

National Anti-Corruption Commission
GPO Box 605
CANBERRA ACT 2601
AUSTRALIA
5 November 2024

Dear NACC,

This letter seeks clarification concerning the NACC's finding in its letter to Mr John Telford; Secretary of Victims of Financial Fraud (VOFF Inc) (Reference: COR20231919) dated 19 August 2024. The letter stated, "*it was not possible to identify a clear and distinct allegation of corrupt conduct sufficient to raise a corruption issue involving a public official which is capable of investigation under the National Anti-Corruption Commission Act (2022) (the Act).*"

After receiving your letter on 19 August 2024, VOFF wrote to Mark Dreyfus, The Attorney-General's Department on 25 August 2024 to complain that the NACC dismissed evidence that pointed to corrupt conduct.

On 8 October 2024, The Attorney-General's Department replied and recommended VOFF contact the NACC again. [See AGD letter on page 7.](#)

On 23 October, the NACC in a phone call reconfirmed it found no corrupt conduct but invited me to submit further evidence of "corruption" because it is building a database of corrupt conduct issues. Conduct deemed not corrupt but stored as corrupt!

The following summaries are of corrupt conduct by public officials. Those officials are Minister of Superannuation Mr Shorten and Chairman, the Australian Securities and Investments Commission (ASIC) Mr Medcraft.

Mr Shorten

1. Mr Shorten's office directed ASIC to go after financial adviser Mr Ross Tarrant. Mr Tarrant had recommended Trio Capital products to the management of the Australian Workers Union (AWU) slush fund 'Officer's Election Fund' (OEF). It invested in the Trio Capital scheme but lost its money to the Trio fraud. The loss of OEF's money made Mr Tarrant a target. The OEF's money would have supported Mr Shorten's campaign to run as the

next Prime Minister of Australia. The Pub Test would have seen Mr Shorten's directive as reeking of a revenge driven vendetta.

2. Mr Shorten acted in the interest of the union-led industry super funds when he directed ASIC to go after and charge Mr Tarrant. He also pointed blame at the self-managed super funds (SMSFs) and presented them as dangerous and "swimming outside the flags".
3. When Mr Shorten headed the AWU he made a secret side-deal with the cleaning services company Cleanevent. The deal was meant to save Cleanevent millions of dollars in wages in exchange for a generous donation to the union. But the real cost was the fact that 5000 of the Cleanevent workers lost \$400 million in wages because they were forced to accept below award wages. Migrant workers that did not speak English very well were disadvantaged and ripped off by a despicable theft. No heads rolled after this despicable conduct. The same advantages / disadvantages appear in his handling of the Trio fraud. He aimed his damning remarks at the rival competitors of the union-led industry super funds. His corrupt conduct benefited the unions.
4. Mr Shorten was allowed to remain in office while overseeing a fraud investigation that robbed his mate RK Collison. **See ASIC Registration document page 8**. No mention of this conflict of interest can be found anywhere. It's an alarming omission and he should have stepped down. He had no right to be the Minister of Superannuation in charge of the Trio Capital investigation while acting for the benefit of his mate Mr Collison.
5. The asymmetry of information disadvantaged consumers and Mr Shorten was able to wrongly blame the SMSFs for putting their savings into a troubled fund (Shorten's words) while at the same time saying the union-led industry super funds lost their money in Trio for "no fault of their own". His failure to serve the people equally without discrimination was based on political gain rather than in the public interest.
6. Mr Shorten as a public official disseminated incorrect information to boost the unions. Can the NACC explain why biased, deceptive, misleading conduct by Mr Shorten for monetary gain, isn't corrupt conduct?
7. Mr Shorten failed to acknowledge or act as requested by The Parliamentary Joint Committee Inquiry into Trio Capital (PJC Report) May 2012. *"The Committee wishes to see APRA, ASIC and the AFP pursue criminal investigations into the key figures responsible for this scheme as a matter of high priority. ASIC must provide all necessary funding for PPB Advisory to*

pursue its investigation to a full conclusion, including where necessary conducting examinations on oath of figures such as Mr Flader and others it considers necessary as part of the investigation.” Page xxi. The Committee’s requests were ignored.

