Senate Economics References Committee: CONSUMER PROTECTION IN BANKING, INSURANCE AND FINANCE SECTOR

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This submission is provided with permission granted to make public. Representatives and individual members of HNAB-AG are keen to participate in a public hearing.

TERMS OF REFERENCE

HNAB-AG notes that on 29 November 2016, the Senate referred the following to the Economics References Committee for inquiry and report by the last sitting day of the autumn sittings of 2018:

The regulatory framework for the protection of consumers, including small businesses, in the banking, insurance and financial services sector (including Managed Investment Schemes), with particular reference to:

a. any failures that are evident in the:
    i. current laws and regulatory framework, and
    ii. enforcement of the current laws and regulatory framework, including those arising from resourcing and administration;
b. the impact of misconduct in the sector on victims and on consumers;
c. the impact on consumer outcomes of:
    i. executive and non-executive remuneration,
    ii. incentive-based commission structures, and
    iii. fee-for-no-service or recurring fee structures;
d. the culture and chain of responsibility in relation to misconduct within entities within the sector;
e. the availability and adequacy of:
    i. redress and compensation to victims of misconduct, including options for a retrospective compensation scheme of last resort, and
    ii. legal advice and representation for consumers and victims of misconduct, including their standing in the conduct of bankruptcy and insolvency processes;
f. the social impacts of consumer protection failures in the sector, including through increased reliance of victims on community and government services;
g. options to support the prioritisation of consumer protection and associated practices within the sector; and
h. any related matters.

Permission for submission to be public

1. The authors grant permission for this submission to be made public. We welcome the opportunity to be listed in the report or elsewhere as *Holt Norman Ashman Baker Action Group* (or HNAB-AG).

Background to HNAB-AG

2. This submission is provided on behalf of the *Holt Norman Ashman Baker Action Group* (HNAB-AG). At least 500 people were subjected to *gross multi-lender / multi-product white collar crime* through a firm which, over the years, had various company names and entities associated with Peter Raymond Holt in the role of principal. He was a qualified accountant, former ATO-auditor and financial adviser. Several staff also had qualifications as accountants or financial advisers. The firm was (and still is) based in Melbourne. It has seen various name changes with more than one company running concurrently. Several accountants and financial advisers worked with Mr Holt as well as other staff. Mr Holt was banned by ASIC in 2012 for 3 years from holding a financial services licence, although his conduct met ASIC's criteria for a *10 year – life ban*.

3. The submission is written from the perspective of extensive experience of white collar crime and efforts over 8 years to seek redress. It was exposed by the GFC from 2008. We are not lawyers, economists or professionally skilled in the financial services industry. We welcome any opportunity to clarify or extend our ideas and suggestions. Direct and ongoing engagement with victims cannot be substituted for given their experience and insights.

4. HNAB-AG formed in January 2011 when a handful of victims met through an invitation to attend a creditor's meeting by the Trustee for Peter Holt's business insolvency at G.S. Andrews and Associates. After media exposure and parliamentary support in mid-2014, word spread and the vast bulk of our 140 members made contact prior to the first senate inquiry in which we were involved (i.e. Forestry MIS and a special hearing into Timbercorp). Since then we still find new people as they learn of us and make contact. Information is available on our website: www.halttosafeguardyourfinances.com and we meet at varying intervals every few weeks or so in Melbourne. Information and updates are circulated via email to members. Support is provided over the phone and via email too. This has included assisting people in crisis. Fortunately, two of the original team are seasoned trauma counsellors and were able to respond to substantial levels and numbers of fellow victims who have been suicidal.

5. Membership of HNAB-AG is free. Expenses are covered by donations and personal contributions. All work is provided voluntarily. It is run by victims, for victims of various companies of which Peter Holt was the principal supported by partners Bill Norman, Bill Ashman and Craig Baker and their sizeable staff. We also have a few members who are not from Mr Holt's firm and who are largely isolated from other victims. HNAB-AG provides compassion, moral support, practical assistance, publicity regarding related issues, submissions to senate inquiries and other committees, lobbying of members of parliament and consulting on necessary reforms and safeguards. We are committed to exposing and transforming corruption in the industry and related power structures to safeguard the community and obtain redress.

6. In brief, clients of Peter Holt's office and its collaboration with lenders and products involved deceptive, fraudulent and unconscionable conduct related to misinformation (or lack entirely of *any* information), placement in, and management of:
    (i) a range of agribusinesses (e.g. Timbercorp, FEA Plantations, Rewards, ITC Pulpwood, TFS, Mahogany etc.)
    (ii) BT Margin Lending
    (iii) Self-Managed-Super-Funds
    (iv) Investment loans including, but not limited to, major banks CBA, ANZ, NAB and Westpac
    (v) related aspects such as Macquarie Cash Management Accounts (MCMA).

7. The unconscionable conduct included incomplete or blank loan applications; false information; witnesses not present and never met; misrepresentation and false claims about law and the meaning of industry and legal jargon (e.g. 'endorsed'); deceptive acquisition and / or execution of POA; unauthorized use of access to money in MCMA and / or dividends from investments; non-disclosure of commissions / trailing fees / conflicted remuneration; failure to obtain and/or honour financial goals and objectives, plans, circumstances, risk tolerance, product suitability, capacity to meet loan obligations and so forth. Much of this was detailed in information provided to the *Senate Inquiry into Forestry Managed Investment Schemes* and the special hearing into Timbercorp. Similar conduct occurred with other products.

8. Staggeringly, some victims were placed in loans about which they had no knowledge whatsoever. Other investments were misrepresented to such an extent that key factors were inaccurate or false or omitted. Questions asked by victims were used as a means to further deceive to the degree to which his or her lack of financial sophistication had been ascertained. Typically, PDS's or SOA's – if made reference to at all - were not presented as important to have before entry into an investment, far less encouragement or the opportunity provided to seek independent legal advice. When aware of material, victims were reasonably (but falsely) informed the key content was conveyed as part of the adviser/accountant's role. Assurance was provided that Mr Holt and colleagues understood the jargon and technical complexities. Key correspondence was retained by the office and copies were not routinely provided. Nor were clients informed this should occur. This was presented as part of the professional service given the firm's expertise for which we were paying to enable people to focus on their areas of expertise and interest.

9. In addition to the specific activities in which Mr Holt and his colleagues collaborated with lenders and product issuers, we also have experience of grave concerns regarding the insurance industry, beyond home, health and life coverage, in relation to:
    (i) inadequate Professional Indemnity and
    (ii) income protection claims: advantage is taken of people when at their most vulnerable, debilitated and distressed with extraordinary efforts to thwart and intimidate.

