

Collapse of Trio Capital: Overview

- Trio Capital collapsed in 2009 (along with managed investment schemes under its control). According to the Parliamentary Joint Committee on Corporations and Financial Services (PJC inquiry) (16 May 2012) roughly \$176 million in Australian superannuation funds was lost.
- There has been \$71.7 million of compensation paid under Part 23 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) to members in APRA-regulated superannuation funds affected by the Trio fraud.
- There is no provision under the SIS Act to compensate other investors such as self-managed superannuation funds (SMSFs) and individual retail consumers in managed investment schemes.
- Treasury released (26 April 2013) a public review of the Trio collapse fraud, including an assessment of how the regulators carried out their responsibilities. It found that:
 - ASIC and APRA carried out their roles appropriately, under the regulatory framework;
 - the Trio Board failed to manage and monitor overseas investment risks;
 - certain financial planners may not have adequately advised their clients regarding risk when investing through SMSFs; and
 - some SMSF trustees did not sufficiently understand the risks involved in their investments and may have received inadequate financial advice.
- On 16 May 2012 the PJC Inquiry reported on its Inquiry into the collapse of Trio Capital.
 - While it did not support a general compensation scheme for SMSFs, it did recommend compensation for a number of investors that were induced to move their money into a fraudulent Trio scheme.
- An independent review into compensation arrangements by Richard St. John (April 2012) did not recommend a compensation scheme be established for SMSFs or other investors.
- Rather, the St. John report recommended that, as a first step, the current requirements in the Corporations Law that financial service providers have compensation arrangements (mostly through professional indemnity insurance) be made more robust, and that the focus should be on efforts to raise industry standards to make licensees more responsible.
- The Final Report of the Financial System Inquiry was released on 7 December 2014. The Inquiry endorsed the current superannuation regulatory framework.

Trio Capital collapse: key facts

Issue	Details
The collapse	<p>Trio collapsed in 2009, along with managed investment schemes. Losses were estimated at \$123 million (ASF) and \$53 million (ARP)</p> <p>APRA had been working on Trio governance issues since 2005. ASIC and APRA formally commenced investigations in 2009 and subsequently froze its assets</p>
Who was affected	<p>9,300 members of APRA-regulated superannuation funds were compensated almost \$71.7 million for losses which was first announced in 2011.</p> <p>285 SMSFs and 415 direct investors suffered losses and were not compensated</p>
The regulators	<p>APRA: prudential regulator of superannuation funds (except SMSFs)</p> <p>ATO: compliance regulator of SMSFs</p> <p>ASIC: regulator of managed investment schemes (MISs)</p>
Inquiry reports	<p>Richard St John (April 2012) did not recommend introducing a last-resort compensation scheme for financial products</p> <p>PJC Inquiry (May 2012) recommended compensation be provided to specific SMSFs induced to invest in Trio</p>
Previous government response	<p>Accepted the majority of the PJC recommendations:</p> <ul style="list-style-type: none">• strengthen the professional indemnity insurance requirements of financial services providers;• change the communication of risks to investors;• improve governance arrangements for MISs;• a better system identifying financial fraud by Commonwealth law enforcement agencies;• no commitment to further compensation
Sensitivities	<p>SMSFs would like fraud protection, but they are not under the same regulation obligations. Compensation would set a precedent for other financial products</p>
Actions by APRA	<p>30 October 2013: enforceable undertaking against former Trio Director David Millhouse. He cannot act as a trustee of an APRA-regulated entity for 10 years</p> <p>A total of 13 former Trio directors have provided enforceable undertakings to APRA, effectively preventing them from holding senior roles in the APRA-regulated superannuation industry for a specified period of time</p>
Actions by ASIC	<p>29 October 2013: Tony Maher (formerly Paul Gresham) pleaded guilty to 20 criminal charges. 27 June 2014: Maher was sentenced to 25 months imprisonment. He will serve 15 months before being eligible for parole</p> <p>ASIC's enforcement action to date has resulted in more than 11 people having either been jailed, banned from providing financial services, disqualified from managing companies or having agreed to remove themselves from the financial services industry for more than 50 years</p>

Treasury Review into the Trio Capital collapse and the regulatory framework (2013)

- Treasury released a public review of the Trio Capital collapse in April 2013, including an assessment of how the regulators carried out their responsibilities. It found that:
 - ASIC and APRA carried out their roles appropriately, under the regulatory framework;
 - the Trio Capital Board failed to manage and monitor overseas investment risks;
 - certain financial planners may not have adequately advised their clients regarding risk when investing through self-managed superannuation funds; and
 - some self-managed superannuation fund trustees did not sufficiently understand the risks involved in their investments and may have received inadequate financial advice.

