

Victims of Financial Fraud
Incorporated (VOFF Inc)

VOFF Secretary

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To Committee Secretary
Senate Economics Legislation Committee,

Submission to the Senate Economics Legislation Committee Superannuation (Objective) Bill 2016 by Victims of Financial Fraud – a non profit group that had their retirement savings disappear from the Astarra Strategic Fund (ASF) under Trio Capital Limited (Trio). The Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulatory Authority (APRA) licenced, regulated and governed ASF / Trio and their entities.

VOFF's submission raises four points that underline why fraud thrived in the ASF:

1. Financial fraud;
2. Conflict of interest;
3. Accuracy; and
4. Integrity

Clarification.

The Superannuation (Objective) Bill 2016 uses the word “superannuation” in Sections 6 & 7 in ‘*Statements of compatibility*’—compatibility meaning:

‘For every Bill or regulation relating to superannuation, there must be a statement of its compatibility with the primary objective of the superannuation system and the subsidiary objectives of the superannuation system’.

and throughout the rest of the Bill as “superannuation system”. The Bill does not clarify whether “superannuation” or “superannuation system” applies specifically and exclusively to the APRA regulated superannuation funds.

Introduction.

After the fraud in ASF (Trio fraud) was discovered (Sept 2009) Trio investors were shown legislation never shown to the market before, *Part 23 of the Superannuation Industry (Supervision) Act 1993* (SIS Act) stating that non-APRA regulated funds are not covered or protected from fraud. The self-managed fund trustees that lost money in the ASF were accused of choosing to be in an unprotected fund. The term “unprotected fund” had never been used before September 2009. It is like suggesting that Australian Indigenous people before 1770 chose to remain Terra nullius “uninhabited” making their land freely available for the taking.

Superannuation is a vehicle for Australian citizens, incentivize by tax concessions, to provide income in retirement, to substitute or supplement the Age Pension. Superannuation must not become an entrapment where personal saving can be gouged by legislative anomaly or by share churning or excessive management fees or by fraud. It is critical that superannuation is safe, that the management and regulatory governance be transparent, accurate with integrity. Unlike the outcome in the case of the Trio fraud, legislation surrounding superannuation needs to demonstrate that scams and frauds are not tolerated.

1. Financial fraud.

The primary objective of the superannuation system is to provide income in retirement to substitute or supplement the age pension.

The primary objective “to provide income in retirement” is defeated by fraud. Investors in for the long term need reasonable protection which APRA and ASIC failed to provide with Trio. Protection from fraud needs to extend beyond the APRA regulated funds.

Since the Trio fraud, open discussion about improving investment security for the non-APRA regulated funds has not happened. ASIC and APRA provide virtually nothing about fraud or the perpetrators so it is not surprising that dialogue is wanting.

The regulators in Australia commandeer information and refuse to show what their actions / inactions were with Trio and its entities. They refuse to show whether ‘fit and proper person test’ were carried out or explain how known criminals were allowed into the Australian financial system. With no transparency, citizens are required to trust the Australian superannuation system, trust ASIC and APRA and trust that all the checks and balances are based on accuracy.

In the case of Trio, no one measured the human misery caused by the ASF / Trio fraud. There was no proper investigation, the crime not solved, the international perpetrators were not brought to justice, no attempt was made to claw back the proceeds of crime and the victims were not offered restitution. Instead the Trio crime was misleadingly called a “collapse” and the investors were said to be “swimming outside the flags”. The regulator’s show a lack of interest in an investigation and victims remain in the dark with no an accurate account of what happened.

2. Conflict of interest.

David Murray points out several conflicts of interest in Financial System Inquiry Final Report Nov. 2014, such as:

- information imbalances and principal agent conflicts;
- conflict of interest between the adviser and the consumer;
- conflicted remuneration;
- conflicting obligations;
- conflicted incentives;
- directors accountable for their ... conflicts of interest; and
- the governance of superannuation ... prevent conflicts of interest from influencing decisions.

The fact the government is eying the over two trillion dollars superannuation pool, suitable for investing in large-scale projects, is not considered a conflict. Nor is conflict raised about APRA showcasing it’s own regulated funds on the back of the Trio fraud, benefiting from the damage done to self-managed funds and other form of investment. APRA’s exclusiveness to Part 23 of the SIS Act makes APRA the only safe superannuation option and all else dangerous. APRA’s exclusiveness to Part 23 discourages investment choice and discourages democratization of superannuation. “*Providing choice and flexibility to meet individual needs and preferences*” is hardly achieved by endangering and penalising anyone outside of an APRA regulated fund.

The Murray Report recommended ‘*Seek broad political agreement for the objectives of the superannuation system*’. But the government’s control of superannuation needs Checks and Balances carried out by a non-conflicted agency who have no vested interest in the \$25 billion per year superannuation service market. Also checks need to be made of the revolving doors where government operatives move from regulating and governing superannuation into positions with liquidation and insolvency firms, directly benefiting from troubled funds or after the financial regulators fail to stop fraudsters.

4 Accuracy.

ASIC oversee auditing but the standard remains questionable. The only plausible reason that the industry is not held more accountable must be lobbying power. Standards in auditing particularly around the long-term investments in superannuation need to find accuracy between subjective and objective auditing. APRA rely on the accuracy of auditing and if auditing is flawed then security is compromised.

4 Integrity.

The “superannuation system” is like a machine, designed to reduce the number of people reliant on the aged pension. The Superannuation (Objective)

Trio is an historical example where the security of a Managed Investment Schemes (MIS) was compromised by deception. The regulators were deceived, the banks were deceived, auditing firms were deceived, star rating agencies were deceived, 150 financial advisors were deceived and over 6,000 investors were deceived. In the Trio example, the “superannuation system” helped the fraudsters more than the Australian citizens in superannuation.

The Superannuation (Objective) Bill needs to empower citizens so they can have access to information concerning their superannuation. Citizens’ access to the information enables them to participate meaningfully in the democratic process, and to ensure that politicians and bureaucrats remain accountable to the citizenry. Transparency, accuracy and integrity are necessary when we live in a time where the Independent Commission Against Corruption (ICAC) in 2014 said the NSW Legislature is the most corrupt parliament in Australian history. It cannot be ruled out that danger to superannuation can come from unexpected quarters.

Australian citizens that own the \$2 trillion in superannuation need basic rights protected by the Superannuation Objective Bill, such as being able to learn what the regulators do (or not) to protect superannuation.

Recommendations

1. Make information about financial fraud more easily available to researchers, fund managers and citizens who take an interest in the security of the Australian financial system and their own investment safety. Inform about what safeguards are in place and whether they apply to all Australians in superannuation or not.
2. Include ‘conflict of interest’ on the Oversight’s Checks and Balances. Ensure concise wording of the Superannuation Objectives Bill to avoid a future bureaucratic or regulatory agencies failure to cost ordinary mum and dads their life savings.
3. It is essential for accurate auditing otherwise the superannuation system is unsafe.
4. Integrity should not have to rely on denying consumers information. Integrity, transparency and accuracy should be integral to a well and accurately run superannuation system.