Introduction

10. Thank you for conducting this inquiry which will address concerns of paramount importance to victims of the sector and the community in terms of safeguards which are

essential to urgently be established and drive meaningful change in the industry culture as well as redress and accountability.

11. Having participated in several senate inquiries in recent years, and still being substantially impacted over 8 years later without redress or adequate protections in place for consumers, HNAB-AG hope that our submission is considered carefully and that meaningful action is given the highest priority. Not only is the economic security of individuals and the nation at stake, ramifications include personal physical and mental health as well as family, social and potentially national security. It has profound repercussions for our future and the generation growing up as well as future ones.

12. Consumer protection can only be meaningfully addressed when understood in terms of the consequences of failures to safeguard the community. To this end the input of industry, academics, investigators, consumer advocates, lawyers, whistle-blowers and those providing psychological services and counselling for those impacted is, without doubt, valuable. However, until and unless, those who are victims of the sector are not only truly heard, but genuinely partnered with, in a consultative role alongside others, the issues cannot be adequately addressed. The reasoning is that the range of devastating impacts as well as insights which could have averted the occurrence from the victim's perspective are not fully appreciated regarding simple, inexpensive and meaningful measures. It also pertains to the necessity for appropriate penalties in view of the consequences of the crime.

Overview

Key aspects towards addressing failures in consumer protection regarding white collar crime:

1) **Victims' plight compounded by advantage taken of debilitating trauma**:

13. The plight of victims in terms of being willing and able to fight for accountability of culprits, protections of the community and redress for impacts must be seen in the context of the often significant trauma related to personal and financial ramifications of white collar crime. An inevitable effort to silence, misrepresent or discredit victims of any type of abuse of power is a major factor. Offenders, and those with vested interests, take advantage of the necessity for victims to focus on stopping the bleed, salvaging what is possible and surviving the trauma and its aftermath financially - which may take years of rolling financial demands for deceptive debt on top of losses and over which they have little or no control. This creates compounding and wide-spread personal trauma reactions extending to all aspects of life.

14. Severe traumatic stress is deeply debilitating and overwhelming. This includes fear of not being believed and/or not knowing how to 'explain' what occurred and thus, being blamed. This is complicated by victims typically engaging in self-blame as a way to avoid facing the even more distressing fact that any one at all can be rendered helpless, powerless and entirely vulnerable to the mercy – or rather, lack thereof – of others. Self-blame and humiliation allows the illusion of control which is more comfortable than feeling powerlessness, hopelessness and consequent intense grief, fear, rage and despair. (See Appendix B for parallels with various types of abuse of power.)

15. Writing submissions and information for reviews is not our 'day-job' and nor is the topic or industry part of our professional expertise. Moreover, in *complex multi-lender, multi-product gross white collar crime* such as most people in HNAB-AG have been subjected to, the material to cover is simply too vast to do justice. It covers consumer protection concerns spanning this entire inquiry regarding numerous banks/lenders, insurance companies and related individuals and organizations in the finance sector. We are acutely aware of being up against extraordinary resources, spin, denial, misrepresentation, misleading and inaccurate information (both by omission and commission), and efforts to protect individual reputations as well as organizations by power structures within the industry and those related to it. We persist because truth matters and, amidst corruption and lack of understanding, are good people whose integrity demands they do something once adequately informed.

2) **Victims have been described accurately as *"The Forgotten People"***:

16. In 2014 Senator Dastyari was instrumental in raising awareness in parliament and the public about white collar crime and the devastation caused to victims. He grasped that victims are "the forgotten people." Politicians are increasingly appreciating concerns but it is slow. Senator Whish-Wilson had the understanding and insight to call related senate inquiries and more recently called for a *Commission of Inquiry.* Bill Shorten has long called for a *Royal Commission* with the broadest possible terms of reference. Support for it or the rare *Commission of Inquiry* is likely to grow as industry scandals continue with little real or meaningful change persisting and affected consumers struggle. Senator Katy Gallagher has called this current, important and necessary, senate inquiry.

17. Power structures have the resources and might to exploit those affected and their families. Too many have personal gain, political and corporate agenda, not ethics and community interests, at heart. Further, in a society where most people think they need more money, regardless of where they sit in terms of income and assets, without education about gross white collar crime, and despite existence of rolling financial scandals, it means that the urgency for pressure to help victims does not come from community (much like domestic violence and sexual abuse was not understood decades ago). At times we encounter highly intelligent, capable people, whose personal (and unconscious) bias, particularly due to having lost substantial money in the GFC interferes with the capacity to distinguish between investments made which were entered into, informed and without deception, fraud or negligence.

3) **No-one is exempt from vulnerability to being rendered powerless**:

18. Victims are often described as *'vulnerable.'* However, this is too often, narrowly interpreted. They are sitting targets as clients/consumers because others abuse power and knowledge those victimized typically did not have – hence seeking expert help. Some are duped due to their lack of education or dependency on others being ill or elderly. Mostly victims are intelligent, capable and decent contributing members to society whose financial lack of sophistication and/or decision to take the advice of, or trust in, a *"professional"* for his or her *"expertise"* is unconscionably abused. Many hold responsible jobs and stay silent for fear of impact on career and / or being seen as complicit. Yet, they had every right to trust the services met their best interests and ethical conduct. None of us should have to be skilled in any other but our field of work or other interests: hence people seek professional, expert or specialist help.

4) Victims are debilitated and depleted, typically do not have time, resources or skills of other stakeholders to best present their case:

19. A significant factor in seeking accountability and redress, including participating in inquiries and reviews is that unlike industry members, consumer advocates, lawyers, advisors and parliamentarians, victims typically cannot devote working hours to the matter. They are debilitated due to various related factors not the least being typically experiencing varying degrees of consequent personal distress and financial stress.

20. Representatives of industry organizations are paid obscene salaries and bonuses. All, but tellers it seems, can rely on reasonable income providing lifestyles which range from comfortable through to luxurious. We all experience inevitable life stresses and challenges. This is different from cataclysmic life-altering consequences of the abuse of power. The fact that significant detrimental conditions place victims at major disadvantage due to various debilitating factors rendering them less able to cope, when they most need to be at their peak in order to fight for justice, does not seem to be duly considered in terms of assistance, expectations or engagement. Most give up in despair if they even attempt to be heard, understandably focusing on trying to repair their lives.

21. Industry is evidently skilled at utilizing the reality of distress and despair to maximum advantage to apply pressure and duress so victims are likely to give up, acquiesce, go away and be silent about losses inflicted on them and pain and suffering. The threat of legal action and the might of the industry is wielded to full advantage. This enables dodgy and unscrupulous business to continue as usual.

