

Financial Regulator Assessment Authority  
The Treasury  
Langton Crescent  
PARKES ACT 2600  
Email: [FRAA@treasury.gov.au](mailto:FRAA@treasury.gov.au)  
5 December 2022

Victims of Financial Fraud  
Submission 5.12.2022

To FRAA,

Part 23 of the Superannuation Industry (Supervision) Act 1993 (SIS Act) compensation scheme was used as a weapon by the Minister for Superannuation and Financial Services, Bill Shorten in the Astarra Strategic Fund (ASF) fraud, (managed investment scheme under Trio Capital Limited), to benefit industry funds at the expense of self managed superannuation funds and direct investors. The ASF was an APRA regulated fund (prudentially reviewed by APRA) and was licensed by ASIC.

In 2010 ACT Super Management Pty Limited to verify fraudulent conduct in the ASF. ACT Super presented its findings of 'fraud' to the Australian Prudential Regulation Authority (APRA). Then on 13 April 2011 Mr Shorten issued a determination under Part 23 of the Superannuation Industry (Supervision) Act 1993, for a grant of \$54,994,079 to be paid to the acting trustee ACT Super for payment to the members. The members received \$55m and another \$17m was added for legal fees.

Incidentally, in 2015, Trio's liquidator and director of PPB Advisory, Brett Manwaring said, Trio was a Ponzi scheme.  
On 13 July 2016, ASIC's Chief Legal Officer, Chris Savundra said ASIC believe Trio wasn't a 'fraud'.

#### **Did APRA influence Part 23 legislation?**

No '*efficient market outcomes and regulatory action*' can result when APRA had 4 attendees at 2 meetings to help shape Part 23 legislation. The first meeting [10.07.2003] called *Review of Part 23 of the Superannuation Industry (Supervision) Act 1993 - Industry Consultation* consisted of 12 people. The second meeting [21.07.2003] called *Review of Part 23 - Industry Roundtable Meeting* had 10 people attend. APRA combined with Treasury held the voting numbers. No one represented SMSFs or direct investors. Although important decisions were made that directly related to the financial security of SMSFs, no one consulted them and no one informed the market. See info released under FOI Act on pages 6 & 7 of this submission.

Prior Sept 2009, no one knew of Part 23 and this wasn't the failure of financial advice because some had worked in the industry for decades and had never heard of Part 23 of the SIS Act. Was Part 23 intended to protect APRA regulated funds because many people manage the funds? Was it considered unnecessary to protect SMSFs because trustees don't steal from themselves and if they did, the insurance would be null and void?

It's highly improbable that Part 23 would have anticipated an international fraud designed to exploit weaknesses and loopholes in the financial system. ASIC's Chair, Greg Medcraft said '*the Trio fraud that found the financial system wanting*'.

#### **The 2012 Trio Capital Hearing in Sydney**

Senator Nick Sherry said to APRA's Greg Brunner, '*I suggest that if you said you are not subject to part 23' no-one would have any idea what you were talking about!*

Mr Brunner, '*No, clearly an explanation would need to be made at that point*'.

Further on Mr Brunner notes, *'it is an area where perhaps there is a lack of understanding of the different types of frameworks that exist. So you would expect a professional who was advising people to warn them of the change in arrangement between the two different sectors'*.

Mr Sherry, *'... I ask you to take it on notice to take these issues up with both the ATO and with ASIC, because I have been at a lot of committee hearings over the last 20 years and this issue has come up time and time again, and time and time again we get—and I am not criticising you or APRA—literally hundreds of people who are not compensable in the event of theft and fraud in the SMSF sector'*.

Mr Sherry, there, *"is absolutely no disclosure in any way, shape or form that an SMSF is not compensated in the event of theft and fraud from the sub-entity, the sub-investment entity. There is nothing there that relates to that"*.

Mr Brunner, *"I would not have thought so. The part 23 arrangements clearly relate to APRA and supervised entities. I think when people step outside the APRA framework, there would be an expectation of understanding from us that people would understand that."*

Mr Sherry, *"very few, if any, SMSF trustees knew of the compensation provisions in this case—or, frankly, in previous cases where I have been a member of a committee conducting an inquiry: very few knew. Don't you think it would be appropriate that they be informed of that? At least as part of their consideration in setting up an SMSF, don't you think it is an appropriate risk issue that they should be aware of?"*<sup>1</sup>

Note, the Trio victims did not **step outside the APRA framework**, they were in the Astarra Strategic Fund, prudentially regulated by APRA and licenced by ASIC. Lies and cover up tried to distract attention away from systemic issues and regulatory failure.