8. Mr Shorten did not support the PJC Recommendations of a proper investigation or to find the stolen money. Mr Shorten and the union-led super funds benefited the most if the stolen Trio money remained stolen. Collateral damage to SMSFs served Mr Shorten better than recovering stolen assets.

Mr Medcraft

1. The Hunter Biden owned fund in New York, linked to the Trio Capital scheme, was the catalyst that sparked Mr Hempton to deliver his concerns to ASIC. An investigation into Trio Capital commenced but nothing was ever said about the Hunter Biden link. The omission is concerning.
2. In 2002 ASIC, the Australian Federal Police, the Australian Tax Office, the Commonwealth Director of Public Prosecutions and the Commonwealth appointed forensic accountant Mr Vincent, visited the Hong Kong office of James Sutherland and Jack Flader. (Before Trio Capital was created). The documents secured helped put the Australian accountant Steven Hart behind bars. Hart was charged with Fraud against the Commonwealth of Australia.¹ & ² No charges were laid against Sutherland or Flader. A year later they purchased an Australian based fund. Given the history of the Hart case, Sutherland and Flader should not been allowed to run a business in Australia or at least closely monitored. ASIC licensed Trio but Australian consumers deserved better protection of our mandated superannuation savings.
3. ASIC’s stranglehold of information denied the public the right to know what happened in the Trio fraud. ASIC’s control of information (**See example ASIC’s letter to AFP page 9&10 [gag order]**) meant no publicly available full set of facts about the Trio fraud. The lack of transparency and ASIC’s addiction to secrecy left the victims without procedural fairness. The resulting vacuum from omissions, obfuscation and cover-ups saw the victims face the same misguided governance found in Robodebt.
4. The same misguided governance found in Robodebt was used against the Trio victims after ASIC and the Australian Prudential Regulations Authority

¹ Commonwealth Director of Public Prosecutions v Hart [2010] QDC 457 (30 November 2010)

² CDPP v Hart & Ors; Yak 3 Investments P/L as t/tee for Yak 3 Discretionary Trust & Ors v Commonwealth of Australia [2013] QDC 60 (2 April 2013).

failed to govern the people they allowed into the financial system. The misguided governance blamed one sector of the financial system under Part 23 of the Superannuation Industry (Supervision) Act 1993 (SIS Act). Part 23 is designed to benefit only the union-led industry super funds. SMSFs are not protected under Part 23 from ‘fraud’. No one informed the market or SMSF trustees about the Part 23 legislation.

5. The miscarriage of justice against the Trio victims is because Mr Medcraft protected ASIC’s image and job security. He fulfilled his own agenda rather than handle the Trio fraud in an honest, fair and transparent manner. He didn’t check or govern entities to ensure they followed and were mindful of their prudential obligations and operated according to the requirements under the Corporations Act.
6. Three points from the PJC Report reflecting attributing blame. 1. *“The regulators—APRA and ASIC—must take their share of the blame for the slow response to the Trio fraud.”* - The PJC Report page xx. 2. *“to some extent, these financial advisers and planners should bear some blame for their role in recommending Trio as a suitable investment for ‘mum and dad’ investors.”* - The PJC Report page 33. 3. *“ASIC and APRA apportion significant blame for the collapse of Trio Capital on the gatekeepers, in particular the auditors.”* - The PJC Report page 69. Is the hierarchy of evidence 1-Auditors, 2-Regulators and 3-financial advisers and planners? But ASIC ignored Auditors and focused on Mr Tarrant.
7. ASIC demonstrated its lack of integrity by supporting Mr Shorten’s directive to go after Mr Tarrant. The action Mr Shorten and ASIC pursued politicized the Trio crime. The politicization became part of the official Trio narrative, and conveniently distracted away from regulatory failure and jurisdictional weaknesses. The official Trio story got parroted by both sides of the government and repeating misinformation indicated they were singing from the same hymn sheet. VOFF complained to the Treasury Department over misinformation in *Treasury’s Review of Trio Capital*. The complaint reached the Treasury’s legal division. It answered saying, the Treasury is entitled to its opinion. The pub test would probably want to see serious financial crimes investigated accurately by people with forensic investigation skills not a whimsical opinion.
8. The ASIC Act states that ASIC has the function of monitoring and promoting market integrity and consumer protection in relation to the Australian financial system but it does not say anything about willfully interfering with a criminal

investigation, by engaging in omission of factual evidence, obfuscation, and obstruction of justice. If the NACC can't see the corrupt conduct presented throughout VOFF's reports to the NACC, then please explain.