Financial System Inquiry (the Inquiry)

- While not examining the circumstances of the Trio Capital collapse specifically, the Financial System Inquiry examined issues relating to consumer outcomes and conduct regulation, regulatory architecture, superannuation and ageing and retirement outcomes.
 - The Inquiry's December 2014 final report did not recommend changes to the current regulatory framework for compensation to APRA regulated superannuation funds.
- The Government released its response to the Inquiry on 20 October 2015 and announced over 48 actions. This includes taking action to improve consumer outcomes in the financial system.
- In its response to the Murray Inquiry, the Government has announced that it will take action to raise the professional, ethical and educational standards of financial advisers. The Government will also act to amend the recently established register of financial advisers to clearly identify whether individuals meets the new standards.
 - Treasury's 2013 Review of the Trio Capital collapse indicated that some financial planners may not have adequately advised their clients regarding risk when investing through self-managed superannuation funds and/or provided inadequate financial advice.
- The Government has also announced that it will create a targeted and principles-based financial product design and distribution obligation. This obligation will require product manufacturers and distributors to consider a range of factors when designing and distributing products. In addition, the Government has announced that it will provide ASIC with a new product intervention power which will enable the corporate regulator to modify, or if necessary, ban harmful products where there is a risk of significant consumer harm.
 - The Government has announced that there will be extensive consultation on these new powers by mid-2016.

Why did APRA tell ACT Super not lodge a Part 23 financial assistance application?

- The decision whether to lodge an application for financial assistance has always been, and remains, one for the superannuation fund trustee. As a matter of best practice regulation, APRA engages with stakeholders in the appropriate way if requested.
- APRA does not have any power to make a decision on whether a fund can lodge an application for financial assistance under Part 23 of the SIS Act.
- In this instance, ACT Super (as acting trustee), taking into account the best interests of its members in accordance with its fiduciary duties, made a decision not to lodge an application for financial assistance.
 - ACT Super advised members of their reasons for not lodging a Part 23 application in significant event notices released online on 23 October 2014 and 24 November 2014 respectively.
- If ACT Super decided to consult with APRA regarding any matter relating to the governance of an APRA-regulated superannuation fund, that is a matter for ACT Super.

What action has been undertaken by the regulators, ASIC and APRA?

- ASIC and APRA have undertaken extensive work to investigate Trio Capital including suspected misconduct involving Astarra Strategic Fund (ASF) and the ARP Growth Fund. Arising from that work a number of enforcement outcomes have been achieved including the conviction and jailing of Shawn Richard, the investment manager of ASF and Tony Maher (formerly known as Paul Gresham) the investment manager of ARP Growth Fund.
- As a result of APRA's investigation, a total of 13 former Trio directors provided an enforceable undertaking to APRA, which effectively removes these individuals from holding senior roles in the superannuation industry for a specified period of time.
- ASIC's work has resulted in a total of nine individuals associated with Trio Capital providing an enforceable undertaking to ASIC, removing them from the industry for varying periods of time. ASIC has also banned nine individuals from the financial services industry and cancelled one financial services licence.

Did the regulators fail in their duties?

- On 26 April 2013 Treasury released its *Review of the Trio Capital Fraud and Assessment of the Regulatory Framework*. The Review independently considered the events behind the collapse of Trio Capital, the responses of the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA) and aspects of the regulatory framework.
- The Government is satisfied that both APRA and ASIC carried out their roles and responsibilities appropriately in relation to the collapse of Trio Capital under the regulation framework. I accept the Review's finding that once sufficient information was available and formal investigations commenced, APRA and ASIC acted quickly.