

**HNAB-AG Survey into KordaMentha, Timbercorp, Hardship Program & IHA:
Call for Leadership over Financial Services Misconduct**

Introduction

The necessity for strong political leadership to properly address white collar crime and related gross misconduct in the financial service industry is underscored in data presented by **HNAB-AG** on 4 August 2015 to the **Senate Inquiry into Forestry MIS**.

It is collated from a survey about the experience of victims of **Timbercorp's** collaboration with banned adviser, Peter Raymond Holt (currently also the subject of a federal court case over a fake-debt sham bankruptcy to hide millions and avoid creditors and clients).

Data highlights concerning accounts about the conduct of liquidator, **Craig Shepard** from KordaMentha and the hardship program advocate he appointed, **Catriona Lowe**.

Public trust and confidence cannot be restored without willingness by those at the highest levels of government and politics, to stop banks and power-brokers in the finance sector buying favour to silence or control review.

White collar crime is enabled and compounded by organizations that are not genuinely independent and empowered to assess misconduct and provide restitution.

Devastating, life-altering impacts leave the unsuspecting public traumatized. Physical and mental health, work, relationships, families and all aspects of life suffer deeply as savings, superannuation and homes are lost with many forced into bankruptcy or overwhelming life-long debt. There is a direct parallel with disgraceful institutional responses to disclosures of sexual abuse and family violence.

A Royal Commission is urgently required to address the impact of organisations and individual members of the industry, on the lives of tens of thousands of Australians and their families. Restitution must be in put place with a retrospective compensation scheme of last resort for victims of financial services industry misconduct.

Flying high, while operating with a sense of entitlement, permitting different rules and obligations for authorities, to those for the community, must cease. Authorities have a responsibility to ensure systems are in order to protect the public's hard-earned finances.

Decisive leadership is urgently required. This must include proper restitution with a retrospective compensation scheme of last resort.

Managed Investment Schemes, lenders, accountants, advisers, liquidators and regulators, rely on successive governments to protect their involvement in financial crime.

Status quo

To date, 9 months on from the first senate hearing into Timbercorp in November 2014, the treatment of victims of Peter Raymond Holt's collaboration with it, has continued if not worsened. People were put into many MIS (and margin lending for shares including utilizing superannuation). The issues translate to other agribusiness MIS in which we were placed which systematically abused the trust of financially unsophisticated people. Urgent, radical overhaul is required.

It seems that media coverage of the HNAB-AG's activism, culminating in the special Senate Hearing 9 months ago, placed pressure on **KordaMentha** liquidator, Craig Shepard, to finally act on our report (at that stage, 2.5 years earlier) about:

1) A need to investigate Mr Holt's bankruptcy – Mr Shepard removed the Trustee, Mr Andrew Wily who has been part of federal court cases in relation to a fake-debt fraud ring.

2) Mr Holt's deceptive misconduct with hundreds of clients – Mr Shepard reported support for an ASIC investigation (which is still being considered but is not confirmed to proceed).

Liquidator's lack of transparency and failure to exercise full range of statutory power

However, Mr Shepard has failed to be reasonable. He has misled, frequently by outright omission or with partial information. Repeatedly, he has not responded to reasonable questions. He has chosen not to exercise the *full range of his power* under statutory obligations to eliminate debt under \$100,000, or seek creditors', or the court's, permission to do so for debts over that amount despite concern regarding Mr Holt's role with Timbercorp in gross misconduct. Instead, Mr Shepard chose to establish a Hardship Program headed by Catriona Lowe, to act as an independent advocate.

Shortly after the hearing last November 2014, a few people were processed relatively quickly, although advantage was taken of their distress and trauma-related gratitude on ending the matter, after years of this harrowing ordeal, taking an immeasurable toll. Mr Shepard made what appears to be disingenuous engagement with representatives of HNAB-AG to communicate with creditors (and still refuses to provide contact details to meet with all of them).

Knowing people felt distressed and overwhelmed by threatening correspondence, he agreed to a halt while in discussion with HNAB-AG from January to March (a period he elected). However, we received agitated and alarmed contact from people when KordaMentha breached this agreement, not once but twice (and 3 times with one man recovering from surgery).

Efforts to address matters were largely futile. When stonewalling did not cause us to desist, Mr Shepard appears to have persecuted those most active.

KordaMentha takes advantage of anguish and demoralization after hope was raised. When this second MIS hearing was delayed, it appears that with media pressure off, the liquidator reverted to what can only be described as exceptionally unreasonable and callous conduct.

Typical, tragic stories in victim impact statements are available on request.

