

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

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Secretary
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Submission - Policy related issues in response to Round 5 Superannuation.

To The Banking Royal Commission,

1. APRA operate behind closed doors:

In Round 5 the Commission asked The Australian Prudential Regulatory Authority (APRA) whether they operated behind closed doors. APRA disagreed with this characterisation and said it publicly provides information through its Enforceable Undertakings (EU).¹

Victims of Financial Fraud (VOFF) allege that EUs provide limited information and to suggest EUs provide transparency into APRA's operations is misleading. APRA's secrecy provisions means that all information obtained under the prudential framework is protected under section 56 of the APRA Act and therefore exempt under section 38 of the Freedom of Information Act (FOI Act).

2. Whim of politicians:

On April 1st 2016, Kelly O'Dwyer MP, said,

*"The Government considered the action taken by the financial regulators, ASIC and APRA, and is satisfied that in relation to the collapse of Trio, both regulators carried out their roles and responsibilities appropriately, in accordance with the law and the regulatory framework."*²

Ms O'Dwyer provided no evidence to support her statement. Ms O'Dwyer and other politicians voted 22 to 26 times against holding a Banking Royal Commission. The Commission found no shortage of misconduct including the reluctance by ASIC and APRA to act on compliance or complaint issues. VOFF argue the government got it equally wrong with its decision about ASIC's and APRA's role in Trio.

It's unsound to suggest that ASIC and APRA carried out their role appropriately with Trio but were reluctant to act against the thousands of breaches taking place in the financial services industry over the same period.

¹ ROYAL COMMISSION 17.8.18 H. ROWELL MR HODGE XXN ©Commonwealth of Australia P-5178

² Government decision on financial assistance relating to the collapse of Trio Capital
<http://kmo.ministers.treasury.gov.au/media-release/032-2016/>

3. Policy to safeguard consumers in superannuation:

The Commission provides an insight into the regulator's governance when it noted, *"It is submitted that the case studies suggest that the approach of neither APRA nor ASIC to regulation of superannuation entities is sufficient to achieve specific or general deterrence. The evidence suggests that APRA is reluctant to commence court proceeding and to take public enforcement action."*³

The Citizens Electoral Council of Australia provide an insight into the politicians who monitor the regulators when it said, *"Mr Caveat Emptor has replaced Mr Goldman Sachs, Malcolm Turnbull, as prime minister, and appointed Mr Deutsche Bank, Josh Frydenberg, as Treasurer. It is time the Australian people cleaned out this political cesspool, and accepted nothing less than genuine morality in government that serves the welfare of all people."*⁴ CEC add that Scott Morrison as former Treasurer, said he *"blames bank victims for bank crimes, saying they are "complicit" for being too "passive"...."You can guarantee it—the more passive a customer is, the worse deal they are going to get."*⁵

Only recently did The Productivity Commission and the Financial System Inquiry (FSI) enshrined the purpose and objective of superannuation in the Superannuation (Objective) Bill 2016. Going by the extent of crime the Banking Royal Commission uncovered, consumer 'purpose and objective' interests were never met.

4. Advertising:

- Regarding the Trio fraud, Minister of Superannuation, Bill Shorten used Part 23 of the SIS Act as a marketing tool. The collateral damage of Mum and Dad's superannuation fund was a warning to new comers - open an APRA-regulated fund because all other superannuation funds are dangerous!
- The Sydney Morning Herald journalist Gareth Hutchens wrote, *"No safety net" on SMSF losses'* (March 27th 2013) and extensively quotes Jeremy Cooper (former Deputy Chair of ASIC). Referring to self-managed trustees who lost their superannuation in Trio, Mr Cooper says, *"you can't have your cake and eat it too"*.⁶ Mr Cooper is now the Chairman of Challenger Limited (Challenger) managing over \$57.4 billion in assets (as at March 31st 2016).⁷ In April 2012, Cooper & APRA's Head, Ross Jones went to Israel with Mr Shorten.

"No safety net" on SMSF losses' swamped Google search pages. About 10 pages deep and each page had 10 to 12 addresses. Altogether there were more than 100 identical headers. For example, here are half a dozen hits,

³ FSRC MODULE 5: SUPERANNUATION CLOSING SUBMISSIONS at 814 Page 216.

