

Government Response to the Parliamentary Joint Committee on Corporations and Financial Services' *Inquiry into the collapse of Trio Capital*

RECOMMENDATION	GOVERNMENT RESPONSE
<p>Recommendation 1(a): The committee acknowledges the shortcomings, identified by Mr Richard St. John, of a statutory compensation scheme for consumers of financial services, and a scheme of financial assistance for investors in managed investment schemes along the lines of Part 23 of the <i>Superannuation Industry (Supervision) Act 1993</i> (SIS Act). However, the committee recommends that further efforts be made to investigate avenues to protect investors in the case of theft and fraud by a managed investment scheme.</p>	<p>The Government accepts the recommendation</p> <p>The Government will consult on:</p> <ul style="list-style-type: none"> • changes to the Corporations Law to strengthen the professional indemnity insurance requirements of providers of financial services (see response to Recommendation 2.1 of St. John report). The changes would: <ul style="list-style-type: none"> – give legislative force to key aspects of ASIC standards of adequacy for professional indemnity insurance such as the scope of cover, policy exclusions and coverage of representatives; – require licensees to report annually to ASIC, as part of their financial reporting requirements, on the adequacy of their professional indemnity insurance cover. • risk management processes by a responsible entity of a registered managed investment scheme that deal explicitly with the risk of fraud. <ul style="list-style-type: none"> – This will be included in a consultation paper on improved governance arrangements for a responsible entity of a registered managed investment scheme which will respond to several recommendations of this report. The consultation paper will have regard to related Stronger Super reforms, for example, in relation to dual regulated entities.
<p>Recommendation 1(b): The committee recommends that the government assist those who invested in the Professional Pensions Pooled Superannuation Trust (PPPST), and were induced to move their funds to the ARP Growth Fund.</p>	<p>The Government notes the recommendation</p> <ul style="list-style-type: none"> • Part 23 of the SIS Act excludes self-managed superannuation funds (SMSFs) from compensation as they are not regulated by the Australian Prudential Regulation Authority (APRA). This exclusion applies regardless of whether they invested in the PPPST.
<p>Recommendation 2: The committee recommends that consideration be given to improving the active detection of investment fraud through systems that can identify 'outlying' patterns in investment performance. To this end, the committee encourages partnerships between the regulators and experts in the private sector.</p>	<p>The Government accepts the recommendation</p> <ul style="list-style-type: none"> • The Government will task the Heads of Commonwealth Operational Law Enforcement Agencies to consider systems and other approaches that can assist in identifying 'outlying' patterns in investment performance and other fraud indicators.

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<p>Recommendation 3: The committee recommends that the Australian Taxation Office (ATO) include a clear, understandable, large print warning on its website that SMSF trustees are not covered in the event of theft and fraud. This warning must be effectively communicated to all existing SMSF trustees through the guidance material of the Australian Securities and Investments Commission (ASIC).</p>	<p>The Government accepts the recommendation</p> <ul style="list-style-type: none"> The ATO has updated its website indicating that SMSF trustees do not have the same access to compensation as APRA-regulated funds in the event of theft or fraud. ASIC has also updated its MoneySmart website material on SMSFs to warn consumers about access to compensation.
<p>Recommendation 4: The committee recommends that the guidance material provided by the ATO for SMSF investors clearly state the difference between the protections and compensation arrangements for investors in funds regulated by APRA as distinct from the limited protections available to SMSF investors.</p>	<p>The Government accepts the recommendation</p> <ul style="list-style-type: none"> The ATO will seek to amend its registration process to add additional warnings that SMSF members are not eligible for compensation. ASIC will also consult on requiring advisers, on the establishment of SMSFs, to advise clients that they do not have access to compensation arrangements under the SIS Act.
<p>Recommendation 5: The committee acknowledges the Future of Financial Advice reforms, particularly the provisions addressing conflicted remuneration. Nonetheless, it recommends that ASIC conduct a specific and detailed investigation of both planners' and accountants' advice to SMSF investors in Trio Capital. This investigation must examine what information was provided to these investors regarding their duties and responsibilities, and whether they were informed—either verbally or in writing—that they are not entitled to compensation in the event of theft and fraud.</p>	<p>The Government accepts the recommendation</p> <ul style="list-style-type: none"> ASIC has already undertaken a detailed and specific risk based investigation of people who provided financial advice relating to Trio. As part of the investigation, ASIC identified inadequate disclosure, including on the relationship between Trio/Astarra, by financial advisers. ASIC has undertaken a range of actions on various financial advisers who advised on Trio, including banning and cancelling their licences.
<p>Recommendation 6: The committee recommends that the Government consider whether current processes are adequate when there is a change of ownership or control of a company which holds an Australian Financial Services Licence (AFSL), or whether there is a need for more detailed scrutiny of the new owner.</p>	<p>The Government accepts the recommendation</p> <ul style="list-style-type: none"> The Government will consult on whether ASIC should have more powers when an AFSL holder changes ownership. Currently, ASIC's powers to cancel an AFSL are limited. This can allow industry entry to a person who would have failed the 'good fame and character' licensing test if they had sought the licence directly. As part of the same process, the Government will also consult industry on APRA's powers for licensing superannuation funds. An internal review concluded that APRA's powers to approve or refuse a change in superannuation fund ownership were limited (see response to Recommendation 13).
<p>Recommendation 7: The committee recommends that the Government investigate options to improve the oversight and operation of compliance plans and compliance committees. The committee suggested a number of improvements that could be made including the detail to be included in the plans, qualitative standards and approval processes for auditors, director liabilities and competence of compliance committee members.</p>	<p>The Government accepts the recommendation</p> <ul style="list-style-type: none"> The Government will consult on ways to enhance compliance processes including considering the need for more detailed compliance plans, legislating minimum requirements (such as experience and qualifications), qualitative standards for compliance plan auditors and oversight of the appointment of compliance committee members. This will be included as part of consultation on improved governance arrangements for a responsible entity of a registered managed investment scheme which will respond to several recommendations of this report.

