

OPEN LETTER: Hon. Prime Minister Scott Morrison MP, Prime Minister of Australia

26 August 2019

Dear Prime Minister,

**Re: Fair go and dignity called for victims excluded from financial redress scheme of last resort discarded as collateral damage of systemic corruption and greed**

I write an open letter to you as replies over the past decade to letters to previous prime ministers, treasurers and ministers for finance resulted, at most, in pro forma replies that did not address concerns or result in engagement despite the gravity of white-collar crime or financial misconduct.

**Victims treated as collateral damage: sacrificed to corporate greed**

Victims have been largely ignored, rendered invisible, powerless and forgotten, particularly complex cases like ours without a whistle-blower or champion. Many serious concerns did not receive scrutiny at the Hayne Royal Commission. It received considerably less time and funding than other royal commissions or the unbinding marriage equality survey. Also, in stark contrast victims were limited to only 27 single case witnesses. Commissioner Hayne did not examine restitution or compensation.

After some 30 prior inquiries, and a marked increase in reports post-GFC including advocacy from HNAB-AG, no politician should have been surprised by the revelations of the Hayne Commission. Had successive parliaments, ASIC and lawyers acted appropriately, earlier victims of industry's collaboration with Peter Raymond Holt would have safeguarded some 500 victims exposed in 2008.

**Your commitment to burn for Australians must extend to incinerated victims**

You vow to burn for aspirational Australians and champion the right to keep what is fairly earned in promoting tax relief. This pledge must include responsible hard-working people who have been burnt to the ground in a ferocious blaze of misconduct raging over years of direct repercussions plus life-long consequences. Others are horribly scorched. Homes, life-savings and retirements have been stolen.

Inadequate consumer protections and regulation permitted deceptive placement in overwhelming debt causing bankruptcy or crippling hardship. Damage is far-reaching - well beyond financial impacts. It spans all aspects of victims' lives and their families: marriages, entire childhoods and health have been profoundly adversely affected.

**Redress Scheme parameters burn a 'fair go' to ashes: the worst affected are among those excluded; others receive no restitution and inadequate compensation**

These flames are again fanned, gutting any hope of a fair go, under the inadequate parameters of the '*Compensation*' Scheme of Last Resort (commenced 1 July 2019).

The system continues to stymie and disadvantage victims at their most debilitated, demoralized and despairing: The precise reasons that drove and magnified our call for accountability, reform, safeguards and redress are used as the very parameters excluding from eligibility those victims of lenders and product issuers who collaborated with Peter Holt and were enabled by regulators. Responsible and fair action requires restitution for direct, indirect and compounding losses as well as compensation for substantial, wide-ranging, non-financial personal injury.

Victims must not be sacrificed to corporate greed and corruption. Industry must not be rewarded through keeping proceeds of crime while victims are excluded from redress. Other victims, eligible for the AFCA-run Scheme, are unfairly subjected to an inadequate cap for compensation of \$500,000 - with no restitution at all i.e. \$0.

While it took Labor until 2014, the former leader of the opposition, shadow ministers and other politicians provided opportunities to meet with HNAB-AG. Bill Shorten provided his direct mobile number to our spokesperson and answered calls.

Engagement was reflected in understanding impacts as expressed in Labor's financial redress scheme proposal. It included restitution for individuals capped at \$2million as well as compensation capped at \$1million. If caps are to be imposed these are far more realistic for meaningful financial recovery and going some way to alleviating distress and related consequences (no amount of compensation would make this torrid ordeal worth it for those badly impacted). Labor's proposal also reflects greater recognition of the path to victimization and being left without recourse.

### **Hayne Commission exposed only tip of ice-berg and failed worst-affected victims**

As you may recall, in 2017 my case was among arguments for a royal commission, presented behind the scenes to Cabinet by Sarah Henderson, my former Federal MP. Once it was called, despite years of advocacy, invitations to participate in parliamentary inquiries and committees and the Ramsay Review, and lodging many submissions, I was not among only 27 victims called as a witness. Significantly, nor was any member of HNAB-AG or victim of multi-lender/product white-collar crime.

While excellent in regard to what it scrutinized, substantial limitations of the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* mean victims have been failed and serious risk remains. It includes that the:

- (i) necessity of fair redress and meaningful accountability was not elucidated
- (ii) compounding financial and personal impacts due to years of delays (over a decade in our cases) and regulatory system failures was not exposed
- (iii) scope excluded multi-lender/product white-collar crime related to 'independent' third parties, liquidators, insolvency practitioners, lawyers, other associated parties, auditors, agribusiness MIS, BT Margin Lending.