Hardship Policy and IHA: a) smokescreen to remove heat directed from parliamentarians and media and b) discovery of crucial errors

The hardship program is not what it appears to be on face value, but forces people to conclude debt based on their ability to withstand duress and protracted pressure. It enables misconduct to be ignored while as much money as possible is extracted on the backs of victims of white collar crime.

Results of a survey conducted by HNAB-AG in May 2015, support reports indicating Catriona Lowe, the IHA, effectively advocates for the liquidator who appointed her. While preferred over Mr Shepard and mostly obtaining better outcomes, she acts for him by pressuring people to comply. She acts on the liquidator's entrenched position pressuring people to end interminable anguish and stress. We help people to conclude cases (some at nominal payment) but it takes many months and significant mental health impacts.

Ms Lowe has made substantial errors in calculation or failed to check figures. These may be small to her but many people's futures hang on every dollar. For instance, she recorded shares as \$60,000 when they were \$6,000; she did not check the value of another person's shares which had decreased by \$10,000 with a market drop to \$25,000 during her delay in finalizing the case.

Tellingly, she did not automatically agree to adjust her calculation for the liquidator. In one case she stated it did not make any difference to her assessment. This should raise alarm and grave concern.

Meetings with ANZ including (electronic recording of) understanding of the Hardship Program

The ANZ endeavours to paint a responsible and concerned position. However, at the highest levels, this fails to be in evidence.

During the AGM, 18 December 2014, David Gonski, Board Chair made a misleading statement designed to obfuscate by implying a genuine response had been provided to a member of HNAB-AG's letter. In reality, another member of staff merely sent a pro forma reply which did not address the matters raised, ignored critical concerns and did not respond to her specific queries.

After our protest outside, and in, the AGM, Graham Hodges, Deputy CEO, and Gerard Brown, Group General Manager Corporate Affairs (the latter attended the previous hearing after demands from Senator Heffernan) met together with 4 different groups of Timbercorp victims. Mr Hodges specifically encouraged HNAB-AG to meet with Ms Lowe on the basis that she would report misconduct to ASIC.

Unexpectedly, Mr Brown arrived at the start of the meeting with Ms Lowe. He then proceeded to vehemently deny the purpose outlined by Mr Hodges. Mr Brown claimed we had "*misunderstood.*" Meeting later with us on 8 January 2015, Mr Hodges confirmed (electronically recorded) he had indeed expected it was her role. (Ms Lowe stated it was not.)

In the final meeting with Mr Hodges, on 27 February 2015, also openly electronically recorded, it was conveyed to us that the hardship program was to provide the mechanism to treat individuals differently, while recognizing the subgroup we constituted (i.e. those under the Holt-umbrella). This would effectively enable KordaMentha to hide conclusions.

Mr Hodges said he understood those individuals, who were part of the group of Mr Holt's victims, were to be treated differently from other individuals. He said he had encouraged Mr Shepard to treat individual Timbercorp victims of Mr Holt, "*as swiftly as possible*" and "*very generously*" as well as "*incredibly compassionately.*"

The survey reflects that for well over 90%, people experience the absolute reverse of the hope Mr Hodges expressed for Timbercorp Holt victims in the hardship program.

Instead, many who are significantly traumatized and effectively in a state of overwhelm, and learned helplessness, were enduring, and still are, inordinately protracted negotiations. They feel pressured to conclude at amounts which compound long-term

hardship. Extreme distress was, and still is, experienced as a factor used to push for a settlement at amounts they must accept. Distress does not expedite the process.

As the only remaining creditor owed money from Timbercorp, according to **Mark Korda** at the senate hearing, it is evident that ANZ is therefore in a position to agree to eliminate or waive all Holt-victim Timbercorp loans - and review those already concluded. Effectively collaborating in ensuring there will be no review of prior conclusions of cases, and keeping the opaque nature of the program intact, Mr Hodges voiced his view that the remaining people should all proceed through the hardship program. Meantime, the bank and liquidator continue to extract money on the backs of victims of their industry.

(See **Deed of Settlement** for more on ANZ.)

Craig Shepard – Liquidator

Mr Hodges endeavoured to assist cases after we met and he spoke to the liquidator. Mr Shepard reportedly told him to butt out. The liquidator declared to us he has the “*sole authority*” and no creditor, parliamentarian or Prime Minister can instruct him. While true, this speaks to his personal agenda, belligerence and stubborn refusal to act with integrity.

Craig Shepard makes flagrantly false claims. This includes his reply to Minister Andrew Robb’s support of a constituent. Mr Shepard states that people are processed in 14 days once their information is provided. He reported the same in an interview with Sarina Locke from ABC Rural NSW. He omits that there are lengthy delays in responding and duplicate requests as well as further detail asked for, months later, dragging out the process.