9. ASIC's power and over reach denied victims of their rights under *the United Nations Human Rights, inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status*. ASIC allowed Mr Shorten's union biased conduct demolish the Human Rights of SMSF Trustees by expecting they be responsible for their loss to fraud. ASIC and Mr Shorten failed to accept worldwide legal precedents. ASIC failed to correct Mr Shorten when he said, *"I believe in caveat emptor; Latin for "let the buyer beware" meaning you need to take responsibility for your own decisions, if you buy something without doing your homework, well, you're an adult, that's your responsibility."*³ Mr Medcraft and Mr Shorten ignored and refused to acknowledge legal precedents for 'caveat emptor'. One such famous precedent is ***'Fraud unravels everything...once it is proved it vitiates judgments, contracts and all transactions whatsoever.'***⁴

Conclusion

The Government embraced the wrong interpretation for "caveat emptor" as seen in the acting Chair Senator O'Neill's statement at the November 2021 Senate Economics References Committee inquiry into Sterling Income Trust. Senator O'Neill said, *'People understand the purchase of a physical good is something that they need to be careful about but they have a certain degree of a sense of protection provided by the government. With financial products, Australians are subject to, as they've written: 'financial dealings must be governed by the principle of caveat emptor—Latin for buyer beware—and the Prime Minister himself and the Treasurer agreed with the chair of APRA, Wayne Byers, when he described that: "And that is our reality.'"*⁵

Despite Ms O'Neill's claim that Mr Morrison, Mr Frydenberg, and Mr Byers agreed with caveat emptor reality, legal precedent states, ***'caveat emptor has no application where contract is induced by fraud'***.⁶

³ The Assistant Treasurer Bill Shorten's article "Clean-up time for financial advisers" (Telegraph 6 May '11 p34)

⁴ LAZARUS ESTATES LTD -V- BEASLEY; CA 1956 Denning LJ, Lord Parker LJ <http://swarb.co.uk/lazarus-estates-ltd-v-beasley-ca-1956/>

⁵ COMMONWEALTH OF AUSTRALIA Proof Committee Hansard, Senate, Economics References Committee - Sterling Income Trust (Public) 16 November 2021. Canberra - Page 12

⁶ See Taylor v Hamer, 31 July, 2002 (Court of Appeal)

Mr Shorten and Mr Medcraft, driven by agendas, weaponized the caveat emptor term. They victimised and discredited the Trio victims. Worse than Robodebt as the unlawful use of “caveat emptor”, denied the Trio victims any legal recourse. The wrong application of the law continued unchallenged for more than a decade. Victims of financial crimes in Australia were made to unfairly and unlawfully absorb the losses. In the Trio fraud there was no willingness by authorities to understand what happened. Or did anyone question about regulatory failure or about the weaknesses in the financial system. Authorities failed to ask, why did the system fail consumers?

ASIC and APRA received fees for services, services that were never provided. ASIC didn't check if the persons running the Trio funds were fit and proper and APRA failed to follow-up the seemingly little prudential problems. Consumers and financial advisers paid fees for no service.

See attached pages 11 to 16 - some of the PJs recommendations that Mr Medcraft and Mr Shorten ignored. Mr Medcraft and Mr Shorten failed to carry out any of the PJS's requests. Mr Medcraft and Mr Shorten failed as public officials to act in the interest of the people. They both acted corruptly and there are many witnesses such as lawyers, financial advisers including nearly 1,000 victims that the NACC could question concerning the serious corrupt conduct by public officials.

VOFF seek from the NACC a more detailed response or reconsideration of the assessment of VOFF's report consisting of:

9 October 2023 - 48 pages,

14 December 2023 - 9 pages,

23 January 2024 - 120 pages,

9 May 2024 - 14 pages, and

21 May 2024 - 35 pages.

Please include this letter 5 November 2024 – 16 pages.