5) Experts may not recognize their limitations in providing opinions:

22. Unless an industry member, representative, academic, lawyer, journalist, commentator, mental health expert or parliamentarian has had personal experience or direct and adequate exposure over time to victims; he or she is no more able than any other person to grasp the issues involved far less the impact on victims of gross white collar crime.

23. Competence and calibre of expertise in one area does not necessarily translate to qualification to make informed comments about another topic or over the full spectrum of a given subject. This is particularly the case over complex matters like finance and poorly understood personal matters. Assumptions, generalizations and lack of ability to imagine or understand ramifications make for dangerous contribution by otherwise well-intentioned good people. It does not serve the victims or society. We are all diminished by it.

24. Having one's life-savings and/or home evaporate through white collar crime is not the same as being robbed of a few hundred, or even a few thousand, dollars in fee-gouging, services not provided but charged for and so forth.

25. Research Fellows, Andrew Bushnell and Darcy Allen at the **Institute of Public Affairs** have made comments in the media and submitted to the *Senate Inquiry into Civil, Administrative and Criminal Penalties for White Collar Crime.* Unfortunately, certain comments demonstrate profound failures to understand the full spectrum of white collar crime or its impacts. For example, they maintain it is not a violent crime.

26. It is disturbing that mental health expert Professor Ian Hickey made frivolous and uninformed commentary publicly on ABC's *The Drum* in April 2016 and then failed to respond to efforts to engage in dialogue. Professionals providing expert opinion shape understanding and perspective. We have seen this in decades past when in the 1970s it was taught in psychology that only one in 1 million women were victims of child sexual abuse. Judges, deemed the most learned amongst the judiciary, have blamed children for incest, rape or assault or minimized its impact. Offenders of various forms of abuse have long denied their deeds with well-meaning, uninformed others inadvertently promoting dismissal, minimization and cover-up. Professor Hickey's lack of knowledge on the topic is forgivable but not seeking to address it or contribute helpfully, when given the opportunity is profoundly disappointing. It highlights the limitations of experts.

6) White collar crime is violent physically and psychologically:

27. Resultant physical repercussions of white collar crime – particularly due to the protracted ordeal of lack of redress which is often life-long – include major stress-related disease such as heart attack, stroke, cancer, gastrointestinal, immunological and neurological problems as well as exacerbation of pre-existing ill-health. Typical symptoms of peri-traumatic (i.e. while the threat persists) and post-traumatic (i.e. after the threat is over) stress are commonly reported in cases of gross white collar crime. Competing needs to stay alert to deal with and also to rest and recover creates a system jam with hypervigilance, re-activation of triggers and exhaustion from lack of sleep and cortisol-adrenal overload. Persistent, chronic stress is severely debilitating physically and psychologically. Severe emotional and mental health consequences typically develop including clinical depression, anxiety and suicidal ideation. Suicide attempts and completions occur.

28. Violence does not merely constitute actions injuring the physical body or damaging property and possessions: violence is also emotional, mental and psychological. This is recognized in relation to family violence and sexual abuse but not white collar crime (see Appendix B).

29. Certainly injury caused to the body from circumstances imposing severe stress and resultant disease or ill-health, or consequently dying, is clearly violent. Physical violence may be evident immediately or emerge later. Death may be instantaneous or after a period of time. Psychological violence can also lead to fatality but is generally less graphic or quick. Emotional violence includes psychological ill-health or crisis, marriages and families torn apart by resultant distress, as well as dislocation from friends, community, work and former life as a broad brushstroke.

7) Greed, money and misuse of power drives white collar crime and lack of redress:

30. The lack of moral compass or concern for ethics including in respect of the impacts on victims or the community, means it is unlikely much will change in the banking, insurance and finance sector culture without:

    i. **Design of practical consumer protections at the frontline** that are simple, inexpensive and effective to implement. These must be designed in direct consultation with former victims of existing products. They could also

trouble-shoot in respect of new products because of their unique perspective and experience. Consumer advocates must also be involved but experience indicates they cannot and should not substitute for the input of victims. (See Appendix D and E for examples.)

ii. **Freezing access to consumers' assets from access by lenders and liquidators until a case has been examined** on identification of a complaint. This would motivate swifter resolution and prevent further loss. This requires independent, competent, well-supported and trained panels working in a one-stop-shop body.

iii. **Imposing penalties which include fines which are a multiple of losses incurred, or potentially risked** where discovered beforehand. These could range between 3-10 times the amount of direct and indirect losses. The lower end could be applied to individuals and the higher to organizations. Compensation for the incalculable losses and personal impacts should also apply. Zero tolerance should be applied so no offender or enabling executive can work in the industry in cases of gross white collar crime resulting in devastating impacts on victims. Careful supervision and surveillance of others should occur to avoid repeating or escalating activities.

iv. **Participation in a Restorative Justice Style program** required of industry offenders and senior executives and CEOs of related organizations with the victim facilitated by a competent expert who has had trauma-informed training. Parliamentarians and advisors should also participate so they will understand the extent of the crimes and the impact on the community.

v. **Linking remuneration of Chair of Boards, CEOs and senior executives inversely to increased misconduct in their organization**. Review of CEO and executive salary and performance bonuses seems relevant. *'Performance'* should not equate to profit but ethics and promotion of a secure economy based on social responsibility. Ensuring industry culture is fair and ethical, would be for the salary / bonus of a CEO or senior executive to be inversely correlated with performance in terms of the number of complaints and / or the amount of losses incurred and penalties paid.

vi. **Establishment, as a matter of urgency, of a genuinely independent, well-paid, highly trained and competent one-stop organization** comprising panels consisting of an industry member with forensic training, consumer advocate, trauma-counsellor, former victim and ombudsman/chair with the skills and power to:
    (1.) review the material pertaining to the case
    (2.) interview the parties for clarification
    (3.) assess
    (4.) determine culpability and hold accountable with enforceable penalties
    (5.) determine and enforce redress: restitution and compensation
    (6.) contribute to designing or refining informed consent regarding the product/s

(7.) publish the case online (protecting the victim's confidentiality) and naming the industry offender/s.

vii. **Meaningful whistle-blower protections, rewards and compensation:** These are vital to encourage those with information to speak out without fear of the personal and financial repercussions which are well documented. People like Jeff Morris and Dr Benjamin Koh are a rare breed. Regrettably, no-one of their calibre has emerged regarding Peter Holt's firm or the many lenders and products with which he collaborated. However, industry members with integrity cut professional association with him due to concerns about his practices and/or reported him to ASIC (although this did not, and has not, protected victims over decades). We understand someone has knowledge that Timbercorp knew it was in trouble a full year, at least, before collapse.

