

Open Letter

Stephen Jones MP
Member for Whitlam
Assistant Treasurer and Minister for Financial Services.

28 September 2022

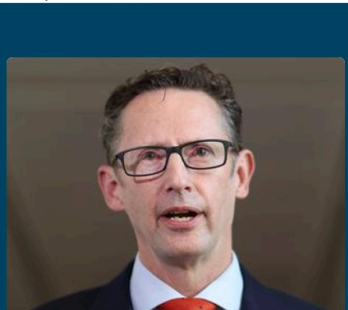
Dear Stephen Jones,

In 2019, the Labor Government said, *it would establish a retrospective compensation scheme so that past victims of bank misconduct can have one last chance to pursue justice. This scheme will be independent of the Australian Financial Complaints Authority (AFCA) and victims of misconduct dating back to 1 January 2008 will be able to apply to have their case heard. ... The stories of bank victims highlight the horrific effect that bank misconduct has had on their lives and they deserve fair compensation. The current AFCA compensation caps are inadequate. Too many consumers miss out on fair compensation.*

In September 2022, Journalist Cliona O'Dowd in the Australian writes, *"...hopes of consumer advocates for a more comprehensive scheme under a new government will be dashed, with Labor backflipping on a previous position supporting higher payments. The new bill, which comes after the Coalition's legislation lapsed at the federal election, will retain the compensation cap at \$150,000 and will not include managed investment schemes..."*

Phil Anderson, Chief Executive of the Association of Financial Advisers, *"supported the \$150,000 compensation limit but argued that managed investment schemes should be included in the scheme. We have advocated for (their inclusion) because we felt that MISs were a major contributor to unpaid determinations."*

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Labor backflips on financial misconduct compo scheme

The country's largest banks will pay a levy to pay victims under new legislation which caps claims at \$150,000 – despite earlier concerns that limit was far too low.

Sarah Abood, Chief Executive of the Financial Planning Association, *"Labor should include managed investments into its proposed compensation scheme. The previous draft version had a very limited scope.*

It would be disappointing if Labor has gone ahead without including MISs. We've had the position for some time that consumer protection means we need to include these MISs into the scheme."

Peter Johnston, Director of the Association of Independently-Owned Financial Professionals, *"excluding managed investments would see victims walk away empty-handed. "Excluding MISs would see this become ... just a pile of paper that doesn't actually cover anything."*

Former Treasurer Josh Frydenberg scrapped the proposed Compensation Scheme of Last Resort (CSLR) before he departed politics into a position in banking. The Government's disinterest in a CSLR echoes its disinterest in complaints by victims of financial crime. In regards to the Trio Capital fraud, at least three class actions were run that resulted in nothing for the victims. In 2013 Connie Fierravanti-Wells, Senator Mathias Cormann, and Paul Fletcher MP agreed to an independent investigation into ASIC's handling of Trio. Mr Cornmann acknowledged that Trio victims were mostly elderly and he said an independent investigation would be expedient. However, it never eventuated.

When the Tony Abbott Government took office on 18 September 2013, the Trio victims were invited to lodge a submission. The 46-page submission was handed to Assistant Treasurer, Senator Arthur Sinodinos on 29 January 2014. The victims received no response.

Less than honest handling of the Trio fraud.

The Minister of Superannuation, Bill Shorten made many disingenuous remarks against the Trio victims. Did his disingenuous comments breach section 474.17 the Criminal Code Act 1995 (CTH), "*using a carriage service to menace, harass or cause offence*"?

He deeply offended the victims when he differentiated between people that were in the same product and exposed to the same financial fraud. Mr Shorten claimed one group of investors were "*victims through no fault of their own*" and another group *ventured "directly into troubled funds"*. The distinction without a difference simply stigmatized one group while protecting another group.

In 2016 the Liberal Superannuation Minister, Kelly O'Dwyer released a media statement saying ASIC and APRA had acted appropriately in handling Trio. By omission, she failed to acknowledge the damning report, held by the Government, about ASIC. Ms O'Dwyer's statement misled the public and disadvantaged some of the Trio victims.

Both sides of government misled the public about Trio. The victims perceive both sides of government engaged in deceptive and misleading conduct. Details about weaknesses in the financial system, loopholes in legislation and regulatory failure were covered up, which exacerbated the harm caused by the crime against the group made up of self-managed superannuation fund trustees and direct investors.

The public were misled by the Parliamentary Joint Committee's Inquiry into the Collapse of Trio Capital. The PJC's Report lacked vital evidence. Usually the lack of evidence was due to ASIC's omission not to inform anyone about important details. Here are a couple of examples,

- ASIC / Inquiry did not investigate the requirements and obligations under the Anti-money Laundering and Counter-terrorism Financing (AML/CTF Act) of Trio's custodian bank.
- Failed to investigate the Hong Kong based company, Global Consultants and Services Limited that diversified Trio's investments.

- No one knew that an overseas fund manager had offered to assist in the ASIC investigation but ASIC turned down the offer.
- The PJC Inquiry and the public were not informed that ASIC met the people behind the Trio operation 2-years before they started Trio.

Is it law or whim that governs “deceptive and misleading conduct” in the financial sector?

Mr Jones, in 2022 you made a 180-degree turn in your approach to victims of “deceptive and misleading conduct”. In 2013 the deceptive and misleading conduct against the Trio victims attracted disingenuous comments now in 2022 the same deceptive and misleading conduct against the Youpla victims has your support. The Queensland insurance company “Youpla” sold junk funeral plans to Aboriginal and Torres Strait Islander peoples and when it went into liquidation in March this year, policyholders were left holding worthless policies and unable to carry out Sorry Business.

It is commendable that you and the Indigenous Australians Minister Linda Burney and Bob Katter championed the fight for the Youpla victims to receive justice. The Youpla victims deserve Justice, they deserve a compensation scheme, but shouldn't the law treat people exposed to deceptive and misleading conduct equally?

The same deceptive and misleading conduct that harmed the Youpla victims also equally harmed the Trio and Sterling First victims.

It is curious that of the 72,358 complaints AFCA received in 2021-22, it singled out the complaints about Youpla. AFCA pointed out that it received 1,200 complaints about Youpla but it did indicate how many complaints it received specifically about Banks, Trio Capital, Sterling First, Great Southern, or the Melissa Caddock scam.

The common thread with mums and dads savings being misappropriated is deceptive and misleading conduct. Another common thread is complaints reported to ASIC years before those schemes collapsed and ASIC choosing not to act. In regards to the Trio fraud, it's a “serious and systemic corruption” issue where there is evidence of omission, obfuscation, misinformation and cover up.

The Trio victims deserve a determination by an independent investigator. AFCA was unable to make a determination because Trio Capital is not a member of AFCA. It is in the public interest for an independent investigator to examine recent evidence (gathered by the victims) and determine how ASIC and APRA handled the largest superannuation theft in Australia's history.

Thank you
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