

**Submission by Victims of Financial Fraud (VOFF Inc) to The Royal Commission into  
Misconduct in the Banking, Superannuation and Financial Services Industry**

**Regarding: not treated honestly and fairly.**

February 19<sup>th</sup> 2018

To the Honourable Kenneth Madison Hayne AC QC,

The collapse of Trio Capital Limited was the largest superannuation fraud in Australian history<sup>1</sup> that affected 6,090 Australian superannuation and direct investors. In April 2011, 5,400 investors in APRA-regulated funds received compensation under Part 23 of the Superannuation Industry (Supervision) Act 1993 (SIS Act). The 690 non Australian Prudential Regulation Authority (APRA)-regulated investors, made up of self-managed superannuation fund (SMSF) trustees and direct investors were not entitled for compensation. The non APRA-regulated investors also found they had no avenue for redress. In 2012 affected victims formed the Victims of Financial Fraud (VOFF Inc) group to fight for justice.

During the operational life of the Trio scheme 2004 to 2010, the investors relied on both the Australia and New Zealand Banking Group (ANZ) and the National Australia Bank (NAB) as Custodians, to accurately, responsibly account for the Trio assets they handled. The Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital found,

*'A custodian is responsible for the safekeeping of the assets of a third party client such as a managed investment scheme. It holds legal title to the assets of the client. (ref)<sup>2</sup> However, as ASIC noted in its submission, 'the custodian only acts on properly authorised instructions from its direct client or authorised agent' and that prime responsibility rests with the RE. (ref)<sup>3</sup> Further, custodians are not required to verify underlying assets in managed investment schemes, only the units in these schemes.'<sup>4</sup> & (ref).*

It is not surprising that the PJC found,

*'..there is an expectation in the public mind that custodians will act to protect and secure the underlying investment. By contrast, Trio's custodian, the National Australia Trustee Limited, has noted that the custodian does not have the expertise to question underlying values of either domestic or offshore funds.'<sup>5</sup>*

The difference between what consumers expect from the custodian and what the custodians provide, led the PJC to write Recommendation 8, suggesting,

*'The committee recommends that as part of its review of regulatory arrangements relating to custodians, [The Australian Securities and Investments Commission (ASIC)] should consider changing the name 'custodian' to a term that better reflects the current role of a custodian. This new term—reflecting the limited role of custodians—must be used in Product Disclosure Statements.'<sup>6</sup>*

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<sup>1</sup> The Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital May 2012 pages xvii & 151

<sup>2</sup> ref. ASIC, Submission 51, p. 72.

<sup>3</sup> ASIC, Submission 51, p. 72. See also Mr Stephen Tudge, Committee Hansard, 23 September 2011, p. 12.

<sup>4</sup> PJC Report May 2012 page 105. ref Committee Hansard, 23 September 2011, p. 15.

<sup>5</sup> PJC Report May 2012 page 123

<sup>6</sup> PJC Report May 2012 page xxviii

Like other regulatory changes that followed the Trio fraud, the change in the 'custodian' title is too late to benefit the victims, but may help prevent future misrepresentation.

The issue of the Commonwealth Bank's failure to report money transaction as required under the Anti-Money Laundering and Counter Terrorism Financing Act (AML/CTF Act) raises questions about Trio's money transactions. For example, Trio made large and continuous cash deposits, even a \$50m transfer to a foreign tax haven. Were any of Trio's large money transactions reported as a suspicious matter to the Australian Transaction Reports and Analysis Centre (AUSTRAC)?

Was Trio's \$50m transfer reported?

Did Trio's \$50m transfer ring alarm bells?

Concerning the Commonwealth Bank of Australia (CBA) / AUSTRAC matter, Nick McTaggart said that the failure of the major banks and other financial institutions to carry out basic due diligence likely placed them in breach of "know your customer" requirements. Mr McTaggart added 'Most financial institutions are just ticking the compliance boxes rather than doing the necessary due diligence,'<sup>7</sup>

The Trio inquiry did not thoroughly investigate the issues surrounding Trio's custodians. The PJC noted that Trio's responsible entity deposited investors' money into a Trio Custodian Account. Trio initially appointed ANZ Custodian Services and then on the 6<sup>th</sup> February 2009<sup>8</sup> appointed the National Australia Trustees Limited (NATL).<sup>9</sup> The custodian apparently does very little 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>10</sup>

It is reasonable to say that the Trio custodians did nothing for the consumers other than provide them with a false sense of security, which the PJC said was a consumer expectation gap. Part 23 of the SIS Act compensated over 90% of the total number of investors who were affected by the Trio fraud, removing any need for a thorough and proper investigation. There is no evidence to show that Trio's missing money was reported under money laundering legislation. The AML/CTF requirements are,

The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 set out what is expected from Australia,

*Section 3*

*(1) The objects of this Act include:*

*(a) to fulfil Australia's international obligations, including:*

*(i) Australia's international obligations to combat money laundering; and*

*(ii) Australia's international obligations to combat financing of terrorism; and*