⁴ Citizens Electoral Council of Australia Media Release 'Prime Minister Scott Morrison: Mr Caveat Emptor' 30.08.2018 <http://www.cecaust.com.au>

⁵ Citizens Electoral Council of Australia Media Release 'Prime Minister Scott Morrison: Mr. Caveat Emptor' 30.08.2018 <http://www.cecaust.com.au>

⁶ <http://www.smh.com.au/money/planning/no-safety-net-on-smsf-losses-20130326-2gs7u.html>

⁷ <http://www.challenger.com.au/about/index.htm>

[No safety net for SMSFs, says Cooper | Money Management](#)

<https://www.moneymanagement.com.au> › ... › [No safety net for SMSFs, says Cooper](#) ▼
Mar 27, 2013 - SMSFs should be responsible for their wins and losses, which is why there should be no special statutory safety net for them when it comes to ...

[Related: 'No safety net' on SMSF losses | Page - 3 - Page 4](#)

www.allnewsau.com/news/no-safety-net-on-smsf-losses/related?p=4 - [Cached](#)

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news.silobreaker.com/no-safety-net-on-smsf-losses-5_2266706263263936587 - [Cached](#)

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news.silobreaker.com/no-safety-net-on-smsf-losses-5_2266705688812060845 - [Cached](#)

[The Age - 'No safety net' on SMSF losses](#)

www.pressdisplay.com/pressdisplay/viewer.aspx?issue...

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['No safety net' on SMSF losses - Sport Balla](#)

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www.movieballa.com/2013/.../losses-safety-net-smsf-no - [Cached](#)

[Money | St George & Sutherland Shire Leader](#)

www.theleader.com.au/life-style/money/

['No safety net' on SMSF losses](#)

4. ['No safety net' on SMSF losses - WittySparks News](#)

flair.wittysparks.com/article/.../no-safety-net-on-smsf-losses - [Cached](#)

['No safety net' on SMSF losses - HOTheadlines - Australian News ...](#)

www.hoththeadlines.com.au/redirect.php?...No_safety_net_on_SMSF_losses... - [Cached](#)

['No safety net' on SMSF losses](#)

www.allnewsau.com/news/no-safety-net-on-smsf-losses - [Cached](#)

Never before in history of the Internet has an article been repeated so many times, not even 9/11 or Lady Di's fatal car crash. Why did vested interests in the \$32 billion per year superannuation services industry go to such lengths to discredit its competitor?

- Citing Part 23 gave the government justification to blame victim's loss on consumer choice i.e. not to chose an APRA-regulated fund. The government ignored the fact that not a single warning existed prior the Trio fraud to guide or warn against predatory fraudsters or about fraud occurring in a Manage Investment Scheme or inform about Part

23 of the SIS Act offering “fraud” protection. What both regulators did during the life of Trio remains hidden in a massive cover up.

- Most Australians were encouraged by the government to place money in superannuation, some were compelled. Encouraged to save for retirement but the Trio fraud found the financial system wanting. The victims could not have predicted or protected themselves from an unknown or undetectable fraud.
- Policy needs to prevent future victimisation of crime victims. For example, there is no inference of blame in Lord Denning’s understanding of fraud,

‘Fraud unravels everything...once it is proved it vitiates judgments, contracts and all transactions whatsoever’⁸

Lord Denning did not hold crime victims responsible or say ‘you can’t have your cake and eat it too’. Nor did Lord Denning create differences like Mr Shorten’s victim / villain discrimination of people who were exposed to exactly the same fraud. In the case of Trio, SMSF trustees made reasonable and lawful decisions. They explored options and relied on sound research. SMSF trustees caught up in the Trio fraud were wrongly discredited.

5. Policy to uphold integrity and discourage misinformation:

In 2010 investigative journalist Stuart Washington noted that the New Zealand Securities Commission in 2001 named Shawn Richard as an associate of the unlicensed broker Millennium Financial that operated in the Philippines. Shawn Richard was the perpetrator who was jailed for his part in operating Trio. The warning was subsequently removed from the NZ Securities Commission website.⁹

Mr Washington questioned whether Richard’s name was removed from the NZ Securities Commission website as a result of the commotion in the Australian news about the Trio fraud? The Securities Commission refused to provide a reason for its removal.

VOFF tried to get an answer under Freedom of Information law. But both ASIC and the NZ Securities Commission remained unhelpful. Shouldn’t government servants owe consumers honesty and integrity concerning mandated money that disappears? The Trio victims received no creditable evidence to show how \$200m disappeared or where it ended up.

Thank you
John Telford
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⁸ LAZARUS ESTATES LTD -V- BEASLEY; CA 1956 Denning LJ, Lord Parker LJ <http://swarb.co.uk/lazarus-estates-ltd-v-beasley-ca-1956/>

⁹ [http://www.smh.com.au/business/how-investors-in-trio-backed-the-wrong-horse-with-\\$426-million-Stuart-Washington-March-27-2010](http://www.smh.com.au/business/how-investors-in-trio-backed-the-wrong-horse-with-$426-million-Stuart-Washington-March-27-2010)