

Submission to the Inquiry into the Collapse of Trio Capital

I am writing this submission on behalf of my mother, Jacqueline Marie Fellows, and myself as the Trustees of Money Hill House Investment Provident Fund and Unit Holder of the ARP Growth Fund ARSN 112 315 036.

When my late husband, William John Stelmach, and I first started to discuss his retirement, which he planned to achieve when he reached 63 years of age, we went to see Mr ..., whom my husband had met through Mr ...'s involvement in the management of the corporate employer superannuation fund, of which my husband was then a member. My husband informed me that Mr ... said that he could assist us with advice on how best to save for our retirement and manage our investments.

Acting upon the advice of Mr ..., my husband and I established our Fund in January 1997 as the superannuation fund for our retirement. We thought that Mr ...'s advice made good sense for us – we would have our own self-managed superannuation fund so that he could ensure that our investments were appropriately tailored to our particular needs, but we would be part of a pooled superannuation fund so that we could benefit from the economies of scale of a much larger investment pool and the security associated with being a part of a larger pooled fund.

Initially there were three trustees of Money Hill House Investment Provident Fund, my husband and I and Mr [The organization], run by Mr ..., managed our Fund for us in the pooled superannuation trust, which he had established in October 1984. The Trustee of the superannuation investment pool was the Trust Company of Australia Ltd and [...] Pty Ltd, Mr ...'s company, was the administrator.

At all times, Mr ... knew that we were saving to provide ourselves with an adequate income to be self sufficient in retirement. As my husband and I had both worked extremely hard all our lives and had been fortunate enough to be professionally successful, we planned to enjoy our retirement years together and travel extensively. Accordingly, we knew that we had to ensure that we had an adequate income stream in our post working lives to enable us to fulfil our dreams. Thus, we always made it clear to Mr ... that we were more concerned about protecting our capital in a bear market, than achieving significant gains in a bull market. We were conservative investors whose focus was on good risk management, rather than stellar investment results. We were satisfied that Mr ... clearly understood our wishes in this regard and would comply with them.

Unfortunately, neither my husband nor I were particularly knowledgeable at that time about complicated investment matters and so we put a high degree of trust in Mr ... as our investment manager. We had established our self-managed superannuation fund not as a vehicle to give us any direct control over our investments, given our lack of expertise in this area, but as a means of consolidating our superannuation contributions into a single scheme, with investments customised by Mr ... to best meet our long term goal of self-sufficiency. We also thought it would make life easier for us in the unwelcome event that one of us died and the other partner was left to live on the income from our fund.

Over time, as Mr ... informed us of more and more changes that were being made to the structure of the pooled superannuation fund (of which our self-managed fund was a part) and the various entities responsible for it, our understanding of what had initially been a simple model for the operation of Money Hill House Investment Provident Fund diminished, with the increasing complexity and change. However, we remained comforted by Mr ...'s assurances of 'an incredible amount of due diligence' being carried out on each of the investment managers and our level of protection through significant diversification of the investments. We believed that such diversification of investments was a sound approach so that, in a worst case scenario, we could never lose all our investments, if any one fund manager ran into difficulties.

We were perplexed by the decision to restructure the pooled superannuation fund into a managed investment scheme to be regulated by ASIC rather than APRA. However, we

believed that ASIC would apply at least the same degree of scrutiny to the MIS, as APRA to the pooled fund, so put our faith in the rigour of the regulator's oversight to ensure that no breaches of the law would occur. As Mr ... strongly recommended this course of action, we did not object to the restructure, given that he was remaining as the investment manager of the Fund in his capacity as [...] Pty Ltd.

We received regular information from Mr ... about the performance of our investments against relevant benchmarks and were quite content with the advice. When the ARP Growth Fund was established, we read the Product Disclosure Statement which was sent to us and satisfied ourselves – to the extent that we were able, given the highly technical information contained therein - that the Fund was to be prudently managed in the sole interests of its members. We specifically noted that there was no mention of leveraged investing in the document, as we were strongly opposed to such a practice, given our low risk appetite.

Our first concern about the health of our Fund occurred when we received correspondence from Mr ..., dated 9 May 2008, that Empyreal Investments Pty Ltd, the investment manager of PPARP Ltd and Empyreal SPC Ltd, had advised that there would be a delay in calculating the March 31st share price of both funds. We thought this seemed rather strange. However, it was not until we received a letter from Mr ..., dated 3 June 2008 regarding the PPARP Ltd share price, that we were dismayed to learn that the Fund had been borrowing money to buy investments for the pooled superannuation fund. We could not understand how ASIC could have allowed this to happen, if it were monitoring the operation of the Fund.

When ASIC placed an Interim Order on Trio Capital Ltd in October 2009, preventing investors in the Astarra Strategic Fund from withdrawing funds, Mr ... assured us that the ARP Growth Fund only had \$1 million invested in ASF and that, apart from this small exposure, there were no problems whatsoever with the ARP Growth Fund. That was the last communication we had with Mr

When we finally comprehended the true situation and the devastating impact it would have on our life savings, my husband and I were both completely mortified by the betrayal that we had suffered. Within months my husband was diagnosed with pancreatic cancer and died in March 2010.

Since October 2009, I have not had any access to the funds that we had invested in Money Hill House Investment Provident Fund. My husband's estate contained virtually no money as all our savings had been channelled into our superannuation fund. Hence, there was no legacy for his three children.

It has been almost two years since ASIC identified that there were major irregularities with the ARP Growth Fund and yet no action has been taken in that time to pursue recovery of our superannuation funds or to seek any compensation for us through whatever means available. I find this lack of action reprehensible, given the financial suffering of all members of the ARP Growth Fund.

Given that my husband and I were only seeking to provide for a retirement with dignity, but had put all our 'eggs in the one basket' in our superannuation fund, including partially rolling over my husband's Victorian State Superannuation lump sum and my former employer superannuation funds and redundancy payments, the collapse of Trio Capital has had a devastating impact on my life and was clearly a major contributor to my husband's death.

Neither my husband nor I ever comprehended that there was less regulatory protection for self-managed funds in pooled investment arrangements than for individual superannuation accounts in industry, corporate or retail funds. Given our conservative approach, we would never have gone down the self-managed path if we had understood that this type of superannuation savings vehicle was not regarded by the Federal Government as deserving of the same safety net protection as other types of superannuation savings arrangements. This fact had never been made known to us – there had been no warning from the Government or the regulators that you invest, however prudently, in your own self-managed fund at your peril. In the event that you are the victim of fraud through absolutely no fault of your own -

unlike the rest of the community's superannuation savings – your superannuation savings have no protection whatsoever. This seems contrary to Australia's proud international reputation as a country with guaranteed protection for all superannuation savings. Indeed, it seems incomprehensible to me that the Government would facilitate the establishment of SMSF arrangements to encourage the self funding of retirement, without putting in place the necessary regulatory protection to afford such arrangements security in the event of fraud.

In conclusion, I would request that the Inquiry give consideration to recommending the retrospective extension of the underpinning protection for superannuation savings in self-managed superannuation funds, affected by the collapse of Trio Capital, as enjoyed by other fund members similarly impacted by the Trio collapse, where the SMSF members genuinely believed that their investments were being prudently managed, but nonetheless were subject to fraudulent behaviour, which saw them lose their entire retirement savings.

Julia Fellows

7 August 2011