Australian Government
Attorney-General's Department

MC24-042673

8 October 2024

Mr John Telford
Victims of Financial Fraud
john_telford2021@gmail.com

Dear Mr Telford

Thank you for your correspondence of 25 August 2024 to the Attorney-General, the Hon Mark Dreyfus KC MP, regarding your concerns about corruption and the National Anti-Corruption Commission. The Attorney-General has requested that the Attorney-General's Department respond to you on his behalf.

The Commission carries out its functions independently of government. Consistent with that independence, it is a matter for National Anti-Corruption Commissioner to determine whether to investigate a corruption issue. It would not be appropriate for the Attorney-General, or the department, to intervene in this matter.

If you are dissatisfied with the Commission's conduct or believe the Commission has not met the standards outlined in their Service Charter, they recommend that you:

- Try to resolve any issues directly with any staff assigned to your case. If this is not possible, you can ask for a supervisor or manager to call or write to you.
- If you are not satisfied, you may escalate your complaint and seek a more detailed response or reconsideration of the assessment of your report.
- If you remain dissatisfied after taking these steps, you may write to:
CEO@nacc.gov.au.
- If you are not satisfied with the response provided by the CEO, and you have completed all the steps outlined above, you may then look to contact [the Commonwealth Ombudsman](#) on 1300 362 072. The above internal review steps need to have been completed before contacting the Ombudsman.

Please note the Attorney-General's Department is not an investigative body and does not investigate corruption.

Thank you again for bringing your concerns to the Government's attention. We trust this information is of assistance to you.

Yours sincerely

Director
Fraud Prevention and Anti-Corruption Branch

Current details for ABN 30 450 889 656

ABN details

Entity name:	R.K COLLISON & V.F FALCONER
ABN status:	Active from 13 May 2008
Entity type:	Other Partnership
Goods & Services Tax (GST):	Not currently registered for GST
Main business location:	NSW 2142

Trading name(s)

From November 2018, ABN Lookup will cease displaying all trading names and only display registered business names. For more information, click [help](#).

Trading name	From
Russell Collison & Vernon Falconer OBO Officer's Election Fund	13 May 2008
Officer's Election Fund	13 May 2008

Deductible gift recipient status

Not entitled to receive tax deductible gifts

ABN last updated: 11 Jul 2008

Record extracted: 29 Jan 2018

Disclaimer

The Registrar makes every reasonable effort to maintain current and accurate information on this site. The Commissioner of Taxation advises that if you use ABN Lookup for information about another entity for taxation purposes and that information turns out to be incorrect, in certain circumstances you will be protected from liability. For more information see [disclaimer](#).



ASIC

Australian Securities & Investments Commission

Level 3, 100 Market Street, Sydney
GPO Box 9827 Sydney NSW 2001
DX 653 Sydney

Telephone: (02) 9911 2000
Facsimile: (02) 9911 2414

Our Reference:

21 June 2012

[Redacted]
Australian Federal Police
110 Goulburn St
SYDNEY NSW 2000

Dear [Redacted]

SOLICITED RELEASE OF PROTECTED DOCUMENTS UNDER THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001 ("the ASIC Act")

Re: TRIO CAPITAL LIMITED AND [Redacted]

I refer to the discussions with you and [Redacted] about ASIC potentially providing the AFP with a referral in relation to Trio Capital Limited and [Redacted]

Please find attached by way of background a Statement of Facts dated 3 December 2010 and a document entitled Draft Outline Memo Re [Redacted] dated 21 June 2012, displaying barcode S01827174.

With respect to the Draft Outline Memo Re [Redacted] I am satisfied that this will assist the AFP perform its functions or exercise its powers and have decided to release it under subparagraph 127(4)(a) of the ASIC Act.

However, I impose the following restrictions on the use of the Draft Outline Memo Re [Redacted]

1. the information is confidential and cannot be disclosed beyond AFP's officers, employees or agents;
2. the information is provided to AFP for use in connection with its powers and functions as set out in the *Australian Federal Police Act 1979*;
3. if AFP intends to disclose the information to a third party or in a public forum it must notify ASIC prior to the information being disclosed and seek ASIC's consent to that disclosure; and

4. if AFP is required to disclose the information by subpoena, discovery order or other requirement of the law, ASIC must be notified without delay and prior to the information being disclosed.

Please notify me immediately if these restrictions are not acceptable to AFP.