Staff at KordaMentha, aware of its handling of Timbercorp (in Liq), including victims in its so-called *'hardship program'* placed through Mr Holt's firm, may come forward if their futures (financially, professionally and personally) were not at risk. The same is likely to be the case with the numerous other agribusinesses in which we were placed as well as BT Margin lending.

We know BT sent staff to provide training to Peter Holt at the height of the GFC around the time hundreds of share portfolios were crashing as his firm was out of its depth. However, BT did not see fit to contact clients until share portfolios were liquidated or to ensure notification of margin calls had occurred (far less that these were possibilities and how to limit loss with a stop-loss order in place 24/7). In fact, most clients never had any direct dealings with BT and only learned of their losses from Holt's office. Many found out that nothing was done to save their portfolios i.e. they were not contacted about margin calls.

The capacity to determine what is fair to honour and reward the integrity of a whistle-blower and to ensure there are no financial repercussions and are provisions of compensation for costs or any retaliation (e.g. discredit in the media or industry etc.) is essential. These brave people should be encouraged, appreciated and lauded as the sort of Australians we want as role models: they should be rewarded.

viii. **Change legislation to halt payment on tax assessed as due, to the amount of loss incurred, until adequate restitution and compensation occurs and secure in a trust fund.** Until a case is resolved, a modicum of alleviation could be provided to victims by holding tax assessed as due, to the amount of loss incurred, in a trust fund to contribute to redress and also to use if necessary meantime (e.g. if the victim cannot work and has no income).

Until adequate funding reserves from fines and industry exists, legislation is required to place a halt on tax which has been assessed as due since the misconduct emerged. Tax assessed as payable, or tax which has already been taken from pay, could be directed to an independent trust fund. (This would avert any tax problem developing should the complaint not be established as valid.) Once the case is determined, until there is the facility to pay restitution and compensation to the victim, the funds would be

returned (with future tax also contributed) to the amount of the loss incurred as determined by an independent panel.

8) Ethically, restitution and compensation must both occur:

31. **Restitution covers** restoring direct and indirect, including compounding, losses up to the date of resolution. **Compensation covers** financial damages for incalculable financial losses and the breadth of personal impacts (family: marriage, children, other relatives; social: friends and community; work: career and capacity; health: physical and emotional/mental health consequences including death of the victim through stress-related disease and distress, suicide or old age before resolution occurs impacting dependents and inheritances).

32. No amount of money will ease the pain or substitute for pain and anguish. Examples include broken marriages and relationships; anguished newly-weds legally burdened with a partner's former deceptively incurred debt; fractured families where fathers can no longer live with and raise their children or new born baby day-to-day, with mothers struggling on their own; miscarriages and premature birth linked by doctors to the harrowing stress; the joy of pregnancy and parenthood severely affected; the impact on grieving over unexpected death of a disabled child; the heightened distress coping with severely ill or disabled dependent or adult children; children reacting to distressed parents and requiring counselling; dying without certainty about your dependent orphaned son's future; the impact on quality of life, work, health as well as relationships. The stories are truly tragic and harrowing: the above outline barely skims the surface...

9) Responsibility for funding of future cases for restitution and compensation:

33. In terms of direct cause and effect, this is ethically the responsibility of the particular industry member and organization(s) involved in a given case. Indirectly, industry as a whole, regulatory bodies and successive governments have responsibility too. Imposing a penalty of a multiple of the losses incurred, or risked before discovery, would provide accountability to the victims by covering restitution and compensation, contribute to costs for running a properly independent and genuinely competent body to examine the case, and add to the pool to address past cases which have been assisted through industry and/or government given their previous failures have measures in place.

34. Penalties could start at 3-10 times the loss incurred or risked with the lower end required of individuals and the higher by organizations such as lenders and product issuers. If being required to pay 10 times the amount risked does not curtail offences this should be increased to the point stakeholders feel the impact and then apply pressure accordingly on industry.

10) Retrospective restitution and compensation is the responsible outcome:

35. It is essential in terms of ethics to hold industry and successive governments responsible for what has occurred to date with people's money in cases such as our members. Retrospective restitution and compensation must be funded by the major 4 banks, subsidiaries and others as well as any industry organizations linked e.g. AMP, Bankers Trust etc.

36. Successive governments have a responsibility ultimately for what has been enabled to occur, hence, should cover any shortfall or particular case where an industry member or organization has been able to secure assets beyond creditors' reach and/or utilizing bankruptcy (including fake-debt scenarios) and insolvency and/or hold inadequate professional indemnity insurance.

11) Establishment of a retrospective compensation scheme of last resort is required urgently:

37. Those worst affected financially are often, but not always, those worst affected personally in terms of trauma. It does not always relate to the amount of money lost or amount of debt deceptively placed in. Some people's lives are devastated personally and financially by 'misconduct' related to $3,000 – for some it is $30,000 - others at $300,000 – and some at $3,000,000. The amount of financial loss does not equate necessarily to the personal, family, social, career and health impacts. Families may be fractured even though the couple's finances are not in dire straits or the home does not have to be sold. Physical and psychological / mental traumatic-stress related impacts are also not tied, necessarily, to the amount of loss.

38. Consequently, restitution and compensation must be kept distinct. Until an avenue is established to properly resolve a case (as outlined in 30.vi. (7)) and detailed in a submission for the *Review of the Financial System External Dispute Resolution Framework* headed by Prof. Ian Ramsay), a short-term measure by way of ***retrospective compensation*** is essential. This is particularly the case for victims of gross white collar crime who are struggling financially or have lost their life-savings and home. However, it must not be a substitute. It is necessary this be implemented without delay given escalating impacts on many victims relate to the compounding lack of redress over many years.

39. The resultant protracted and deepening trauma to lives is often much worse than the actual devastating initial impact of losses discovered or debt placed in (underscoring the need for swift and appropriate resolution at the outset). The amount provided through this mechanism could be adjusted once the case is properly assessed as described above through a competent new independent body.

40. There is no valid ethical argument for a compensation scheme of last resort that is not retrospective. The billion dollar profits reported by banks have, in part, been acquired on the backs of thousands of innocent victims of white collar crime.

