

August 17<sup>th</sup> 2011

**Submission to the enquiry into the collapse of Trio Capital and other related matters**

**RE: Masterbind Provident Fund – A unit holder in The ARP Growth Fund**

**BACKGROUND**

Our self-managed Superannuation Fund, Masterbind Provident Fund, was a unit holder in the ARP Growth Fund with Trio Capital as its Responsible Entity (RE). Our submission is based on the experience of the loss of our entire life's savings. My partner and I had a modest fund totalling approximately \$450,000.00 which was our entire superannuation. I am over 60 years old with no prospect of replacing this money and this event has devastated our retirement plans. I worked hard all my life and took responsibility for my own retirement with a SMSF so as not to rely on the Government for support in retirement but this event now means we will have to sell our home and rely on the Government pension in retirement.

We are conservative investors, no different to most individual retail investors who took professional advice from Government regulated advisors and had the expectation that the Regulatory Authorities and auditors could be relied upon to ensure our investments were not exposed to persons and/or entrusted to parties that were not properly examined and regulated. This has not been the case with TRIO and we are extremely disappointed in the Regulators, auditors and advisors and fail to comprehend why we have not been compensated like the retail investors in this matter. We feel abandoned by the Government and let down by the regulators. We hope this enquiry will recommend changes to the legislation and enforce protocols to minimise the risk of what happened with TRIO re -occurring.

**WHAT WE SEEK FROM THE PARLIAMENTARY ENQUIRY**

- i) ASIC & APRA failed in their responsibilities to properly supervise TRIO. Other investors affected by the collapse of TRIO have received 100% compensation while those of us with SMSF's have received nothing, Why have the SMSF's been treated differently? The circumstances behind the collapse that affected the other individual investors who have been compensated are exactly the same as those that caused our loss and the loss to other SMSF's. We too relied on the regulators for security and it is very unfair in view of the circumstances of the collapse that compensation has not also been paid to us. We ask the enquiry to consider this as a matter of urgency especially to assist many older retirees who have lost everything.

- ii) Protection for future victims of similar circumstances with legislation for a levy and/or insurance contributing to a fund held in reserve to compensate victims, through no fault of their own, that have been victims of similar situations to the TRIO matter.
- iii) Legislation requiring RE's, Advisers, Auditors etc to be covered by adequate Indemnity Insurance. The existing Indemnity Insurance held by these entities is not sufficient to cover the massive losses incurred.
- iv) Improved resources for ASIC and APRA so they can better supervise and ensure investors are protected
- v) Consideration is given by ASIC to pursuing civil proceeding against auditors, trustees and custodian banks to recover the funds. This could contribute to the Government compensating unit holders of the ARP Growth Fund and other SMSF's who have suffered this loss.

## **POINTS OF REFERENCE**

### **1) Type of investment**

There should be stronger standards put in place regulating the types of investments in which SMSF's and RE's can invest. In my personal experience where over \$50 million of the ARP Growth Fund was transferred to offshore entities indicates the need for better control and regulations. How could this occur under the noses of compliance regulators, advisers and auditors all supposedly operating within the regulations? How was this allowed to happen and go unnoticed until the money was gone? How on earth could the auditors have missed this? The standards surely require review and change.

### **2) Points of failure in relation to products and advice**

With hindsight the TRIO collapse reveals many examples of failure with regard to products and advice such as.

- Justice George Palmer in the NSW Supreme Court said in respect to one PDS that it was "no more than gibberish"
- The Audit Report and Risk Assessment at 30<sup>th</sup> June 2008 made comments regarding valuations that were very positive. With the benefit of hindsight how could this be so?
- In December 2006 APRA decided Trustee Astarra (TRIO) take over the administration of the Pooled Superannuation Trust (PST) and clients were transferred to a new MIS Professional Pension Fund retaining the same investments in ARP. Did APRA closely examine these entities?

### **3) The Relationship between SMSF arrangements and regulatory coverage**

The arrangements relating to SMSF's and their regulatory coverage requires a complete review. The fact that the events surrounding TRIO and the losses suffered by us with a SMSF (our life savings) under the nose of the regulators are a clear indication changes are required and the current system failed totally.

#### **4) The role of ASIC in monitoring Trio Capital and subsequent pursuit of directors, advisors, fund managers**

We submit that ASIC should have been more aware of the problems with TRIO much earlier. We also submit that once concerns were raised the investigations should have happened more quickly. In the case of the ARP Growth Fund it was only because of an organised campaign amongst unit holders that eventually we seemed to get ASIC's attention and action. We strongly suggest more resources should have been made available earlier by ASIC to the investigation. Although the investigations were difficult and complex involving offshore jurisdictions, which understandably increases the complexity and time frame, the time taken while worried investors dealt with uncertainty and anxiety was too long. ASIC must continue to aggressively pursue all associated directors, advisors, fund managers, auditors to recover funds. Is there money that has been secreted away?

Are the penalties sufficient? The recent sentence of Shawn Richards for his role in TRIO affair is grossly inadequate and an inadequate deterrent. His actions resulted in the ruin of many lives. The penalties have to be a real deterrent and ASIC must play their role in ensuring this occurs.