If you wish to discuss this matter further, please contact [redacted] or email [redacted]

Yours sincerely

[redacted signature]

Senior Manager
Australian Securities & Investments Commission

THIS DOCUMENT IS DE-CLASSIFIED
AND RELEASED BY THE
AUSTRALIAN FEDERAL POLICE
UNDER THE
FREEDOM OF INFORMATION ACT 1982

Recommendation 10

8.13 The committee recommends that the Australian Securities and Investments Commission provide all necessary funding for PPB Advisory to pursue its investigation to a full conclusion, including where necessary conducting examinations on oath of figures such as Mr Jack Flader and others it considers necessary as part of the investigation. The committee recommends that ASIC fund the phase 2 investigation by PPB Advisory as a matter of urgency.

Recommendation 11

8.26 The committee recommends that the Australian Federal Police, in cooperation with the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority, pursue criminal investigations into—and, where applicable, criminal sanctions against—the key figures responsible for defrauding investors in Trio as a matter of high priority.

Recommendation 12

8.36 The committee recommends that the government investigate the options for a scheme to recover assets from those found to be personally involved in fraud and theft, with the proceeds to go to those found to have been defrauded.

Recommendation 13

8.37 The committee recommends that the Australian Prudential Regulation Authority conduct an internal assessment of the adequacy and timeliness of its checks to monitor the ownership of superannuation vehicles. This process must review why key 'trigger points' in events that led to the collapse of Trio Capital were not identified.

Recommendation 14

8.38 The committee recommends that the Australian Federal Police consider the options to create an organisational focus on the matters pertaining to superannuation fraud. This should occur in close consultation with the Australian Crime Commission given its work in coordinating Task Force Galilee.

Recommendation 10

8.13 The committee recommends that the Australian Securities and Investments Commission provide all necessary funding for PPB Advisory to pursue its investigation to a full conclusion, including where necessary conducting examinations on oath of figures such as Mr Jack Flader and others it considers necessary as part of the investigation. The committee recommends that ASIC fund the phase 2 investigation by PPB Advisory as a matter of urgency.

The investigations of Australian crime-fighting agencies into Trio

8.14 The committee also has concerns that the various crime-fighting agencies should be doing more to seek to recover outstanding monies and bring to justice those who have committed crimes which have so badly affected Australian investors. There do not appear to be any criminal investigations into the conduct of Mr Flader or others involved in developing and implementing Trio's schemes.

The Australian Federal Police

8.15 The Australian Federal Police (AFP) has no current investigation into Trio. Indeed, Commander Peter Sykora, Manager of Crime Operations at the AFP, told the committee that the role of the federal police in investigating those involved with Trio overseas had been 'very minimal'. He explained:

The first thing we did with ASIC was to assist them in a number of search warrants here in Australia. They have the investigative lead and they have the investigators to handle the investigation under the Corporations Act 2001. So we were only called upon to act as a facilitator for those search warrants, and the documents that were seized with regard to a certain individual were then passed to them for further investigation. ASIC then obviously came to us to facilitate some international inquiries, which we did throughout our office. I also understand that another agency was involved in Hong Kong. They reached out to the AFP through the International Liaison Officer Network, and we put them in touch with ASIC. That was as far as our involvement was concerned in that case.⁸

8.16 The committee asked Commander Sykora his view on whether there is currently a need for further work on the Trio case. He responded:

I think the loss that has been seen throughout Trio is quite significant. But what we identified quite early on when ASIC approached us was that there was no Commonwealth broad per se for the AFP. This was a matter for ASIC to handle. However, in saying that, what we do see with a lot of our Commonwealth agencies here as well is that they can refer matters to us, particularly if they want to do it in a tripartite partnership—for want of a better term—with either the ACC or another government agency. We will

⁸ Commander Peter Sykora, Manager of Crime Operations, Australian Federal Police, *Committee Hansard*, 4 April 2012, p. 25.

then assess that referral as per our case categorisation and prioritisation model. Then we will either accept or not accept the job.⁹

8.17 The AFP noted that it currently has a senior liaison officer posted in Hong Kong, where Mr Flader resides. It also told the committee that it has the powers to recover assets which are deemed to be proceeds of crime. However, the AFP would not sell those assets and would therefore not be able to deliver the proceeds to the victims of crime.¹⁰

