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Victims of Financial Fraud (VOFF) take this opportunity to lodge a submission regarding - **Scams Prevention Framework – exposure draft legislation.**

The Treasury’s *Scams Prevention Framework, Summary of reforms*, September 2024 suggest the following penalties for scams.

- The framework sets out a tiered penalty regime (figure 2), with higher penalties applying to more significant and egregious breaches of the framework.

Figure 2. Proposed Tiered penalty regime

	Tier 1 contravention	Tier 2 contravention
	<i>Breaches of the principles-based obligations in the primary law relating to preventing, detecting, disrupting and responding to scams</i>	<i>Breaches of the principle-based obligations in the primary law relating to reporting and governance and any breaches of the sector codes</i>
Penalty for an entity	The greater of: <ul style="list-style-type: none"><li>\$50 million</li><li>three times the value of the benefit obtained, or</li><li>30 per cent of the turnover during the period in breach</li></ul>	The greater of: <ul style="list-style-type: none"><li>\$10 million</li><li>three times the value of the benefit obtained, or</li><li>10 per cent of the turnover during the period in breach</li></ul>
Penalty for an individual	\$2,500,000	\$500,800

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VOFF supports an entity penalty 3 times the amount stolen. The same should apply to an individual. To end blaming the victim game, victims could receive double their loss, as a reward and to help restore justice and respect (something that’s been absent for the last twenty years in the financial sector toward consumers). Three times the amount stolen in penalty would help discourage banks and corporations from robbing their customers.

**Phantom Tax**

Tax collected by the United States Tax Office from a scam where assets no longer exist, is called Phantom Tax. Once the Tax Office learns it received Phantom tax it returns the money back to the victims of the financial scam. Australia should adopt the Phantom Tax process and put an end to consumers paying tax on money that doesn’t exist.

## **The Corporate Manslaughter Act**

The Australian Securities and Investments Commission (ASIC) did not question Trio's underlying fund managers about the fraud. According to Freedom of Information requests, both ASIC and the Australian Prudential Regulations Authority (APRA) had no documentation of the two people that took their life by suicide after Trio robbed them of their life savings. ASIC being reluctant to act against misconduct in the financial sector, and seemingly with no interest if misconduct was a contributing factor in a suicide, suggests predatory fraudsters have it made in Australia.

Sometimes the families of the deceased prefer to keep details of suicide private. With no pro action by ASIC, scammers are not being reminded of the impact of their crime. It's an example of white-collar crime avoiding responsibility and accountability, making Australia a paradise for white-collar crime.<sup>1</sup>

White-collar crime causes 14 times more harm than blue-collar crime<sup>2</sup> and 18 times more costly than street-crime.<sup>3</sup>

The Scams Prevention Framework needs to look into the Corporate Manslaughter Act, as a response tool for serious financial fraud / scams. Under the Corporation Manslaughter Act, victim(s) of financial crime would receive justice by seeing company directors compelled to face their legal responsibility and predatory fraudsters made accountable for the harm they cause victim(s). The United States, United Kingdom, Canada and Hong Kong, have a Corporate Manslaughter Act.

## **The Magnitsky Act**

The Act can impose visa bans and target sanctions on individuals anywhere in the world who are responsible for committing human rights violations, operating drug cartels, engaging in human trafficking, or serious theft of another persons' property. The Magnitsky Act offers Australia a way to manage financial fraud and scams that occur in international jurisdictions.

The blacklisting of predatory fraudsters under the Global Magnitsky Act, would empower the public to avoid potential scams and indeed make Australia a hellhole for financial fraudsters by ensuring they no longer can hide behind an impenetrable Corporate Veil or keep their fraudulent behaviour secret under confidentiality laws. Perhaps the Global Magnitsky Act would have enabled the Trio victims to ask a Trio principal who owns a house valued at \$30m, "where did the money come from"?

## **The Scams Prevention Framework must improve scam handling in Australia.**

Take for example the Troll-like disingenuous, discrediting and misleading comments made about the Trio fraud victims.

- Not a single cent of the nearly \$200 million that disappeared was found or recovered. Compare that to the Trustee of the Bernie Madoff Ponzi as of 19 December 2017,

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<sup>1</sup> Sue Lannin ASIC boss says Australia a paradise for white collar crime 22 Oct 2014 <http://www.abc.net.au/news/2014-10-22/asic-boss-says-australia-a-paradise-for-white/5832040>

<sup>2</sup> Megan Graham White Collar Crime and the United States University of New Hampshire

<sup>3</sup> <https://www.bcsdschools.net/cms/lib010/SC01916775/Centricity/Domain/4845/Ch.%207%203-5.pdf>

recovered 73% of \$17.5 billion in lost principal.<sup>4</sup>

- The Trio victims allege the Minister of Superannuation Mr Bill Shorten wrongly portrayed them by suggesting self managed super fund trustees were swimming outside the flags. He also made a distinction without a difference when he said, *'we will compensate victims who are victims through no fault of their own'...* adding *'no compensation was available for non-superannuation investors who placed their money directly into troubled funds.'*<sup>5</sup>
- The Madoff Ponzi losses per head are much greater than Trio but they did not come under the same attack that was directed at the SMSFs for placing too much money in the Trio Managed Investment Scheme.
- The Trio scam saw \$194.5 million stolen from 6,090 victims, which equals an average loss of \$31,937. The Madoff scam saw about 24,000 victims lose 17.5 billion dollars. That equals an average loss of \$729,166.
- VOFF allege Mr Shorten and Mr Medcraft collaborated to serve their own agendas in the Trio matter. As a consequence, Australians were denied an honest, accurate account of how the Trio scam happened or where \$200m went.
- Did ASIC meet community expectations by ensuring the players in the financial market uphold the law? For example, in 2010, Australian citizen Jeffrey Revell-Reade was charged with operating a fraudulent scam that sold penny stock to British retirees. While he was awaiting trial before the Southwark Crown Court, London, the Serious Fraud Office (SFO) requested that the London media refrain from writing or printing any articles about Revell-Reade that might jeopardize any possible court trial that may arise in the future. The SFO distributed the warning worldwide to financial regulators. On 6 June 2014 Revell-Reade was sentenced to eight and a half years in prison. His scam lost \$126.4 million that belonged to 1,000 British investors. During the same period, ASIC granted an Australian Financial Services License to Revell-Reade.
- Australian regulatory agencies need to improve how they handle scams, including other problematic issues like revolving doors and captured regulators.

John Telford  
Secretary  
Victims of Financial Fraud.

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<sup>4</sup> Erik Larson Madoff Victims Near Full Recovery of Principal With Payout 19 December 2017  
<https://www.bloomberg.com/news/articles/2017-12-18/madoff-victims-near-full-recovery-of-principal-with-new-payout>

<sup>5</sup> 'Fraud victims get \$55m back, but some left empty-handed' 13.4.2011  
<http://www.thecourier.com.au/news/national/national/general/fraud-victims-get-55m-back-but-some-left-emptyhanded/2132235.aspx>