey. In July 2009 while Mr Meerveld was resident in Guernsey, his management role with Global Financial Managers Ltd, the St Lucia British Virgin Island (BVI) company saw the transfer of AU\$57m to the Exploration Fund. These securities disappeared from the Exploration Fund between that time and the time that the Trio administrator (PPB Advisory) gained access to the assets of the Exploration Fund in 2010.

In early 2016 Mr Meerveld stood as a candidate for Deputy position for Saint Sampson parish in Guernsey. Some of the Guernsey residents discovered on Google that Mr Meerveld was named in Australian court documents in relation to the Trio Capital fraud. Concerned Guernsey citizens approached Mr Meerveld over his connection with the Trio fraud. He defended his position by presenting a letter mediated by The Guernsey Financial Services Commission (GFSC) dated 3 September 2010. The letter shows he offered to assist ASIC's Trio investigation but ASIC declined his offer. VOFF acquired a copy of the letter in early 2017. **See single page of the 4-page media statement (undated) released late 2016 or early 2017 by Mr Meerveld.**

¹ Stephen Letts Banking royal commission: Cost of bad behaviour rising rapidly, set to pass \$7b 17 Oct 2018
<https://www.abc.net.au/news/2018-10-17/banking-royal-commission-cost-of-bad-behaviour-rising-rapidly/10386678>



GUERNSEY
FINANCIAL
SERVICES
COMMISSION

. 6 SEP 2010



3 September 2010



Enquiry by Australian Securities and Investments Commission ("ASIC")

I refer to our previous exchange in connection with ASIC's wish to have a discussion with Mr Meerveld on a voluntary basis. I relayed your message to ASIC and I have just received their response. They express their thanks for the assistance given and to Mr Meerveld's agreement to speak with ASIC but they now wish to hold off from taking up that offer. They may wish to explore this avenue at some point in the future but it can be considered dormant for now. If circumstances change, I shall be in touch again.

Yours sincerely



GUERNSEY FINANCIAL SERVICES COMMISSION



ASIC never questioned the overseas Trio operators.

ASIC's jurisdictional limitations weaken its enforcement powers, but it has not made this weakness clear to consumers in the financial market.

According to the concerned people in Guernsey, ASIC can ask the Guernsey authorities to question Mr Meerveld and, they would be able to carry out the questioning under Clause 11 of the Fraud (Bailiwick of Guernsey) Law, 2009. The legislation allows the Guernsey authorities to question any person who might be linked to fraud anywhere in the world, - if they were living in Guernsey at the time.

Apparently the Australian Trio Capital fraud is not a high priority issue for the Guernsey authorities because no one in Guernsey was directly harmed. Sources in Guernsey said the Guernsey authorities would respond if they received a request from ASIC.

VOFF wrote to ASIC Chairman James Shipton pointing out the opportunity for ASIC to be "proactive" and use "*the mindset of the ASIC of today*" as mentioned at *The Banking Royal Commission* in November 2018. ASIC have an opportunity to learn what may have happened to the missing money. Mr Shipton did not reply to VOFF's letter.

Mr Meerveld's offer to assist ASIC, invites the question, why didn't ASIC inform the NSW Supreme Court at the trial of Shawn Richard in August 2011?

During the trial the court referred to the overseas operators and suggested that the overseas Trio managers would be hard to track down and would be uncooperative witnesses. Mr Meerveld's offer of assistance shows that the court got it wrong.

With the omission of facts from the NSWSC seemingly the court overvalued the significance of Mr Richard's assistance and overvalued the time saved by avoiding '*significant time and resources seeking to gather independent admissible evidence, including evidence from uncooperative witnesses from numerous overseas jurisdictions*'.²

Consequently 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.³

Mr Meerveld's willingness to assist ASIC is not the only example of overseas Trio operators offering information. In March 2010 Mr Meerveld's Hong Kong work colleague, American lawyer Mr Jack Flader, sent the Sydney Morning Herald information in an attempt to set the public records straight about Trio. That's two principle overseas Trio operators from the largest superannuation theft in Australia's history, both offering their assistance to help ASIC but in both cases ASIC showed no interest. In addition to not informing the NSWSC, ASIC never informed the Parliamentary Joint Committee, the public or the Trio victims.

Mr Richard who was sentenced for '*providing misleading information to those entitled to accurate information*'⁴ outlined his assistance to ASIC (which the court rewarded him) in the confidential document tabled 'Exhibit B'. No one can verify Exhibit B because access is denied.

Why do both regulators refuse to disclose the weaknesses in the financial system?

ASIC, APRA and Treasury know about the weaknesses. The market does not know and the market is not entitled to find out. At the May 2013 Statutory Oversight of ASIC, the committee said, "*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.*"⁵

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

³ *ibid.*

⁴ *ibid.*

⁵ Statutory Oversight of the Australian Securities and Investments Commission, Chapter 5 - Developments with Trio Capital, Whitehaven Coal, Macquarie Entities and Storm Financial page 47.