### **Part 23 Compensation scheme distorted efficient market outcomes and regulatory action**

The Australian Securities and Investments Commission (ASIC) took no interest in the crime after Part 23 compensated 5,300 victims out of 6,090, which gave the appearance that the 'fraud' issue was resolved. However, the Parliamentary Joint Committee questioned why Trio, one of the largest financial frauds in Australian history, was not more thoroughly investigated by agencies such as the Australian Federal Police (AFP), and the Australian Crime Commission (ACC).<sup>2</sup> ASIC sought limited involvement from the AFP<sup>3</sup> and the ACC informed the PJC inquiry that it did not conduct any specific investigations into the Trio case.<sup>4</sup>

The PJC Report writes, *"The committee is surprised that there appears to have been very little follow up activity by APRA, ASIC and other authorities such as the AFP, to seek to recover outstanding moneys or to bring to justice those who have committed crimes which have led to great suffering on the part of Australian investors"*.<sup>5</sup>

### **Distorted market outcome after making a distinction without difference**

Mr Shorten divided the Trio fraud victims into two groups. The union run superannuation funds that according to Mr Shorten had *lost money for no fault of their own*. Whereas, the Self Managed Superannuation Fund Trustees and Direct Investors group, according to Shorten, *chose to invest in a troubled fund*. Fact is all the victims got robbed the same way from the same fund.

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<sup>1</sup> Parliamentary Joint Committee on Corporations and Financial Services - 04/04/2012 - Collapse of Trio Capital, Sydney

<sup>2</sup> The Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital May 2012 pp xx & 84. (PJC Report).

<sup>3</sup> PJC Report page 142 Ref. *Commander Peter Sykora, Manager of Crime Operations, Australian Federal Police, Committee Hansard, 4 April 2012, p. 25.*

<sup>4</sup> PJC Report page 143

<sup>5</sup> PJC Report page xxi

Mr Shorten discriminated and discredited one group for the benefit of another, reminiscent of the shameless union biased tactics used in the attempt to destroy,

- the small business trucking industry (by forcing the little guys to join the trucking giants) and
- the Australian Workers Union secret side-deal with the cleaning services company Cleanevent, to save Cleanevent millions of dollars in wage costs in exchange for making a "donation" to the union. The deal cost 5000 workers \$400 million (cleaning staff were forced to accept below the award wages).

#### **APRA promote SMSFs - APRA destroy SMSFs**

*The Wallis Financial System Inquiry (May 1996–March 1997) was influential in informing the subsequent changes to superannuation industry regulation by the Australian Prudential Regulation Authority (APRA) and for measures to promote competition between funds, including the establishment of the SMSF arrangements and choice of superannuation fund by employees.<sup>6</sup>*

APRA and Treasury helped write Part 23 legislation without public debate and without informing the parties that would be harmed by the outcome of the legislation. Part 23 legislation designed only to protect APRA regulated super funds against fraud in the market. Part 23 gave APRA regulated funds a way to destroy market competitors and monopolise the market in the same way drug lords fight tuff wars. The Labor Party's control has a "new agenda for the \$3.4 trillion superannuation sector that he (Jim Chalmers) hopes will steer part of its vast pool of capital toward nation building investments in housing and clean energy."<sup>7</sup>

Around 2008 – 2009 industry fund members saw hard earned savings disappear in fund management fees during the Global Financial Crisis. Many had moved or were considering the move to SMSFs where they could take control of their own money. Part 23 used the opportunistic Trio Capital fraud to destroy the self-managed superannuation fund sector. The human carnage sent a market signal that put a stop to the exodus leaving the industry funds.

Inquiries and Royal Commission over the last two decades have proved to be useless and just another waste of public money. The Trio victims agree with what Alan Kohler had to say about the *terrible behaviour, greed and corruption* highlighted by the Hayne Royal Commission 'are mostly due to failures of policy and regulation that allowed them.' The same can be said about APRA's systemic failures 'are mostly due to failures of policy and regulation that allowed them.'<sup>8</sup>

Are emotional grief struck victims of a serious financial crime expected to take the Commonwealth to court over its responsibility for the failures of both financial regulators?