*(b) to address matters of international concern, including: (i) the need to combat money laundering; and*

*(ii) the need to combat financing of terrorism; and*

*(c) by addressing those matters of international concern, to affect beneficially Australia's relations with:*

*(i) foreign countries; and*

*(ii) international organisations.<sup>11</sup>*

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<sup>7</sup> Nick McKenzie, Richard Baker, Georgina Mitchell It's not just CBA: all the banks are exposed to millions in money laundering Sept 15 2017  
<http://www.smh.com.au/business/banking-and-finance/its-not-just-cba-all-the-banks-are-exposed-to-millions-in-money-laundering-20170914-gyhhipi.html>

<sup>8</sup> PJC Report May 2012 page 39

<sup>9</sup> PJC Report May 2012 page 26

<sup>10</sup> PJC Report May 2012 page xxiii

<sup>11</sup> Anti-Money Laundering and Counter-Terrorism Financing Act 2006

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To verify whether reports were made concerning Trio's missing money, a Freedom of Information request to ASIC, dated June 25<sup>th</sup> 2014 sought documentation of potential weaknesses in the financial system at both the national and international level during the period 2007 to 2009 which might attract money laundering and terrorist financing.<sup>12</sup>

On October 13<sup>th</sup> 2014 ASIC said it had located relevant documents – provided a schedule list but all are exempt under s33(a)(iii) s37(2)(b) s47C and s47E of the FOI Act.

It disappointed VOFF that, in a democratic society there was no transparency over this important AML/CTF issue. By denying citizens information, this denied them the opportunity to become well-informed citizens who can contribute to society. VOFF could see similarities in the possible disappearance of Trio's assets with known money laundering techniques. For example,

*'Money Laundering is the process by which criminal proceeds are sanitised to disguise their illicit origins. Acquisitive criminals will attempt to distance themselves from their crimes by finding safe havens for their profits where they can avoid confiscation orders, and where those proceeds can be made to appear legitimate.*

*Money laundering schemes can be very simple or highly sophisticated. Most sophisticated money laundering schemes involve three stages:*

*Placement - the process of getting criminal money into the financial system;*

*Layering - the process of moving money in the financial system through complex webs of transactions, often via offshore companies;*

*Integration - the process by which criminal money ultimately becomes absorbed into the economy, such as through investment in real estate.*

*Prosecutions for money laundering can involve any of these stages in the money laundering process'.<sup>13</sup>*

In 2002 the Guardian newspaper reported that the Financial Action Task Force, (the international money-laundering body) investigated a blacklist of al-Qaeda financial backers operating out of Liechtenstein bank accounts. The Jeeves Group, a major offshore finance firm with 40 employees in Liechtenstein and the Caribbean tax haven of St Vincent were questioned.<sup>14</sup> Jeeves have a long history with the American Lawyer Jack Flader and the Scottish accountant James Sutherland. Flader and Sutherland were business partners in Hong Kong and funded the purchase of Trio Capital Limited.

ASIC seemed unaware that the Jeeves Group were questioned over supporting crooks, crime syndicates, tax evaders and terrorists or of the connection with Mr Flader. ASIC said no such document exists in answer to VOFF's FOI on this issue.<sup>15</sup>

In 2017 money-laundering issues were "big news" in the Australian media concerning the Commonwealth Bank's money transaction service. The Australian Crime Commission carried out a 'High Risk Funds' investigation, and found the movement of illicit cash by crime groups who were exploiting weak laws and questionable banking practices. The CBA's alleged failure to report 53,700 money transactions (as it is required to report under the AML/CTF Act) suggests a structural deficiency that allow for serious matters to go under the radar and/or not be reported.

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<sup>12</sup> VOFF FOI Number 197 to ASIC - June 25th 2014.

<sup>13</sup> Proceeds Of Crime Act 2002 Part 7 - Money Laundering Offences

[http://www.cps.gov.uk/legal/p\\_to\\_r/proceeds\\_of\\_crime\\_money\\_laundering/#Introduction\\_to\\_Money](http://www.cps.gov.uk/legal/p_to_r/proceeds_of_crime_money_laundering/#Introduction_to_Money)

<sup>14</sup> Conal Walsh Trouble in banking paradise as Uncle Sam's sheriffs ride in 27 October 2002

<http://www.theguardian.com/business/2002/oct/27/theobserver.observerbusiness9>

<sup>15</sup> VOFF FOI Number 269 to ASIC - finance terrorism October 18th 2014.

Like the CBA example, Trio also highlighted structural 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>16</sup> into overseas locations only known to the fraudsters.

Consumers expect the financial system to be properly operated within a legal framework. The supervision is wanting when so much can fall through the gaps. For example, the Trio products were in full view of ASIC, APRA, custodian, auditor, research houses and star rating firms yet the investors' had their savings stolen. Why did Trio's money laundering (a text-book example of money laundering) not face charges over systemic non-compliance with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)?