Really, does the security of the Australian financial system rest with an informal deal that Mr Medcraft may or may not be able to negotiate. Leaving Australia's financial security in the hands of the man who did more for his own career while he was ASIC Chair, and who said Australia is a paradise for white-collar crime. Did Mr Medcraft help make that paradise?

Reference to "loopholes in international fraud detection and response" suggests weaknesses. Four years of Freedom of Information applications to ASIC, APRA and Treasury, with generally a blanket refusal. Then while the Banking Royal Commission was running VOFF received heavily redacted documents. Despite the redactions, the documents are evidence that the government knew all along the weaknesses were exploited by fraudsters, but ASIC's narrative went nowhere near the actual facts. ASIC wanted to stir up "poor financial advice".

Senator Sue Boyce in the August 2011 Official Committee Hansard said,
*"I suppose my concern as a legislator would be if there are people who have committed wrong in the view of society and yet are outside the reach of any laws or regulations of the country."*⁶

It's good to know that some Senators see things accurately. Weaknesses in the financial system ultimately concern the financial security of an estimated 15 million superannuation account holders. The banking and regulatory industries are not fully disclosing to the public about risks or weaknesses in the financial system. Without knowing the extent of the dangers, it would be prudent to introduce the "Glass-Steagall" Act as a precautionary measure.

- See 2-page letter dated 14 May 2018 from Treasury to OAIC and
- See 4-page letter from APRA addressed to FOI Officer at Treasury dated 8 May 2018.

John Telford
Secretary
Victims of Financial Fraud

⁶ Parliamentary Joint Committee On Corporations And Financial Services - Collapse of Trio Capital - 30 August 2011, page 41.



Australian Government
The Treasury

Office of the Australian Information Commissioner
By email: [REDACTED]

Notice of IC review and request for documents – John Telford and Treasury

Dear [REDACTED]

I refer to your correspondence dated 19 April 2018, in relation to Mr John Telford's application for Information Commissioner review of Treasury's decision under the *Freedom of Information Act 1982* (the Act) dated 24 March 2017.

Requested information

In your correspondence, you requested a further submission in support of Treasury's original decision and previous submissions to the OAIC on 21 August 2017 and 8 March 2018. On 7 May you advised that Treasury could provide a confidential submission on this matter.

In support of this submission, and in order to address the substance of your questions, I sought a letter from APRA. I consider it most appropriate in this case for APRA to address the material harm that would come from releasing this document, as it is APRA's operations that would be so harmed.

The full confidential letter from APRA is at **Attachment A**.

A partially redacted version of the letter, which can be provided to the applicant, is at **Attachment B**.

Treasury's submissions in relation to the questions you raised are set out below, and can be provided to the applicant in full.

Submissions about why exemptions were not relied on in original decision

The original decision was made to exempt the document in full, and the deliberative exemption provision was applied in relation to the entire document.

The proposed revised decision is to exempt the document in part. The exemption provisions recommended for this revised decision are applicable only to certain parts of the document, and would not have been appropriate to apply to the entire document in the first instance.

Treasury maintains that the suggested exemption provisions are applicable to the sections of the document as previously recommended.

Submissions about the passage of time since the document was created

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APRA has asserted that the risks discussed in the document are still relevant. Treasury supports APRA's assertion.

Reasonable expectation

The reasonable expectation of harm is demonstrated within the document itself. Mr Telford has made a significant number of public statements about the actual harm that was caused to him, and others, by the collapse of Trio Capital. Within the document, the author specifically describes the relationship between the legislation and the investigation into Trio Capital that led to this harm.

The discussion of the legislation, however, is not limited to Trio Capital. If the document were released, it would reasonably be expected that it would enable others to repeat the actions of Trio Capital. If this happened, then it would expose other people to the same actual harm that Mr Telford himself has been exposed.

Public interest factors

Treasury made submissions relating to public interest in its letter to the OAIC of 8 March 2018. APRA has made a further submission on this issue in the attached letter. Treasury has nothing more to add in support of these submissions.

The applicant's additional contentions

In his submission of 7 May 2018 Mr Telford has drawn a comparison between the document and the banking data breach. The situation that Mr Telford describes relates to notifying potentially affected persons of a privacy breach. Releasing the document would not alert any affected persons to any real or potential harm, but in actuality would expose people like Mr Telford to an increased risk of harm.

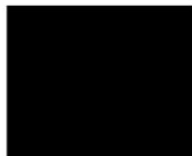
While I am sensitive to the fact that Mr Telford has not read the document, I respectfully disagree that the two situations are analogous.

Next steps

Treasury is willing to provide further submissions in relation to the review if required.

Should you have any enquiries concerning the matter, please email FOI@treasury.gov.au.