He is protected by the opaque hardship program and lack of accountability. An inquiry is warranted into the conclusions of debt, certainly for victims of Mr Holt’s collaboration with Timbercorp. It is further fuel for the call for an urgent Royal Commission into the industry.

May 2015 Timbercorp Survey data

The survey of 126 people (17 were too distraught to participate) show 49% are in the hardship program, or have been. Data clearly refute claims by Mr Shepard, and Ms Lowe.

While Mr Shepard professes commitment to work with people in hardship, and engaged the IHA to assist, the survey indicated:

- 95% report not being treated “*very generously*”
- 92% did not find the hardship program to be “*incredibly compassionate*”

- 90% did not report being processed *“as swiftly as possible”*
- 50% report delays of 3 months after engaging in the program (for many, much more than twice this) and penalty interest persists
- 23% had the advocate’s proposal rejected by Craig Shepard (sometimes several times)- suggesting he has an agenda or does not trust her competence
- 74% sought help from HNAB-AG to prepare or advocate for their case (reinforcing little confidence in IHA or going direct to Timbercorp/KordaMentha)
- 93% are not sure they were fairly assessed
- 66% expect retirement to be impossible or highly unlikely
- 45% report intimidation or bullying etc.
- 87% did not think the hardship program was fair in considering their *financial and broader circumstances* as it professes to do
- 62% found the process humiliating with treatment as if they were the criminal
- 59% did not feel afforded due dignity and respect
- only 15% are confident Ms Lowe is not influenced by being paid by the liquidator i.e. 85% are not confident in her advocating based on their interests.

Mr Shepard refuses to allow retrospective review of debt settled prior to the existence of the hardship program (announced in September 2014). People had been told categorically, there was no option beyond paying 85% (of doubled debt with penalty interest) or going to court.

As one man emailed, *“in a blaze of deep despair and alcohol...”* he signed at 85% in June 2014 because he was *“deeply affected and wanted things to go away”* given the ruinous penalty interest rates.

Of those refused retrospective review, 51% would have sought assistance through the hardship policy had it been in existence before September 2014. However, 20% were unsure. (Hope for justice via the legal system, exhaustion, distress, distrust, bankruptcy, ill-health and significant trauma as well as *“on principle”* are reasons others would not.)

Failing to address concerns about the Deed of Settlement, or reply to reasonable questions, Mr Shepard finally, after 7 months, chose to “close the case” on one person who had lost everything due to Mr Holt, and had no capacity to pay.

However, marking his email “WITHOUT PREJUDICE” meant it was not legally binding. The liquidator could have pursued the person at any point had it not been picked up and understood. While he corrected it on request, deceptive attempts to manipulate financially unsophisticated, potentially unsuspecting, people who are not conversant with the law, continue to be underscored.

Deed of Settlement

The Deed forces people to sign, stating that they were informed and are responsible for the debt. It takes advantage of their powerlessness and dire circumstances. It is akin ***to forcing a rape victim to sign a legal agreement claiming it was consensual sex plus pay money to the perpetrator/s and/or associates who enable rapes to continue, in behaving as if it is the victim's fault.*** The parallel with institutional responses to sexual assault and family violence should be recognized and responded to accordingly.

ANZ agreed to follow-up the wording and other matters. However, the availability of Mr Hodges reduced as 2015 progressed. Gerard Brown has not responded to our request some months ago to schedule an appointment with Mr Hodges on his return from overseas in June. We declined Mr Brown's offer to substitute: this was based on prior experience (as noted earlier) which did not engender trust or confidence.

Silenced - fear of being penalized

The survey shows the overwhelming majority are too afraid to speak out for fear of being penalized. People are captive to the liquidator and as such to the Hardship Program, unless they have money or hope the legal system will prevail - and feel able to cope.

Catriona Lowe – Independent Hardship Advocate (IHA)

The results of the survey, and innumerable accounts, suggest a better title would be *"Liquidator's Representative Liaison with Timbercorp Victims."* Ms Lowe only works for Timbercorp debt despite her advertised title (people contacted her thinking she could help with other matters). As noted (on page 4) serious errors have been made, yet required people to push for an adjustment to her proposed conclusion. Depleted from protracted trauma, many are not up to pressing for the figures on which her proposal is based, far less checking her accuracy or diligence. It beggars belief that Ms Lowe would accept decisions about her own finances without a solid basis provided.