12) Determining a cap on a retrospective compensation scheme of last resort must be based on meaningful assistance:

41. If the aim is to provide some alleviation of impacts and assist in rebuilding lives and dignity, research that is relevant to purchasing a home, incomes and being able to retire with the quality of life a victim had worked to create, must be factored including:

    i. The **massive increase in property values since the GFC in 2008** (i.e. the time related to discovery for most current victims of the collaboration of lenders and product issuers with Peter Holt's firm) means that without sizeable compensation those most severely affected financially would continue to be the

most disadvantaged in being unable to buy a home in their former vicinity whether or not they could afford a mortgage now. Research indicates the value of the mean dwelling in Melbourne has increased 85% since 2009. Some homes in certain suburbs have doubled. This is also relevant to further losses incurred in not benefitting from increased property values and the choice of if, and when, to sell. (Indeed, further disadvantage has occurred regarding having lost their home and being unable to benefit from the lowest mortgage interest rates in history.)

ii. **If Australians do not have a foothold in the property market by the age of 45 they have probably *"missed the boat"* to own a home** because of rising prices, sickness and unemployment risks, and (ironically for victims of white collar crime) difficulty obtaining a bank loan according to research by economist Dr Andrea Sharam of Swinburne University. The report *"Security in Retirement: The impact of housing and key critical life events"* showed that single mothers and divorcees in particular were exposed to seriously dire consequences for their retirement if they reached 45 and were not paying off a home. Consequently, it is unlikely victims can ever buy a home again if over 45. They should not be expected to live in a car, tent, caravan, friend's home or rent a place that is substandard (and worse than former student housing from their past) or relocate to somewhere cheaper, often cut off from their community and the suburb / town or place of living and working.

iii. **In addition to white collar crime different pathways are revealed for men and women into rental poverty in old age** (outlined as cost of care and gender pay gap for women and low educational achievement, consequential limited employment prospects and disability for men) beyond relationship breakdown and loss of home for one or both. Of course, white collar crime does not discriminate in its victims. We have people in HNAB-AG who were on incomes of $40,000 through to people who were comfortably financially secure and some very wealthy. These factors are related to gender pathways to poverty in considering the impacts of white collar crime for people middle-aged and over. It must inform compensation as well as restitution when redress is years later.

iv. **People entering retirement as renters are never able to escape** according to the Australian Centre for Financial Studies which issued a 40-page report titled *"Expenditure Patterns in Retirement"* in August 2016. They suffer *"significant"* additional expenditure in retirement: average rent consumes about 40% of their annual expenditure. Co-author of the report, Eliana Maddock told The New Daily (23 August 2016) that *"Australians should think more about property as a 'fundamental' part of retirement, along with their super funds and the age pension….I don't know that people necessarily make the link between home ownership and retirement, and how fundamental it is to having a reasonable quality of life once you stop earning high levels of income each year."*

v. **Victims of white collar crime, through no fault of their own, must face severe constraints of the aged pension and renting**. Further, being able to contribute superannuation can also be on hold for years or ceased altogether because of the consequent financial circumstances of white collar crime. This compounds indignity and painful when they had endeavoured to take responsibility for their financial well-being. (Research into the plight of victims is urgently required.)

vi. **Preliminary discussion has posited $500,000 as a cap**. While this would help significantly, it is grossly inadequate where losses have been substantial with cataclysmic impacts and for the reasons noted in the previous points. Those most affected should not continue to be further disadvantaged. This underscores the necessity for urgently establishing a genuinely competent ombudsman-panel type scheme as described elsewhere in this submission to properly determine restitution and compensation. (A *tribunal* is wholly inappropriate given its adversarial and legalistic nature. The problem inherent in that forum is that it favours offenders with deep pockets and industry connections: it works against people in distress who are out of their depth with little, if any, resources on many levels.)

13) **Fund retrospective redress from billions of dollars of banking profits and holding multinational companies accountable for tax evasion**:

42. Offenders must not be able to pocket, or benefit from, the proceeds of crime. The major banks post billions of dollars of profit. Regardless, banks, insurance companies and the finance sector have not adequately self-regulated. They manipulate existing legislative loopholes and regulatory requirements. Consequently, they should be required to fund proper restitution and compensation, including for retrospectives cases. The bulk of this should be contributed by the major 4 banks.

43. Shareholders and stakeholders cannot reasonably argue against it as the scandals have long been publicized. The opportunity to provide meaningful redress in-house has existed for over 8 years as has the necessity to design and implement genuinely adequate consumer safeguards. This has not occurred. Over the past several years, not one of the 4 banks (CBA, ANZ, NAB or Westpac linked to Bankers Trust) has taken up our direct invitation to assist in designing effective safeguards and informed consent.

44. Successive governments are responsible for enabling what occurs in the industry and thus for the impact on tens of thousands of Australians. Funding could also address retrospective restitution and compensation from holding multinational companies which dodge tax to account. An article by Adjunct Associate Professor Michael West, at University of Sydney published on 28 February 2017 (see Appendix N) notes *"multinational tax dodgers are the real leaners"* and that this is the most costly failure of politicians and regulators. He says *"zero tax on A$330 billion worth of income"* is paid.

45. Michael West also says there are serious deficiencies with data made transparent from the ATO due to failure of companies to lodge proper financial statements. His article demonstrates this with a couple of companies selected randomly. He notes ASIC could rule on financial statements provided which do not give a true and fair view under Section 297 of the Corporations Act. Our dismal experience of ASIC has been outlined in previous senate inquiries (a summary can be found in Appendix A). It seems the more money you have the more able you are to get away with daylight robbery utilizing 'legal' but unethical strategies. Meanwhile ordinary citizens are victimized from every angle and stripped blind of their home, life-savings and assets and forced to pay for debt in which they were deceptively placed.

46. In short, there is money available from the finance sector as well as potentially from recovering tax of multinational companies. Regardless, restitution and compensation must be prioritised for reasons outlined.

14) **Banks prioritize measures 24/7 to detect credit card fraud but not loan or other products fraud**:

47. Lenders patently failed in due diligence to seek out, or respond to, detecting loan fraud and deception related to their collaboration with Peter Holt's office. Yet banks heavily invest in swift identification of credit card misconduct to minimize losses. They refund the victim any losses incurred through bank failures to stop its misuse and abuse by con-artists and fraudsters. If the banks did not refund fraudulent activity few people would use a credit card. It is that simple.

48. Unfortunately, deceptive and fraudulent or negligent activity and related loss to a victim does not show up clearly the next month as it would on a credit card statement. People need home loans, insurance, investment advice or their lives and financial futures could not easily be pursued in today's world. Consequently, given failures in consumer protection legislation lenders have had no reason to match their systems to catch and rectify deception in these aspects of their services.

15) **Industry profits must not be protected by structured degrees of separation while gambling with consumers' money:**

49. Measures are put in place to ensure carefully designed degrees of separation, remove risk to the industry and place it entirely on the victim. This is enabled by inadequate consumer protections, regulatory and legislative measures. Industry must be held responsible for fraud, deception and negligence and reforms implemented. There is little incentive to promote or ensure consumer protections: victims know this all too well.