#### **5) The APRA regulatory relationship to Trio Capital and the use of SMSF**

The enquiry must thoroughly investigate the fact that in 2007 APRA is now reported as having been unable to find any valuation methodology in relation to TRIO. At this stage the alarm bells should have been ringing and investors made aware. Did APRA advise the auditors or anyone else? Why not?

#### **6) The access to compensation and insurance for Trio Capital investors including in circumstances of frauds**

We have no compensation because we are a SMSF which is grossly unfair. In relation to my circumstances (the ARP Growth Fund) the total amount of Indemnity Insurance available in the various related entities policies is so small ASIC are not in a position to sue. This is puzzling as how could ASIC have complied with their own guidelines on adequate insurance for financial services licensees?

In cases such as the Westpoint collapse ASIC it seems, took action against auditors to get investors funds and we ask that ASIC take this action against the auditors in the case of The ARP Growth Fund as well.

We are the victims of what is described as the biggest superannuation scam in Australia's history but unlike Westpoint and/or Storm there is no compensation for us. We relied on the regulator to ensure regulatory compliance and under ASIC's nose the TRIO situation was allowed to occur. We should be compensated just as the retail investors of TRIO and the victims of Westpoint and Storm were, and strongly recommend the enquiry suggest legislation that ensures that in the future, compensation is available for SMSF's in these circumstances.

**7) The issue of fraud (in particular international fraud) in the collapse of Trio Capital and regulatory implications.**

The fact that so much money could disappear which cannot be properly traced indicates serious shortcomings in the existing system which needs to be addressed to avoid more collapses like this in the future.

We have to ask how could people like Jack Flader, Frank Bell, Philip York and James Sutherland with previous serious actions brought against them in the USA and UK go unnoticed by the regulator. Are the AFS Licensing regulations and/or process of due diligence adequate when people such as this can become involved with an organisation regulated by ASIC? Did the auditors exercise proper diligence? Did they verify the existence of and the value of these funds offshore?

**8) Whether there are adequate protections against fraud for those who invest through self-managed superannuation funds as opposed to other investment vehicles**

It is clear there are not adequate protections and/or compensation as demonstrated by my own circumstances. Stronger regulations combined with an adequate compensation scheme must be put in place to provide adequate protection and compensation for victims in the case of fraud. The following should be considered:

- The current Professional Indemnity Insurance requirements are inadequate.
- The legislation must be changed so that SMSF's have access to the same compensation scheme as that available to retail investors.
- Some form of additional insurance scheme incorporated in Financial Planners ,RE's and/or even a small levy on SMSF's should be established to fund a scheme that can compensate members of SMSF's who are victims of circumstances the same or similar to the TRIO collapse. A similar last resort scheme is in operation in the UK I believe which may serve as an example.
- The regulations and their enforcement should be strengthened to better anticipate and avoid collapses of this nature. The appropriateness of individuals to act in the capacity of a RE, Financial Advisor or Investment Manager requires much stronger monitoring and stronger regulation with a regular ongoing review/audit methodology.

**9) The appropriateness of information and advice provided to consumers and how the interests of consumers can be best served in regulated and unregulated environments**

Information provided in Product Disclosure Statements must be presented in a way that is easily understood and ASIC and APRA must be made responsible for ensuring this occurs.

Legislation is required that makes it mandatory for the risk profile of any investment and where investments are held to be clearly explained to the investor in simply understood language.

**10) The role of ratings agencies and research organisations in product promotion and confidence**

Advice from ratings agencies and research organisations is clearly helpful but there should be a legal requirement for them to declare any self-interest and/or commercial relationships in regard in their comments and advice. The rules should clearly define an obligation to declare when their comments or analysis is not independent.

**11) Any other matters relevant to the collapse of Trio Capital in the further improvement of the financial services sector and consumer protection**

We chose to invest with a RE regulated by APRA and ASIC, no different to the many retail investors who also invested through TRIO. My partner and I mistakenly thought we were protected by the regulators from the events that transpired with TRIO. We have lost our life savings and cannot understand why the Government has been discriminatory in providing compensation to one group (the retail investors) and not to the SMSF's who also lost money in the TRIO collapse. Surely this is unfair.

The current compensation under Part 23 of SIS to APRA regulated superannuation funds investors and not ASIC regulated SMSF's is very poor policy and requires urgent review.

The Government should correct this anomaly and also compensate SMSF's who lost money in the ARP Growth Fund many of whom are elderly and have lost everything and in some cases even their homes.

If the Government is to encourage self-funded retirement, as it does, then any compensation scheme must be all embracing so that self-funded retirees can feel confident that their investments are safe from charlatans and thieves.

Like all the other SMSF's affected by this matter we planned and saved all our lives to fund our own retirement and without compensation will now be dependent on the Government pension payments which in our case, will be more costly to the Government and Tax Payer than any "one off" compensation payment.

In conclusion we would like to thank the committee for the opportunity to make our submission to your enquiry. We hope your enquiry will recommend legislation and protocols to ensure Self-Funded Retirees avoid the disastrous consequences of a collapse of this kind in the future. We also hope that your enquiry, in all fairness, will seriously consider the matter of compensation to all the SMSF's who put their faith in the regulators and whose lives have been shattered by this event.

Yours Sincerely

Paul Cohen

Julie McEachern

Trustees of the Masterbind Provident Fund