While initially presenting as very empathic and concerned to assist victims, Ms Lowe's actions have been largely unresponsive to HNAB-AG, requiring follow-up after lengthy delays to correspondence. She may be constrained by the parameters of the liquidator. However, with evident displeasure, she has been less than responsive to concerns from, and about, desperate people with requests for help and clarification. Reports of not hearing from her, for many weeks after people email to engage her services, are not rare.

Rather than seeking an immediate clarification, only on repeated request did she eventually speak with **ANZ** about our report to her on 1 March 2015, of Mr Hodges' understanding of how Timbercorp-Holt-victims were to be treated. It took almost 5 weeks. She then dismissed us as having misunderstood – without ever asking to hear the recording (which she was aware existed) from which direct quotes were taken, in context.

Dignity and privacy is further diminished with tremendous pressure to end debt, enticed by a reduction, in consenting to access reports from health care providers. Spuriously, Ms Lowe acknowledges such reports do "*assist*" in achieving a better financial outcome – yet denies duress to provide them claiming it is done so at someone's "*election*." It is not freely given consent in any way, shape or form.

Further, it is difficult to reconcile her idea that the "*program is voluntary and people can withdraw at any time and indeed not engage at all*" with the reality of trauma, the legal system and for many, financial decimation. People are powerless, other than to conclude misconduct-related debt.

Suicidality – including retirement suicide plans – and family violence

Rather than reducing distress, by eliminating or compassionately addressing debt, the liquidator arranged training for the IHA and her team in suicide prevention. This suggests concern to counter a lawsuit in the event of action taken over any completed suicides.

We are aware of people who have had to refinance to reduce misconduct-related debt leaving them with substantial mortgages to age 80 while others had to sell their home. Some are considering suicide once they reach retirement due to their grossly limited **superannuation** which the hardship program fails to adequately consider. It is not credible to believe Mr Shepard or Ms Lowe would accept as adequate for their retirements, the levels of superannuation (e.g. much less than \$200,000) which Ms Lowe anticipates people will acquire, claiming they can afford to pay money to conclude cases.

There has been a report of a 35% increase in suicide rates in Greece since the GFC. We do not know the statistics here. In Australia, there are reports of children engaging in sexual violence due to family stress, over financial hardship through to bankruptcy, as parents are less available to comfort their children in such times of instability and uncertainty.

Arbitrary conclusions of debt

The chair of HNAB-AG is in a position of knowing what many people are considering or have considered as a settlement and their circumstances (which Ms Lowe agreed could

occur in efforts to support and assist very distressed people). Mr Shepard's final decisions (and Ms Lowe's proposals to him) seem considerably variable. Since February 2015, it would seem Mr Shepard penalizes people for speaking out. He appears to either take advantage of, or does not give adequate consideration to people's distress and increased vulnerability leading to giving up and complying. Ms Lowe is part of his strategy.

Inaccurate and misleading conclusions of CPA Australia: Disciplinary Tribunal

CPA Australia is one example of inadequate industry response enabling fraud to flourish. HNAB-AG first contacted CPA Australia on 30 September 2012 advising of misconduct and ASIC's ban of our former accountant Peter Raymond Holt. We requested clarification of how CPA Australia arrived at its 3 false conclusions in his Disciplinary Tribunal. Posted online, CPA Australia stated that Mr Holt *"took steps to ensure clients... were not affected"* by his personal circumstances and, *"made otherwise encumbered family assets available to...clients"* and that *"unfortunate circumstances"* led to his insolvency.

CPA Australia was not forthcoming in its reply. We know of no sampled clients.

Conclusion

The liquidator of Timbercorp – and numerous other MIS (e.g. TFS, FEA, Rewards, ITC, Huntley and products such as margin lending for shares), banks – as well as our former accountant / adviser Peter Holt, make money on the backs of decimating innocent people. It causes profound suffering. The trauma affects families well beyond financial factors. Health, work, relationships and children are impacted. It also impacts the economy.

In our view, a genuinely independent, competent professional, empowered to authorize conclusions of Timbercorp debt should be installed immediately. A thorough investigation of the hardship program, and conduct of the IHA, liquidator and their teams, is warranted.

The devastating, life-altering impact is similar to victims of disgraceful institutional responses to sexual abuse. We fervently hope that in decades hence, authorities are not called to a Royal Commission for failing to act on disclosures about the impact of organizations and particular members of the financial services industry, on every aspect of the lives of tens of thousands of people and their families.

Strong, decisive leadership is required. It must include swift and proper restitution with a retrospective compensation scheme of last resort.

Update at 10 August 2015: Nine months since special Senate Hearing into Timbercorp