

Manager, Redress and Accountability Unit
Financial Services Reform Taskforce
The Treasury
Langton Crescent
Parkes ACT 2600
13 January 2020

Reg: Compensation Scheme of Last Resort (CSLR)
Implementing Royal Commission Recommendation 7.1 – Establishing a Compensation Scheme of Last Resort - Discussion Paper December 2019.

To Manager, Redress and Accountability Unit,
Victims of Financial Fraud (VOFF Inc) represent 1,190 Trio consumers who had invested in the Astarra Strategic Fund, Ualan and the ARP Growth Fund.
- 690 ASF & ARP investors (415 Direct Investors and 285 SMSFs) and
- 500 Ualan investors (490 APRA supervised funds and 10 SMSFs).

Systemic issues became apparent after Trio Capital Limited stole retirement savings, like the regulators were found wanting. During Trio's operational life (2004 to Sept 2009) ASIC updated Trio's AFS Licence, APRA carried out prudential reviews, the Australian Tax Office collected tax, the NAB and ANZ Banks carried out custodian duties, auditors produced financial statements, the research houses vouched for the quality of Trio's investments, and star-rating firms confirmed Trio's products were low-risk. But in reality, Trio was imaginary - there was no money. The entire industry had continued providing and charging for services long after Trio's money had disappeared. The entire system failed and VOFF regard that failure as a systemic issue.

The Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the Trio fraud, (May 2012) found, *'The strength of single responsible entity regime is its clean lines of accountability. With some notable exceptions, most submitters supported the regime primarily for this reason. However, the system can falter when the responsible entity stalls and deceives. In these circumstances, as the Trio case amply demonstrates, there are various points of systemic weakness relating to the role of the regulators, the auditors, custodians, research houses and financial advisors.'*

According to the Ramsay Review, *'The EDR body must monitor, address and report systemic issues'*. VOFF did inform the government about the systemic issues but VOFFs' concerns went unanswered. After the discovery of the Trio fraud, legislation changes specifically fix numerous weaknesses in the financial system, which was an indication to VOFF that the government did recognise that there were systemic issues.

Support CSLR for SMSFs:

Consumer, superannuation and financial planning associations support a CSLR. They recognise that Australian consumers invest in financial services products to save for their retirement and build wealth. Consumers seek advice from financial advisers and other licencees to help them assess suitable products with an appropriate level of risk. But while consumers are ultimately responsible for their own investment decisions, they should be able to make those decisions without being adversely affected by regulators reluctant to act against misconduct in superannuation and the financial services industry.

VOFF acknowledge Part 23 of the Superannuation Industry (Supervision) Act 1993 (SIS Act) allows for financial assistance to be granted in the event that the fund has suffered a loss as a result of fraud or theft. However, consumers discovered that the market had never been informed or warned about Part 23, nor were SMSF trustees offered the option of Part 23. The industry built Part 23 void of dialogue or consumer participation.

The unique circumstances surrounding Trio:

The extraordinary and unique set of circumstances surrounding the Trio fraud is without precedent in Australian. The unique circumstances could help avoid and protect against opening the floodgates once a one-off compensation payment is made. VOFF suggest that the Government pay compensation immediately via a special, one off piece of legislation. The money could be repaid to government derived from SMSF income tax, or a levy on managed investment schemes.

An “opt in” fraud-protection scheme, using Part 23 type legislation, could be established for SMSFs. Any fear that such a scheme might allow risky investment behaviour could be avoided by stipulating that SMSFs must agree to an APRA-approved list of acceptable investment products.

Implementing Royal Commission Recommendation 7.1

- Establishing a CSLR:

Treasury’s document *‘Restoring trust in Australia’s financial system’* claims a compensation scheme of last resort will pay consumers or small businesses for misconduct. The scheme is operated by the Australian Financial Complaints Authority (AFCA), established in November 2018, and is meant to compensate people who have unpaid determinations. AFCA’s limitation to pay only unpaid determinations excludes the Trio victims by default. VOFF don’t have external dispute resolution (EDR) determinations. VOFF would welcome the opportunity to proceed through a tribunal process if that is necessary for compensation.

VOFF asked AFCA if it’s possible for Trio consumers to lodge a submission. AFCA said, “... *Trio Capital Limited’s AFCA membership ceased and as a result, we are unable to consider complaints lodged against them. Trio Capital Limited has the option of re-registering with AFCA but this is a decision for Trio Capital Limited. AFCA can not compel Trio Capital Limited to register with us.*”

VOFF is unable to confirm whether the re registration of Trio requires a Risk Management team, Compliance Officers, Lawyers and that the company is publicly listed. VOFF made enquiries about the cost of re registering Trio, a liquidating firm quoted \$50,000. According to an ASIC document, *Application for ASIC Reinstatement*, it states that the “*Applicable Fees*” is \$41. Victims-of-crime are not comfortable or do they want to re register a deregistered company that was allowed to wreck their lives in the first place.

Direct Investors and SMSFs don't deserve to be punished when through no fault of their own they were doing exactly what they were supposed to do, save for their future. The people who were robbed were saving for their retirement. They were contributing towards removing pressure off the welfare system. This fraud is the result of regulatory negligence.

The proposed CSLR is too limited and dependant on consumers who have a dispute with a 'relevant provider' as defined under section 910A of the Corporations Act. The select criteria and tribunal determinations undermines the "Last Resort" concept for the people who have no recourse options.

A CSLR has the opportunity to deliver justice and bring some closure for the Trio victims. The Trio fraud has caught the regulatory system wanting, this fraud is not the consumers' fault. A compensation scheme without discrimination is needed for 'large unexpected failures'. An unexpected failure, such as regulatory negligence, currently leaves consumers with no redress. The government needs to clarify and inform consumers where and how CSLR can help. Or should victims of unexpected failure turn to an Act of Grace?

Without a CSLR, superannuation account holders are vulnerable to unexpected failures like in Trio's case. If the Trio victims need a tribunal determination, then it's a matter of urgency to establish a tribunal and get the process started because justice is long overdue.

As VOFF said earlier, let the Government pay compensation immediately via a special, one off piece of legislation to reimburse the Direct and SMSFs for their losses. VOFF proposed in its 46-page submission delivered to the Assistant Treasurer Senator A. Sinodinos on 28 January 2014 that the Trio compensation money is to be collected from upcoming budgets of APRA, ASIC and the ATO. VOFF added, ***“This would make the regulators accountable for their negligence and more diligent to prevent future criminality”***.

John Telford
Secretary VOFF Inc