50. The same commitment to credit card fraud must apply to all products. This includes removing such *"costly 6-degrees of separation"* as outlined by Walkley Award winning journalist Michael West. It entails responsibility for collaborating with external advisors or *"authorized representatives"* and legal entities which have been utilized as steps in structured distancing to remove liability under existing laws.

51. The most efficient and effective way is to demand implementation of genuine informed consent forms (designed in consultation with former victims) to be signed and witnessed by non-industry people known to the client / consumer. (See Appendix D and E.) Requirements for due diligence are rationalized away in buck passing currently occurs leaving victims duped despite responsible efforts to be informed and assess risk.

16) **Products such as BT Margin Lending escape scrutiny because its structure secures its risk while leaving victims exposed**:

52. Efforts and activism has focussed on agribusiness 'investment' schemes which tie the victim to repayments for deceptively placed debt. This fact has determined its priority along with abysmally run class actions (Macpherson and Kelley who ran the Timbercorp case was initiated by Peter Holt according to sources).

53. Further, it has taken years to understand what happened in respect of the various 'investments' in which people were placed both in terms of what, and how it, happened. Over and above this is the resultant personal trauma. Trying to stay afloat financially, or

cope with having been sunk, means it is a herculean task to initiate, and persist, with efforts regarding most aspects of white collar crime.

17) **Industry failure to provide a full and complete copy of client files**:

54. Numerous examples of this abound in relation to Peter Holt's firm, major banks, subsidiaries and product issuers. Requests for a *full and complete file in its entirety* should include goals, plans, circumstances, risk aversion, loan applications, loan approvals, meaningful informed consent, correspondence or notes of phone calls or other contact between advisor, lender, product issuers or anyone else associated.

55. Not only have clients typically been unable to obtain these files – which is their right under various Acts - but FOS also was unable to compel the material (and thus refused to hear cases or take on any more related to Peter Holt's firm as a result). As an example Bankers Trust provided grossly inaccurate information (e.g. that margin calls amounted to $34,000 as opposed to $340,000; claims of contact with the 'client' which were false and appear to be with the advisor etc.) as well as omission of material. The same reports relate to all the major banks and many products.

56. Concerted persistence over months or longer, often does not result in a copy of the individual's complete file. Personnel are sometimes painfully inappropriate in response to the highly distressed state of a victim. At other times they are clearly engaging in training to manipulate the victim through fostering a false sense of concern and trustworthiness. Typically it is revealed they are operating entirely to protect the organization which employs them without regard for rights, ethics, truth or facts. Establishment of genuinely independent auditors (not employed by the organization or receiving any benefit) empowered to access all files and provide a copy are required for consumer protection.

18) **Cover-up, doctoring documents and lack of proof regarding advice of interpretations where documents have been provided**:

57. Major banks and liquidators have taken months to provide even parts of files, if they do at all. We have been advised by a secure data storage facility that documents should be accessible within one week. This aside, the lenders, insurance and finance sector have the capacity to 'lose', doctor, or in some way alter documents to their advantage. Victims have no proof most of the time. Nor can victims prove what they were told regarding documents with information which advisors instructed them was mere *"formality"* required by the bank or ASIC etc. and that it did not alter explanation or interpretation provided.

58. This highlights the necessity for electronic recording of interviews with copies provided to all participants and counter-part contracts and other documents, such as informed consent, requiring multiple-originals for all to sign, as consumer protection measures.

19) **Independent investigation is required to expose white collar crime, assist with redress, reform and ensure accountability of the industry**:

59. Investigation to reveal unscrupulous and unconscionable conduct, how it occurs and has been enabled is imperative to protecting the community. A problem cannot be solved if it is not properly identified or fully grasped. The damage extends beyond victims to all

Australian citizens given the ramifications of personal, family, social, professional and health consequences. Such investigation needs to occur *separate to* the urgent need to provide restitution and compensation.

60. Senate inquiries are valuable vehicles, however, given the proclivity of industry in our experience to provide less than full, clear, accurate and truthful information, in our view, only a *Commission of Inquiry* or *Royal Commission* will expose matters of utmost concern. These avenues can compel evidence and impose penalties for failing to co-operate or provide truthful testimony.

61. In the experience of HNAB-AG genuinely independent investigation is warranted into:

    a. **KordaMentha's Timbercorp Hardship Program** and related issues including the liquidator's failure to exercise discretionary power under statutory obligations in light of principal, Mark Korda's senate testimony and guidance of largest creditor ANZ and arbitrary settlement amounts

    b. **ANZ's failure to meet stated objectives for its new Fairness Officer position** including thwarting discussion of refunding settlements procured by KordaMentha given ANZ's position at the annual bank review in October 2016 that victims of Peter Holt's collaboration should not be pursued

    c. **Bankers Trust Margin Lending** and related issues exposed by the GFC

    d. **Structured separation of responsibility to avoid risk by lenders while exposing consumers** including using employees in roles such as mobile lenders and brokers to collaborate with external financial advisors

    e. **Liquidator and lender scandals** re-victimizing people through utilizing inadequate consumer protections and legislation despite ethics and strong substantiating evidence (and the view of independent colleagues)

    f. **Insurance scandals** including professional indemnity, income protection, health and life.

62. However, we hold significant fears that very few individuals would participate in a further senate inquiry or forum which did not provide privacy and confidentiality regarding their identity, case and details as there is tremendous fear of retaliation, including in years henceforth, by unscrupulous liquidators and lawyers. For example, KordaMentha's deed permits the liquidator to reopen a case if he merely *"forms the view"* there has been a breach (rather than go through the normal process of suing someone and having to prove its case). Moreover, the deed retains all rights for the liquidator and requires the victim to relinquish his or her right to a defence. Meantime the liquidator could demand payment in full of the "debt" plus the amount of exorbitant penalty interest through to that future date. People may be more likely to participate if permitted to provide testimony *in camera* to a senate committee.

63. Related to this is the power afforded the liquidator in the deed. **Craig Shepard claims the deed is *"standard"* but independent liquidators have assured HNAB-AG it is not**. Further, due to deceptive loans in which our members have been placed with other agribusiness, the opportunity to compare deeds underscores our views. It is concerning

that inaccurate claims about the deed go unchecked by both the hardship *"advocates"* and also KordaMentha's so-called ***"free independent lawyers"*** **such as John Berrill** who appears to be the primary lawyer paid by the liquidator to merely *"explain"* the deed. The explanation provided reiterates the view conveyed by KordaMentha and its hardship program rather than giving advice in the person's best interest.

