

**ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY**

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Secretary  
Victims of Financial Fraud (VOFF Inc)  
September 14<sup>th</sup> 2018

**Submission on policy related issues in response to Round 5 Superannuation.**

To The Banking Royal Commission,

1. The Victims of Financial Fraud (VOFF) are disappointed and alarmed that the complaints we provided in our submissions, to the Banking Royal Commission about [REDACTED] [REDACTED] misconduct and conduct falling short of community standards and expectation remain unacknowledged.
2. VOFF are victims of the largest superannuation theft in Australia's history, and following the [REDACTED] fraud, significant policy changes had to be made. Policy changes were made by to fix weaknesses in the financial system that allowed fraudsters to exploit and steal nearly [REDACTED] dollars. Most of the policy changes were made by stealth obfuscating the extent of the systemic failure.
3. Both regulators found excuses by citing Part 23 of the Superannuation Industry (Supervision) Act 1993 (SIS Act) to blame the self-managed superannuation fund sector for their own loss. The argument was that they had chosen not to be in an APRA-regulated fund. In many circumstances victims were transferred out of APRA regulated funds to the Australian Tax Office (ATO) without their knowledge of a lack of a safety net!
4. Self-managed superannuation fund trustees feel they are being treated as lepers and are excluded from the Banking Royal Commission's terms of reference, despite the fact that some have two superannuation accounts.
5. VOFF perceive the argument against hearing their complaints may be based on the fact that [REDACTED] had a government inquiry, court hearing, investigation by ASIC and liquidator.
6. VOFF strongly reject that the process ran its course because the process was denied vital information and as a consequence is flawed. [REDACTED] failed to provide critical evidence to the PJC inquiry, Supreme Court of NSW, the liquidator and the public.

7. Still the Trio victims have not seen justice. The victims cannot afford \$6 million (starting price) to take ██████ to court. ██████

8. The government said in 2016 that ASIC and APRA carried out their roles appropriately with licensing and regulating Trio. But the Banking Royal Commission has highlighted that over the same period, the regulators, failed to stop thousands of breaches. VOFF urge the government to take a second look at the regulator's role in Trio.

9. VOFF's criticism is not just the opinion of people who were harmed by ██████. For example, former Treasurer Peter Costello slammed ASIC for the 'appalling' acts uncovered by the Banking Royal Commission and he implored the Commissioner to expose the regulatory failures that allowed banks to behave so "appallingly".<sup>1</sup>

10. Founding chairman of the Australian Competition and Consumer Commission (ACCC), Professor Allan Fels, said ASIC should be stripped of its supervisory powers for being weak and ineffective in fighting bank misconduct.<sup>2</sup>

11. Professor Evan Jones argues that 'the key financial institutions are structurally given to corrupt practices' and that includes ASIC and APRA.<sup>3</sup>

12. Professor Graham Dean, former University of Sydney academic, has published several books over the last twenty years attempting to alert the regulators and government to the dangers around auditing. Mr Dean is critical of ASIC as it has not moved toward evidence based auditing.

13. Professor William Black, economics and law, University of Missouri-Kansas City - White-collar criminologist, serial whistleblower and author of *The Best Way to Rob a Bank Is to Own One*, notes that CEO's who use a company as a fraud vehicle are able to cause greater losses than all other forms of property crime combined.<sup>4</sup>

14. Professor Black's knowledge and views about financial fraud is highly respected throughout the criminology literature world.

15. ASIC's handling of Trio and the United States Securities and Exchange Commission's handling of Bernie Madoff's Ponzi raises some important differences. For example:

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<sup>1</sup> Joanna Mather and Jonathan Shapiro Costello slams ASIC for banks 'appalling' acts Australian Financial Review 30 August 2018 page 11

<sup>2</sup> Peter Ryan Former ACCC boss calls for ASIC to be stripped of powers over banks 9 Aug. 2018. <http://www.abc.net.au/news/2018-08-09/former-accs-boss-alan-fels-slams-asic/10092864>

<sup>3</sup> Evan Jones Bank corruption: it's the system August 30, 2018 <https://www.greenleft.org.au/content/bank-corruption-systemic>

<sup>4</sup> Black, William K. 'When Fragile becomes Friable: Endemic Control Fraud as a Cause of Economic Stagnation and Collapse' Institute for Fraud Prevention IDEAS Workshop: Delhi, India Financial Crime and Fragility under Financial Globalization December 19-20, 2005

16. The same week that the Bernie Madoff's Ponzi made news, the SEC chairman Christopher Cox, made a statement pointing out that SEC investigators and law enforcement were going through information to discover the complicated steps that Madoff took to deceive investors, the public and regulators. Cox acknowledged that Harry Markopolos gave the Commission information alleging the Madoff Ponzi in 1999, but the SEC staff never recommended the Ponzi to the Commission for action. Cox expressed concern over the decade of multiple failures as the Commission failed to thoroughly investigate the allegations of Madoff's wrongdoings.

17. Six months after the Trio fraud was initially announced, ASIC remained unable to confirm if Trio's assets were lost. [REDACTED] when it travelled to their Hong Kong office in regards to another "fraudulent" matter. [REDACTED]

18. Following the discovery of the Trio fraud by a fund manager, ASIC politicized the Trio fraud by ignoring the crime and going after a financial advisor. [REDACTED] in a letter dated June 21st 2012 that financial advisors in Australia earned high commissions for recommending clients to Trio. To date there is no evidence of any advisor receiving high commissions.

19. Further important issues we raised that went unacknowledged are:

- The complaint letter by lawyer [REDACTED] addressed to the Attorney-General's Department - see VOFF's submission PWF.0001.0001.9415.
- The issue concerning the [REDACTED] which became exposed to the Trio fraud.
- There is no evidence of [REDACTED]

- The 'bringing down' 1 financial advisor out of the 155, without logic.

20. But, we are not deterred and we are not going away, because circumstances surrounding the Trio fraud were so extraordinary, the victims of this crime deserve justice and the perpetrators should be exposed to prevent such an event being repeated!

Thank you  
John Telford  
Secretary VOFF Inc.