Some of the Trio victims started superannuation accounts as APRA regulated funds until APRA handed them over to the Tax office with no explanation about Part 23 legislation. See example on pages 4 and 5 of this submission – [home address redacted].


John Telford  
Secretary, Victims of Financial Fraud

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<sup>6</sup> Major superannuation and retirement income changes in Australia: a chronology - Save Our Super  
<http://saveoursuper.org.au/major-superannuation-retirement-income-changes-australia-chronology/>

<sup>7</sup> Jonathan Shapiro and James Evers Superannuation will fund nation building: Chalmers 23.08.2022  
<https://www.afr.com/companies/financial-services/superannuation-will-fund-nation-building-chalmers-20220822-p5bby#:~:text=Federal%20Treasurer%20Jim%20Chalmers%20has,in%20housing%20and%20clean%20energy.>

<sup>8</sup> Alan Kohler, It's Your Money, Published by Nero, Victoria, Australia 2019 page 6



**Australian Prudential Regulation Authority**

## Invoice/Statement

**JOHNT FAMILY SUPERANNUATION FUND**

**Billing Enquiries**  
 Telephone : (02) 6213 5454

**Return Lodgement Enquiries**  
 Telephone : 13 10 60


Customer No: 241055  
 Statement Date: 12-MAY-99  
 Page: 1

Description	Amount
Previous Statement	0.00
SIS BASIC LEVY 1998	600.00
<b>Please pay this amount within 30 days of statement date</b>	
	<b>600.00</b>

**NOTE THAT LATE PAYMENTS WILL INCUR A PENALTY**

Detach before mailing

Detach before mailing

 Reserve Bank of Australia

**Please detach slip and forward with payment made payable to:**

Australian Prudential Regulation Authority  
 GPO Box 3295  
 Sydney NSW 2001

**CREDIT**

Date: / /

JOHNT FAMILY SUPERANNUATION FUND

No. of Cheques	Cheque Details <small>Drawer (i.e. Account Name on cheque)</small>	Bank	Branch or B.S.B. No	Cheques etc. (please record cheque details)

For CREDIT of Department of the Treasury - APRA Collectors Receipt Account - SIS

**Total**

\$ .

⑈00 24 1055 ⑈00 24 1055⑈ 09 2000 21: 2 1955 9⑈ ? 1 ⑈0000060000⑈



Ref No: 990619410

Facsimile: (02) 6213 5252

17 August 1999

The Trustees  
JOHNT FAMILY SUPERANNUATION FUND

SFN: 4634/389/86

Year Of Income: 1997/98

Dear Sir/Madam

**NOTICE ABOUT COMPLYING FUND STATUS**

I, Russell Eaton, a delegate of the Australian Prudential Regulation Authority (APRA), under paragraph 40(1)(a) of the Superannuation Industry (Supervision) Act 1993 (the "Act") state that the JOHNT FAMILY SUPERANNUATION FUND (the "Fund") is a complying superannuation fund in relation to the above year of income.