64. In addition, the fact that beyond the long view of invaluable growing momentum leading hopefully to a thorough investigation and proper redress, very little benefit or value has resulted from support of, and participation in past inquiries which extract a marked toll (and financial cost for some). Indeed situations remain on hold or progressively deteriorate for many. Even those whose cases which have stabilized financially, albeit with considerable loss and who are endeavouring to recover personally and move forward, many express anxiety and doubt about the personal toll in putting themselves through the distress and effort only to experience more denial, misrepresentation, and manipulation.

65. Demoralization and disillusionment is high regarding intervention from power structures to assist, not least the government.

20) **Involvement by parliamentarians in Restorative Justice-style program**:

66. A restorative justice style program including the victim's local Federal members, state senators, relevant Ministers and their key advisors is necessary in a percentage of cases for the protection of Australian consumers. This would educate those with power to influence understanding and legislation about how white collar crime occurs, the consequences to innocent people and the necessity for committing to action, and staying the course regarding the larger problem, as swiftly and effectively as possible.

67. Lack of adequate action, particularly after a senate inquiry and notification of ongoing problems, new concerns as well as misleading and inaccurate testimony, signals to industry that if it delivers seemingly assuring corporate-speak and claims to be co-operating – or, alternatively just stands firm in denial - for long enough, attention will dissipate. The strategy is designed so activities can be resumed, undeterred, and without fear of accountability or pressure for change or to treat victims ethically including on lodging concerns and regarding redress.

68. People know lenders and the financial sector worldwide created what led to the GFC. Failures in due diligence through to outright deception and corruption are evident globally. Some countries appear to have responded much more responsibly than Australia and are economically and socially the better for it. Seeking to be informed beyond that which prevails in the immediate or known environment is paramount to responsible action.

69. Inadvertently many politicians enable the sector by not acting from an informed position, or swiftly enough. Thus permitting undue delays which further compound the ordeal and its repercussions for victims. All professionals benefit from recognizing a responsibility to be sufficiently informed in order to make meaningful comment, decisions or recommendations. Victims must not be used for political point scoring or media exposure. People must not be left high and dry when a politician moves on to the next scandal to boost his or her profile. This re-victimizes people powerless to the system's failures who are already struggling in marked distress.

21) **Responsibility for informed position from Senate Committee members, advisors and other parliamentarians**:

70. Parliamentarians are best positioned when they recognize their responsibility to become informed to realities outside their experience and views stemming from that– i.e. beyond the vacuum of Canberra and their own, often more privileged, lives as part of power structures. No doubt they recognize the capacity for colleagues and members of other power structures to discredit or minimize or skew concerns expressed by those affected by an issue. Committee members and their advisors could best effect change by deepening their understanding through exposure to every submission provided by a victim. It takes an inestimable toll for most to write a submission. Persisting in the face of so little response over years, and on top of the cascading impacts, is not easy.

71. Parliamentarians, including relevant party leaders, ministers and the prime minister, could each meet with at least 1% of victims who make submissions to an inquiry or contact their office as well as discussion with representatives of all victims' action groups, allowing enough time to hear and understand the related issues and ensuing tragedy, to best respond from an informed grass-roots position.

72. CEOs, senior executives, principal directors and others among the industry as well as in-house dispute resolution scheme representatives and advocates are typically invested fundamentally in protecting each other. We have numerous examples. Their *testimony* (literally in hearings and to committees as well as in dialogue elsewhere or claims to media) should not be accepted at face value. They have corporate speak to pepper their industry knowledge and are not operating from a debilitated and devastated position financially or personally.

73. Without seeking ongoing feedback from victims about the status of an issue or progress of internal -or external - hardship programs or dispute resolution schemes, parliamentarians contribute to an already legal and industry tsunami rendering victims invisible, floundering, silenced and helpless – and further victimized by unscrupulous lenders and liquidators (substantial evidence regarding KordaMentha and ANZ is available with the most recent concerns outlined in Appendices F, G, H, I, J).

74. Well-meaning parliamentarians demoralize and devastate victims, deepening despair when they provide assurances, or commence action on commitments, to assist and then fail to honour these. In our experience this includes abrupt lack of response after substantial engagement; repeatedly scheduling and postponing the bulk of discussions (beyond what is reasonable according to a former senior advisor to state and federal government at the highest levels); not responding to phone calls, text or email; ignoring or dismissing survey data; failing to read clear brief updates particularly when requested of us by the politician; abandoning people despite knowing the mental/emotional state and personal circumstances of victims desperate for help over losing their home and being sent to the wall; failing to advise if, or why, commitments made appear not to be or will not be honoured; etc. Their ability to help or hinder has significant impact.

75. Work overload and the demand of numerous crises and intense issues must be addressed in terms of proper resources for parliamentarians. The country and its citizens have a right to expect decisions made on their behalf arise out of parliamentarians being sufficiently resourced. (This includes perplexing expectations of parliament sitting late,

or even overnight: these work conditions would not be permitted in other fields as it impairs cognition. Sleep deprivation is recognized as a form of brainwashing and torture. No-one wants a doctor or pilot having control of their life whose capacity is impaired by virtue of inadequate rest or sleep and challenging pressure. Australians deserve politicians to be supported to function at their best.)

76. It is not reasonable parliamentarians be asked to perform a job without adequate support, equipment and resources. When this affects basic courtesy as well as crucial compassion for victims and integrity, it underscores a serious problem which contributes to inadequacies in ensuring consumer protections.

22) **Meaningful accountability for testimony to senate inquiries**:

77. Senate inquiries are important vehicles to explore serious community concerns. Limitations exist in terms of their power and jurisdiction which translate to serious concerns in our experience when accountability for inaccurate and misleading testimony is ignored or not underscored as imperative and treated accordingly. The finance industry will continue to play the system regarding parliamentary reviews and committees making a mockery of the process and blithely continuing to rort the public, unless there is:

    (1) active and sufficient investigation of reports of testimony notified to be inaccurate and misleading

    (2) meaningful accountability pursued, including penalty, for testimony in submissions and appearances at hearings which is inaccurate and misleading

    (3) genuine separation of potential conflict of interest regarding industry and political parties and/or individual politicians.