William Thompson's career with the Australian Tax Office (ATO) for 26 years provided him an understanding of how important the AUSTRAC data is in money transactions. In 2010, Mr Thompson provided certain material to the Inspector General of Taxation, pursuant to what was then a Section 15 Notice (is now a Section 9 Notice) to furnish information but he never received any response. Mr Thompson has attempted more than once to blow the whistle about money laundering issues but his impression is that federal agencies seem quite keen on burying their mistakes.

In June 2017 Mr Thompson saw Kelly O'Dwyer at a Melbourne Law School event about the proposed protections for whistleblowers. Kelly O'Dwyer said there have been "...five official reviews regarding Trio, or aspects of Trio's collapse..." but Mr Thompson said that none of the reviews - especially the PJC Inquiry, made any reference to what had happened to potentially dozens, scores or perhaps even hundreds of AUSTRAC reports - possibly even specific Suspect Transaction Reports. Mr Thompson is concerned that during all the years while Trio siphoned \$millions from Aussie retirees super fund deposits, transferring the money to offshore tax havens, the AUSTRAC reports didn't raised any red flags.

Mr Thompson sent a submission dated November 2nd 2011 to the PJC Inquiry. Tim Bryant's letter dated November 4th 2011 acknowledged Mr Thompson's submission. That was the last Mr Thompson ever heard about his submission. The PJC Report was released in May 2012. The Report does not list Mr Thompson among the 77 names that supplied submissions.<sup>17</sup> No one from the office of the Parliamentary Joint Committee on Corporations and Financial Services informed Mr Thompson as to why his submission was not accepted. Important information in Mr Thompson's submission did not appear in the PJC Report!

After the PJC released its report, Mr Thompson believes the PJC's failure to point a finger specifically at blatant failures by oversight agencies, is evidence, of a deliberate cover-up. VOFF submitted an FOI to the Parliamentary Joint Commission in June 2017 seeking information about Mr Thompson's submission.<sup>18</sup>

The PJC replied June 23rd 2017 and refused any information under s 46(c) of the FOI Act. VOFF were not treated honestly and fairly over a serious financial crime when the matter was placed into the hands of politicians with no recognizable background in crime or forensic investigation and consequently politicized the crime. Politicizing the crime removed the need for a proper public independent investigation - which would show the extent of ASIC's failures. Starting in 2001 when arrangements were made by a group of international brokers to register a holding company with ASIC, names and business addresses were entered into ASIC's company register

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<sup>16</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>17</sup> PJC Report May 2012 see Appendix 1 at pages 157 to 160.

<sup>18</sup> VOFF FOI 460 PJC - Thompson's submission June 14th 2017.

database. Information that could have at the time, informed ASIC about the entities. From 2001 onwards, information about international boiler-room scams, named people already on ASIC's database. ASIC's reactionary approach, whether due to underfunding and/or overworked, let Australian consumers down. ASIC do not deserve the title of Securities Investments Commissioner:

- i) failed to acknowledge that the American lawyer and Scottish accountant in Hong Kong, where ASIC travelled to visit their office in 2002 in regards to a 'fraud' against the Commonwealth, that the two men were already on ASIC's company registration data base after registering a holding company in 2001. That holding company went on to purchase the Australian Trust fund in November 2003 that later became Trio;
- ii) ASIC failed to prevent known criminals from entering the Australian financial system;
- iii) failed to carry out background checks on the new owners of an Australian business;
- iv) failed to note warnings by international regulatory authorities of unlicensed firms;
- v) failed to check people behind the licences ASIC approved for Trio;
- vi) failed to adequately regulate the Trio scheme;
- vii) failed to communicate with APRA, AUSTRAC, ACC, AFP and the ATO;
- viii) failed to address Trio's irregularities;
- ix) failed to investigate the crime properly once the fraud was discovered;
- x) failed to correct the misuse of its 'swimming between the flags' brochure;
- xi) failed to provide accurate information when informing or updating the public about the Trio fraud;
- xii) failed to accurately provide facts to the PJC inquiry and the NSWSC;
- xiii) 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>19</sup> in Trio's case, to undisclosed locations;
- xiv) failed to warn that ordinary investors do not have the tools to identify sophisticated fraud<sup>20</sup>;
- xv) failed to correct the public record about financial advisor's 'secret commissions'; and
- xvi) failed to inform victims of their right to submit a Victims Impact Statement to the court.

The Australian financial system failed to recognise the deceptions spun by Trio. Trio's legal department signed off on deceptive information. ASIC and APRA gave the green light. The banks as custodians and the auditors failed to identify the fraud. Trio is demonstration of a systemic failure of the Australian financial system.

The Trio victims met all the requirements to be in the highly regulated Australian financial system but the Trio fraud found the Australian financial system wanting. This group of consumers exposed to the unique Trio fraud deserve justice.

John Telford  
Secretary  
Victims of Financial Fraud (VOFF Inc)

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<sup>19</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>20</sup> Victoria Tait 'ASIC wants MIS underlying portfolio disclosure, Medcraft 'very, very passionate' on issue 23 Feb 2012  
<http://www.investordaily.com/13592.htm>