

Submission to the Senate Parliamentary Joint Committee on Corporations and Financial Services

INQUIRY INTO THE COLLAPSE OF TRIO CAPITAL

Submission by Russell J SMITH

19th July 2011

My wife and I are self funded retirees having retired in early 2006 with what we believed to be sufficient funds to see us through a time of life where we could enjoy the fruits of our labors in a little comfort. Similar to all self funded retirees our aim was to not be a burden on the government throughout our retirement.

At the time of the Trio Capital collapse we had just over \$1 million invested and with a reasonable annual return this amount would have seen our hopes and dreams achieved. Naturally this has been shattered by the events that unfolded with the collapse of Trio Capital and the proven fraud.

At this point in time we have lost approximately 80% of our funds although there will be some small return when the Part 23 Compensation Claim is finalized and paid out. In the end we potentially stand to lose upwards of 65% of our money. This in the greater part is due to the apparent negligence of ASIC, APRA and the auditors of the fund. These are the gatekeepers, who we all relied on to protect our interests and investments.

It's my understanding that this same process is the same for all regulated superannuation plans? With the current funds under management for Superannuation in the trillions this is of great concern.

I am pleased that this inquiry has been instigated but I would like to see the terms of reference extended to obtain answers to not only why it happened but to ensure that the right organizations and people (be they government or multi national institutions) are held accountable and responsible.

In my opinion you are starting at the wrong end by focusing on the Financial Planners, instead of beginning your examination on the role, effect and impact of ASIC, APRA and the auditors such as KPMG & WHK who all failed in their Duty of Care to the investors. They did not undertake or apply correct procedures or protocols when it came to compliance and/or auditing.

In the terms of reference specific attention is to be placed on the role and complicity of Financial Planners which in our case is not necessary. I would like to formally state that in my opinion our Financial Planner (Dominion Financial Group) undertook all necessary and correct due diligence and fully applied all duty of care when identifying and investing in this organization.

My real concern lies with the regulators, overseers and gatekeepers of superannuation and financial investment starting with ASIC, APRA and then the auditors themselves. As a result I would like the Committee and Inquiry to also look at their role, involvement and complicity in the establishment and approval of the fund and eventual collapse of Trio Capital.

By investigating the role of ASIC and APRA you will find that had they correctly reviewed the **licensing application information and** PDS documents and undertaken Due Diligence and applied correctly their Duty of Care then Shaun Richards would never have been granted a license and as a result Trio Capital would not have been established. As a final outcome the investors would have been protected from the eventual fraud. You need to ask yourselves isn't this the reason why we have organizations like ASIC and APRA?

Having been given the approval by these government bodies to establish Trio Capital the next issue is the role of auditors like KPMG & WHK and their associated audit organization. Had these companies, who receive **millions of dollars** in audit fees, correctly audited the investments then this fraud would not have seen the light of day.

As I have said I do not, in my instance, have concerns about my Financial Planner but rather the process applied by ASIC and APRA and then the incompetent audits undertaken over a 5 year period by the auditors. In addition the role of APRA in reviewing and checking **each year that this business was operating within the scope of a regulated trustee and superannuation plan** and that all **checks & balances** (audits) had been correctly undertaken and applied.

All of the investors in Trio Capital have lost substantial funds due to the breakdown in the APRA and ASIC regulatory process and further compounded by the incompetence of the auditors.

Therefore, I **respective** submit that the inquiry focus on the regulations, guidelines and principles of the investment process applied by ASIC and APRA, their roles in not being able to identify potential fraud through its audit process and their inability to apply Due Diligence and complete its Duty of Care **for and on behalf of the investor and the investment industry as a whole**.

More importantly as many small investors (be it superannuation or other investments) have been caught up in inappropriate investments, fraud and misappropriation of funds then the specific accountability and responsibility of auditors like KPMG & WHK needs to be addressed. Had they completed the audit process correctly and efficiently then this fraud would have been identified earlier and the situation rectified before investors lost the amount of funds they have.

I would like the inquiry to consider and recommend that the government legislate to instigate that where fraud or criminal activity has been proven that the auditors be held fully accountable and responsible for the loss. If this is applied then the audit process will be conducted correctly, efficiently and ensure that these situations potentially never occur in the future. The auditors need to be held accountable and responsible for their actions and not simply be happy to accept huge financial returns for conducting an audit without these constraints.

Furthermore if the auditors are held responsible for their actions then investors (small and large) would have a greater degree of confidence and the government would not have to be called on to compensate for losses nor have to potentially support those **(through the pension scheme)** who have lost everything.

It is my strong belief that ALL investors in Trio Capital need to be fully compensated by the government for ALL their losses as it was a failure of the government regulatory bodies that provided the basis for which this fraud was perpetrated.

Like all involved with the Trio Capital investments we hope that we may be able to obtain further recompense and justice, one way or another, and that this process may help us with that. However we would not have learnt anything if the system is not changed to greater protect those investing their life savings.

The greatest chance you have to protect us all is to make those authorized to regulate, investigate and approve potential financial investment undertakings as well as those who undertake the auditing of these investment organizations and activities be held FULLY ACCOUNTABLE AND RESPONSIBLE.

If the government regulatory bodies and the auditors accept responsibility for the wrongs they have caused (which they should) then accept fully the responsibility for compensating the losses that have been caused and make total recompense now.