The Australian Crime Commission

8.18 The Australian Crime Commission (ACC) has not conducted any specific investigations into the Trio case. Mr John Lawler, Chief Executive Officer of the Commission, told the committee:

The ACC conducts special operations and investigations against Australia's highest threats from serious and organised crime. The ACC works with partners to disrupt, disable and dismantle serious and organised criminal syndicates. I need to say from the outset that the ACC has not undertaken any specific investigations into the activities of Trio Capital or the circumstances surrounding its collapse. However, the ACC has undertaken significant work on the issue of fraud, in particular international fraud, and can make a contribution to the committee, particularly against the inquiry's seventh, eighth and ninth terms of reference.¹¹

8.19 The committee queried why—when in excess of \$100 million of Australian investors' superannuation monies had gone missing and an auditor and five trustees had accepted some responsibility—the ACC had not looked into Trio. Mr Lawler responded:

Well, there are two reasons for that. One of the reasons goes to...the scope and breadth of the commission's work, which can be ascertained from the website—a very extensive scope around narcotics, child exploitation, money laundering and the list goes on. The second reason is that, at its heart, the commission does not want to duplicate anything anyone else can or is doing. So if there is an agency or agencies with responsibility for pursuing particular matters then our view is that they should pursue the matters. If, as the particular police jurisdiction in the context of Project Galilee, reach a situation where they say traditional methods of law enforcement investigation and approach are not sufficient, it is then under our legislation that the commission can be brought into play. So there is a set statutory response level required before the commission can be engaged.

9 Commander Peter Sykora, Manager of Crime Operations, Australian Federal Police, *Committee Hansard*, 4 April 2012, p. 25.

10 Commander Peter Sykora, Manager of Crime Operations, Australian Federal Police, *Committee Hansard*, 4 April 2012, p. 26.

11 Mr John Lawler, Chief Executive Officer, Australian Crime Commission, *Committee Hansard*, 4 April 2012, p. 19.

That is a judgment for the agencies tasked with this sort of investigation and the regulation of this sort of matter in the first instance. If, for example, they feel that the powers of the commission could aid such an investigation then they are quite at liberty to bring those forward to us.¹²

8.20 The committee is aware that the ACC Board, which includes Commissioners from every state/territory police jurisdiction and the heads of key Commonwealth agencies—has established Task Force Galilee. This Task Force seeks to disrupt serious and organised investment fraud operations and the organised criminal groups behind them. It also aims to educate the Australian community about this type of investment fraud and the threat it represents.¹³

AUSTRAC

8.21 AUSTRAC is Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regulator. It currently operates under section 209 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). AUSTRAC's role is to oversee compliance with the obligations of the AML/CTF Act and *Financial Transactions Report Act 1988* across various industry sectors. It collects and analyses financial information provided by regulated entities through financial transaction reports. This information is disseminated to Australian law enforcement, national security, human services and revenue agencies, as well as international counterparts, to assist in the investigation and prosecution of serious criminal activity including terrorism financing, organised crime and tax evasion.¹⁴

8.22 Significantly, it is the responsibility of gatekeepers, including auditors and custodians, to report suspicious matters to AUSTRAC. ANZ, the original custodian for Trio, noted that the AML CTF Act and the *Anti-Money Laundering and Counter-Terrorism Financing Rules 2007 (No. 1)* require participants in the financial services industry to make due diligence inquiries when taking on prospective clients, as well as carrying out suspicious matter reporting.¹⁵ It added:

The identification of suspicious matters is aided through transaction monitoring tools designed to detect abnormal or unusual behaviours based on certain typologies. ANZ provides guidance and training to staff to assist with the identification, and escalation, of suspicious matters.

Suspicious matters raised by ANZ staff are referred to a centralised ANZ team, ANZ Financial Intelligence Office (FIO), for further investigation. FIO acts as the escalation point to ensure that any suspicious matters sent to

12 Mr John Lawler, Chief Executive Officer, Australian Crime Commission, *Committee Hansard*, 4 April 2012, pp 22–23.

13 Australian Crime Commission, 'Serious and organised fraudulent investment scams', <http://www.crimecommission.gov.au/publications/crime-profile-series-fact-sheet/serious-and-organised-fraudulent-investment-scams> (accessed 11 May 2012).