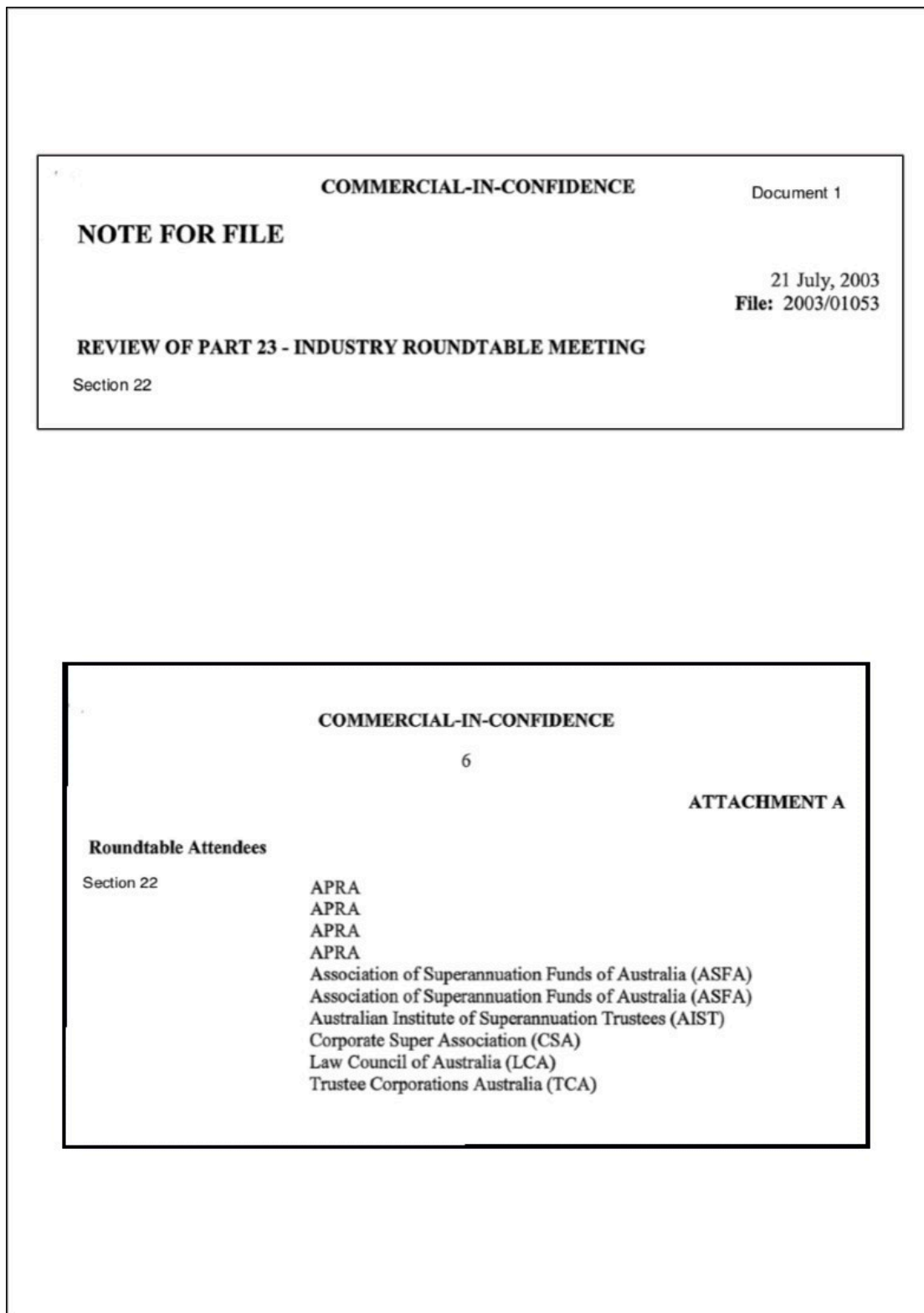
Under subsection 40(3) of the Act, the Commissioner of Taxation will be given the particulars of this notice.

Please note that, by virtue of section 45 of the Act, notices about complying fund status need not be issued in relation to future years of income (unless APRA issues a notice that the Fund is non-complying). The Fund will continue to be eligible for concessional taxation in all years subsequent to the year for which this notice is issued, so long as no other notice is issued.

Yours faithfully

A handwritten signature in black ink, appearing to read 'R. Eaton', is written over a horizontal line.

Russell Eaton  
Manager  
Reporting Section  
Australian Prudential Regulation Authority



FOI of the first meeting [10.07.2003] - 6-page document fully redacted citing Section 22. Two pieces of information - header on page 1 and attendee list on page 6.

Document 2

**REVIEW OF PART 23 OF THE SUPERANNUATION INDUSTRY (SUPERVISION)  
ACT 1993 - INDUSTRY CONSULTATION**

**Time and Venue**

Thursday, 17 July 2003, at APRA, Level 26, 400 George Street, Sydney

**Agenda**

Introduction

Operation of Part 23

Concluding comments

**Attendees**

Section 22

APRA

APRA

APRA

APRA

Association of Superannuation Funds of Australia

Association of Superannuation Funds of Australia

Australian Institute of Superannuation Trustees

Corporate Super Association

Institute of Actuaries

Investment and Financial Services Association

Law Council of Australia

Treasury

Treasury

Treasury

Treasury

Trustee Corporations Australia

The second meeting [21.07.2003], one page only released under FOI Act.  
Reference for Treasury's FOI is File: ER2014/05/05763, FOI ref: 1626.