### **Research must guide the Scheme's recognition of impacts in determining eligibility**

The government's commitment to examine mental health and your concern voiced regarding levels of suicide and suicidality is most welcome: High levels are reported

in victims of the finance sector. Misuse or abuse of power and trust is a crime as it violates basic human rights and undermines society. Whether it's family violence, rape, sexual or physical assault, bullying, emotional abuse or financial misconduct, trauma can have a serious psychological and physical – and often fatal - impact.

Research over 20 years in the prestigious *Journal of American Medical Association* in 2018, shows middle-aged and older people experiencing a negative financial shock, losing 75% or more, and particularly their home, are at risk for serious physical and mental health repercussions including suicide and early death.

The Last Resort Scheme ignores such data. It must be remedied to include as eligible:

- (i) those most impacted by financial misconduct relative to their situation who remain among the worst affected
- (ii) older Australians who do not have time or health to rebuild and start over
- (iii) single middle-aged and older people who face poverty on the pension having had their home, life-savings and retirement effectively stolen
- (iv) women who are worse-off after divorce (common in trauma) or if single, as if any superannuation remains after misconduct, they already average 47% less super than men
- (v) families given children suffer markedly from parenting affected by serious misconduct-related stress with mental health repercussions as well as financial hardship and resultant life-altering constraints: intergenerational psychological impacts are significant
- (vi) people whose situations are compounded by related impacts: relocation, loss of community, social supports, work, health, career and other consequences e.g. credit rating, inability to get a loan, bankruptcy etc.

Society is undermined by loss of trust in institutions and a lack of moral compass.

### **Risk persists to the economy and social fabric from white-collar criminals: Australia remains their paradise and hell for incinerated victims**

Uproar is warranted given the reinforced message: The more corporate Australia effectively steals from citizens, and the greater the impact relative to the individual victim(s), the more white-collar criminals get away with it. Corporate criminals must not be protected. Victims must not continue to be sacrificed. Failure of successive governments over decades to act on white-collar crime enabled it to flourish.

Victims most seriously impacted must be urgently prioritized for access to restitution and compensation - or at minimum - various measures to assist until responsible redress is established. The GFC exposed systemic misconduct hence cases that *emerged* (not merely *occurred*) after 1 January 2008 warrant inclusion. Fair and meaningful redress caps for restitution and compensation are essential.

Little will change while white-collar criminals are rewarded and not held properly accountable. Shareholders will apply pressure for industry to reform if dividends are impacted by redress claims including of victims left with no avenue of recourse by system failures. Shareholders have long benefitted from proceeds of crime.

Industry claims of change and reform are spin: I can attest to this during, and since, testimony to the Royal Commission and parliamentary committees, for example (but not limited to) ANZ and AMP. Spin is delivered to committees not resourced or expert to identify or follow-up reports of misleading and inaccurate testimony.

An enduring, transparent, genuinely independent Standing Commission into the finance industry and associates, with several Commissioners and scrutiny by lawyers of the calibre of Rowena Orr and Michael Hodge, and establishing a user-friendly permanent public record of misconduct is necessary for industry to reform.

## **Conclusion**

Victims' plight should not depend on the personal experience of politicians, or that of their loved ones, to be able to stand in our shoes.

Democracy means politicians provide genuine access to engage with citizens, treat people with dignity and act from integrity rather than under pressure or influence of those with vested interests or at the behest of corporate agenda, greed and profit.

Victims are silenced not only by struggling with trauma impacts but active efforts of power structures to discredit, thwart and control. This is over and above necessity to focus our time and energy to salvage matters financially, and hold families together. Victims cannot afford lobbyists. Without a whistle-blower victims are burnt alive.

It is soul destroying when leaders turn a blind eye and walk by, in the face of concerted efforts by victims of the finance sector. It is often more distressing than the impacts of the misconduct or white-collar crime. The toll is impossible to convey.

With respect, it is not true, *"Those who have a go, get a go"*. This is not reality for many Australians, certainly for victims of financial misconduct – not by a long shot. We worked hard for decades, contributing to society in wide-ranging ways. We endeavoured to be responsible seeking accounting expertise and engaging with financial advice we believed we understood. We then sought to raise concerns with regulators, lawyers and politicians, calling for a royal commission and financial redress scheme of last resort after the system failed accountability and redress.

I seek to meet with you to assist with your commitment to reflect outcomes for abandoned and forgotten Australians by ensuring fair redress for hardworking victims of white-collar crime. Thank you in anticipation.

Yours faithfully,  
Susan Henry  
Chair, HNAB-AG

*HNAB-AG is an action group run voluntarily, for and by, victims of multi-lender/product white-collar crime. Industry collaborated with, and enabled, third party "independent" accountant / advisor Peter Raymond Holt and his office in Melbourne. Most members discovered the "misconduct" as a result of the GFC. Earlier victims went to lawyers and ASIC and were failed by the system. This also placed subsequent victims at risk.*