Yours sincerely,





8 May 2018

[REDACTED]
The Treasury
Langton Crescent
Parkes ACT 2600

By email: [REDACTED]

Dear [REDACTED]

INFORMATION COMMISSIONER REVIEW – MR17/00343
Request from Mr John Telford, on behalf of Victims of Financial Fraud (VOFF)

1. Thank you for inviting APRA to make submissions in relation to the above Information Commissioner review (**IC review**).
2. APRA consents to a copy of this letter being provided to the Office of the Australian Information Commissioner (**OAIC**) for the purpose of conducting the IC review. APRA requests that this letter be kept confidential and not be provided to the applicant, as it contains reference to the content of the document subject to this review. In accordance with the OAIC's email dated 7 May 2018, APRA has provided a separate version of the submission that can be shared with the applicant.
3. APRA has set out its submissions using the headings provided in the email dated 19 April 2018 from the OAIC to the Treasury.

Why exemptions were not relied on in original decision

4. In March 2017, the Treasury consulted with APRA in relation to the relevant document. APRA submitted that the document should be exempt in full as it contains deliberative material and disclosure would be contrary to the public interest. APRA did not consider that it was necessary to rely on further exemptions in its submissions. In the interest of time and cost efficiency APRA does not as a matter of practice rely on every available exemption when making a decision to release a document. Rather it relies on the strongest exemptions.
5. In March 2018, during the course of the Information Commissioner review, the Treasury recommended a partial release of the document with parts being redacted on the basis of the exemptions in sections 37(2)(b) and 47E(d). The Treasury's recommendation arose following the OAIC review officer indicating her preliminary view that there are strong public interest factors in favour of disclosure. APRA agrees with the approach proposed by the Treasury to partially release the document subject to the redaction of the exempt material.

The passage of time since the document was created

6. There have been no changes to the legislative provisions referred to in the relevant document since July 2012. [REDACTED]
7. There is general ongoing public debate about reforms needed to the superannuation framework to ensure that it remains fit for purpose as the superannuation industry continues to evolve and expand. Recent proposed reforms have focused on improving the legislative and regulatory framework, including through proposals to provide APRA with the power to issue directions [REDACTED]. These reforms have not to date been implemented, nor do they specifically address the gaps discussed in the relevant document. The gaps in the legislation identified in the relevant document still exist today.

Reasonable expectation

8. In the OAIC's email to the Treasury dated 1 May 2018, Ms Cameron stated 'it is my view that the Commissioner may not be satisfied that a discussion of the legislation is a method or procedure for the purposes of s 37(2)(b)'. In response, APRA considers that the relevant document is not merely a discussion of the legislation. [REDACTED]
9. [REDACTED]
10. Disclosure of the document therefore would, or would be reasonably likely to, prejudice the effectiveness of a [REDACTED] method used by APRA, as a person with malicious intent could use the information to identify and exploit the weaknesses [REDACTED]. Although some of the identified gaps in the SIS Act may be evident through studying the legislation, the relevant document draws particular attention to and explains what APRA considers to be weaknesses [REDACTED]. This analysis by APRA provides an additional layer of information which could be misused by a person with malicious intent.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

12. This would prejudice the effectiveness of APRA's methods, as APRA's [REDACTED] method for dealing with the identified gaps in the SIS Act would be rendered ineffective.

[REDACTED]

[REDACTED]

[REDACTED]

13. To counteract this harm, the legislation must be amended to close the identified gaps. Amendments to the legislative framework for superannuation are a matter for the Government. APRA is not aware of any plans to action reforms to address these legislative gaps in the short or medium term. It is a lengthy process to amend the legislation and there is a risk that individuals or entities would exploit the identified gaps in the intervening period.

Public interest factors

14. APRA agrees with the Treasury's submission that there is a significant public interest in government agencies being able to undertake their responsibilities in the most efficient and effective manner possible. As raised in the Treasury submission, efficiency reduces the amount of resourcing needed for regulators to function optimally, which is in the public interest.
15. APRA further submits that there is significant public interest in APRA being able to take appropriate enforcement action in relation to breaches of the SIS Act. Disclosure of the relevant document creates a heightened risk that APRA would be unable to prove a breach of the legislation due to individuals or entities exploiting the identified gaps and weaknesses in the current legislation.
16. Finally, APRA submits that there is significant public interest in preventing fraud from occurring in the superannuation industry. APRA considers that public confidence in superannuation is essential to the delivery of sound retirement outcomes for all Australians. Disclosure of the relevant document may facilitate the commission of fraud by enabling persons to exploit the identified gaps and weaknesses.
17. APRA considers that these public interest factors against disclosure equally apply to the section 47E(d) exemption and the section 47C exemption which, in APRA's view, is applicable to the redacted material. APRA considers that any public interest in debating

the issues raised in the relevant document is outweighed by the significant public interest factors against disclosure set out in paragraphs 14 to 16 above.

18. If you would like to discuss any aspect of this submission please contact me on