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<p>Recommendation 8: The committee recommends that as part of its review of regulatory arrangements relating to custodians, ASIC should consider changing the name 'custodian' to a term that better reflects the current role of a custodian. This new term—reflecting the limited role of custodians—must be used in Product Disclosure Statements.</p>	<p>The Government accepts the recommendation</p> <ul style="list-style-type: none"> ASIC has released a consultation paper about the use of the label custodian and its use within disclosure documents. This work will be progressed in the context of ASIC's recently released report into custodian services in Australia.
<p>Recommendation 9: The committee recommends that the government release a consultation paper to investigate the best mechanism for a responsible entity of a registered managed investment scheme to disclose its scheme assets at the asset level. The objective must be to enable scheme members to legally require specific information on the portfolio holdings of the registered managed investment schemes in which they have invested.</p>	<p>The Government accepts the recommendation</p> <ul style="list-style-type: none"> The Government will consult on the disclosure of managed investment scheme assets, having regard to the Stronger Super reforms on portfolio holdings disclosure by superannuation funds. This will be included as part of consultation paper on improved governance arrangements for a responsible entity of a registered managed investment scheme which will respond to several recommendations of this report.
<p>Recommendation 10: The committee recommends that ASIC 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.</p>	<p>The Government accepts the recommendation</p> <ul style="list-style-type: none"> ASIC has provided the funding requested by PPB Advisory in accordance with the rules of the Assetless Administration Fund (AA Fund). ASIC will consider any future requests it receives for funding from PPB Advisory in accordance with the rules of the AA Fund.
<p>Recommendation 11: The committee recommends that the Australian Federal Police, in cooperation with ASIC and APRA, 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.</p>	<p>The Government notes the recommendation</p> <ul style="list-style-type: none"> The Government notes this recommendation as the decision to investigate possible criminal offences is a matter for the Australian Federal Police. ASIC is cooperating with, and providing relevant information to, the Australian Federal Police. It is not appropriate to discuss the content of that information or the likely outcome of any possible AFP assessment.
<p>Recommendation 12: 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.</p>	<p>The Government accepts the recommendation</p> <ul style="list-style-type: none"> The Government will task the Heads of Commonwealth Operational Law Enforcement Agencies to consider the matters raised in this recommendation.

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<p>Recommendation 13: The committee recommends that APRA 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.</p>	<p>The Government accepts the recommendation</p> <ul style="list-style-type: none"> • APRA has undertaken an internal review of the adequacy and timeliness of its checks to monitor the ownership of superannuation entities following the collapse of Trio. The Government's Stronger Super reforms strengthen APRA's ability to address emerging issues within superannuation through providing APRA with the ability to issue prudential standards and broader data collection powers. The internal review concluded, however, that APRA powers to approve or refuse a change in superannuation fund ownership remain limited. The Government will also consult industry on APRA's powers for licensing superannuation funds. • The Government will also release a paper by the Treasury in relation to the Trio Capital fraud and an assessment of the regulatory framework.
<p>Recommendation 14: 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.</p>	<p>The Government accepts the recommendation</p> <ul style="list-style-type: none"> • The Government will task the Heads of Commonwealth Operational Law Enforcement Agencies to consider opportunities to enhance fraud detection capabilities.