14 AUSTRAC, *Annual Report 2010–2011*, Agency overview, p. 1.

15 ANZ, *Submission 70*, p. 8.

AUSTRAC contain complete and relevant information to assist in the broader management of financial crime. ANZ officers within FIO investigate each 'suspicious and unusual activity matter report' in order to determine whether a suspicious matter report should be provided to AUSTRAC as required under the AML CTF Act. For example, ANZ in the year to 30 September 2011 reported 1092 suspicious matters to AUSTRAC.¹⁶

8.23 The committee did not receive a submission, or take direct evidence from AUSTRAC. It does appear, however, that AUSTRAC was not given any significant information from the various gatekeepers alerting it to suspicious activity in Trio Capital. In this context, questions must be raised as to whether the gatekeepers—particularly the financial advisers and custodians—conducted due diligence when taking on prospective clients.

Committee view

8.24 The committee questions why one of the largest financial frauds in Australian history has not been more thoroughly investigated by agencies such as the AFP and the ACC. Chapter 5 noted that various gatekeepers pointed to others' responsibilities rather than their own. The evidence above similarly indicates that Australia's crime fighting agencies seem to have deferred responsibility to other agencies: the AFP to ASIC, and the ACC to the AFP among others. Notwithstanding the progress that the AFP, the ACC and AUSTRAC have made in coordinating their detection and response to international financial fraud, in the case of Trio and Mr Flader, there do not seem to have been satisfactory investigations.

8.25 The committee asks whether any attempts have been made to bring charges against Mr Flader and others, to have them extradited to Australia, or even as to whether their names are on a watch list for people passing through Australian airports. The committee believes that, unless there is compelling evidence that these efforts would be futile, there should be concerted action on these matters. Of course, ASIC and APRA have a crucial role to support and coordinate these investigations.

Recommendation 11

8.26 The committee recommends that the Australian Federal Police, in cooperation with the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority, pursue criminal investigations into—and, where applicable, criminal sanctions against—the key figures responsible for defrauding investors in Trio as a matter of high priority.

¹⁶ ANZ, *Submission 70*, pp 9–10.

Pursuing the funds and the criminals

9.12 The committee also reiterates that more must be done to investigate whether the missing Trio funds can be recovered, and to pursue criminal investigations into the key figures responsible for the fraudulent overseas Trio funds. To this end, the Australian Securities and Investments Commission (ASIC) must provide all necessary funding for PPB Advisory to pursue its investigation to a full conclusion. Mr Flader's evidence must be part of this investigation. [PJC Report page 152](#)

ASIC didn't pursue the criminals. Too occupied going after Mr Tarrant despite Justice Palmer, in the NSW Supreme Court saying, '*Yet even a competent and responsible financial adviser would have heard no warning bells sounding for these Schemes.*'⁷

ASIC also ignored Justice Garling in the NSW Supreme Court at the trial of Shawn Richard in 2011. The court said, Mr Richard had assisted ASIC by providing information that saved ASIC from, '*... significant time and resources seeking to gather independent admissible evidence, including evidence from uncooperative witnesses from numerous overseas jurisdictions.*'⁸

Due to ASIC's omissions, Justice Garling didn't know that Mr Carl Meerveld, manager of Trio's underlying funds, offered to assist ASIC in its investigation. ASIC refused Mr Meerveld's help. So why didn't ASIC inform the NSWSC and present the evidence it held, evidence that was contrary to what the court presented?

Without vital evidence, did the NSWSC overvalue Mr Richard's assistance to ASIC? The court rewarded Mr Richard's pleas of guilty with a discount of 25% off his sentence, with an additional 12.5% discount allowed for the utilitarian value of the pleas of guilty.⁹

Like with other evidence about Trio, no one has ever seen or checked the integrity of just what the assistance was that Mr Richard provided ASIC. Secrecy protects and keeps hidden the information from the man sent to prison for lying.

John Telford
Secretary VOFF
Cc Mrs Butler, VOFF Executive

⁷ Trio Capital Limited (Admin App) v ACT Superannuation Management Pty Ltd & Ors [2010] NSWSC 286 (16 April 2010)

⁸ Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011) before Garling J.

⁹ Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011) before Garling J.