23) **Recommendations by Senate Inquiries must be based in context of concerns and power to act by those involved**:

78. In our view, the report *Bitter Harvest* developed from the *Senate Inquiry into Forestry MIS* was largely an invaluable and much needed exposé of horticultural and forestry agribusinesses schemes for which victims are immeasurably grateful. However, as a consequence, victims of Peter Holt's collaboration with Timbercorp have been thwarted in efforts to expose ongoing concerns to shareholders and seek help from ANZ by the flagrantly manipulative misuse of recommendation 13: 11.64:
"The committee recommends that spokespeople for HNAB–Action Group consult with KordaMentha and the Independent Hardship Advocate on implementing measures that would help restore confidence, faith and good-will in the hardship program." This recommendation could only work where clear, trustworthy and reliable commitment from the power structure was ensured - and where the hardship program was worthy.

79. Firstly, the recommendation is perplexing in light of documentation provided by HNAB-AG to (original) committee chair, Senator Dastyari, and his former advisor, [redacted] about the liquidator and the hardship program representative from early 2015 up to the second hearing in August 2015 and right through to the end of 2015. This was before the report was compiled. The recommendation does not reflect that information. ***It is akin to suggesting spokespeople from a group of victims of rape or paedophile priests/clergy consult with the church and its internal response program*** (e.g. this

parallels the *"Melbourne Response"* which reflected a dismal, inept, lack of compassion of the Catholic church) ***on implementing measures to help restore confidence, faith and goodwill*** in the program about which serious complaints have been levelled (as occurred regarding institutions including the church). The inappropriateness of the notion, and the impact on victims of sexual abuse in that scenario, is fortunately well understood by most of the community these days, unlike decades ago.

80. Neither the senator nor his advisor sought feedback from, or responded to material provided by, HNAB-AG despite active engagement before the first special hearing in November 2014. However, Hansard reveals in August 2015 that the chair, Senator Dastyari, sought feedback from KordaMentha and its hardship program advocate, Catriona Lowe. As the senator had been instrumental in achieving a special senate hearing into Timbercorp and applying pressure on KordaMentha to – at least appear to – act on victims' concerns, the abrupt door closure, disinterest and abandonment remains profoundly disturbing and demoralizing. Moreover, it signalled to the liquidator, Craig Shepard, that he could proceed undeterred without concern for accountability.

81. Furthermore, in respect of this recommendation, HNAB-AG made repeated attempts both before and since the liquidator first agreed to meet with representatives over 2 years ago. We had no power to enforce this or to ensure KordaMentha's engagement is not disingenuous or hostile or vexatious. We had no power to hold the liquidator accountable for concerns, serious or minor. We had no power to counter efforts to misrepresent or discredit us by the liquidator or hardship 'advocate' (which is not an *"independent"* role despite the title, being subcontracted by the liquidator and where there was no independent audit or oversight). We had, and have, no power whatsoever other than persisting to expose the truth when KordaMentha and its hardship program ignored efforts entirely (failing to reply) or typically responded by deflecting from pertinent issues and focusing on matters which were not at hand with careful omissions, and corporate spin.

82. Moreover, all efforts by representatives are made in our own time with no financial assistance or reimbursement for impact on paid work.

83. The resignation of the first program advocate, Catriona Lowe, in June-2016 due to being, "*unable to support KordaMentha's position in a 'significant minority' of cases*" and being "*no longer prepared to* (endorse the program) *in light of the final positions being put by KM in a number of cases…"* vindicates our information provided to Senator Dastyari and his advisor since early 2015. Senator Xenophon was also provided with information as 2015 progressed and throughout 2016 and into 2017.

84. Of note, Ms Lowe did not provide a submission until January 2016. Had she done so, or indicated consideration of resigning *before* the second hearing in August 2015, we would have been supported in our concerns in respect of the liquidator's conduct and also been able to address errors in her comments. We appealed to her many times to assist and are disappointed she took so long. We are, however, grateful that she eventually took a stance. There are also concerns regarding her conduct which have been provided, as outlined, to that senate committee. Concerns about her replacement, Stephen Blyth, also highlight insidious inherent problems of in-house, non-independent hardship programs or resolution schemes. The entire program warrants investigation. Attempts to collaborate with both Ms Lowe and Mr Blyth have been disappointing. Their response has ignored, or outright, denied relevant facts related to their role.

85. Testimony of principal, Mark Korda (liquidator for **Timbercorp Securities**) was provided in August 2015 on behalf of Craig Shepard (liquidator for **Timbercorp Finance**) which in itself seems to be a conflict of interests: one represents creditors and other alleged 'debtors.' Timbercorp victims were part of both these separate yet entwined entities. As noted HNAB-AG forwarded notification and complaint about Mr Korda's misleading and inaccurate testimony. We understand Ms Lowe endeavoured unsuccessfully to address some of this with KordaMentha before resigning. Commitments continue not to be honoured. We are unaware of action on, or concern about, this occurrence. It appears to have emboldened KordaMentha to persist undeterred.

86. HNAB-AG expressed concern to the senate economics committee that misleading and inaccurate testimony had been provided by the liquidator and advocate with no follow-up and that the recommendation referred to above inferred responsibility of HNAB-AG for the state of affairs.

87. In addition, concern about paragraph 11.62 in the body of the report on page 172 of *Bitter Harvest*, regrettably, leaves room for misunderstanding. In the context outlined, it could be interpreted to mean that the committee viewed that HNAB-AG was implicated in an *"apparent adversarial mindset is undermining the work of the IHA."* It may well refer to KordaMentha or an unreasonable depiction of individual parties struggling against unreasonable demands and inconsistencies in comparable cases or those in better positions. Correspondence was emailed on 24 June 2016 to the committee. [redacted] kindly replied on 8 July 2016 in his role as Research officer, Senate Standing Committees on Economics that *"no suggestion made HNAB-AG approached the process with an adversarial mindset"*. He also engaged in email correspondence in August 2016 with HNAB-AG to help clarify the matter noting the information would be provided to the new committee. No clarification has transpired. This may be related to the timing and events around the federal election.

88. David Gonski, Chair of the Board of ANZ and Gerard Brown, Group Manager Corporate Affairs, ANZ have both sought to dismiss and deflect from their responsibility by utilizing the report's recommendation 13: 11.64: *"The committee recommends that spokespeople for HNAB–Action Group consult with KordaMentha and the Independent Hardship Advocate on implementing measures that would help restore confidence, faith and good-will in the hardship program."* Mr Gonski cited it in shutting HNAB-AG down from an attempt to update shareholders at its 2016 AGM. An update was part of the context in order to pose a question on the basis of the testimony of Graham Hodges, Deputy CEO, ANZ. He informed the *Standing Committee on Economics Review of the Four Major Banks* on 5 October 2016 that victims of Peter Holt should not be pursued. KordaMentha's lack of genuine engagement with HNAB-AG has been apparent from the first meeting in January 2015. Craig Shepard's letter to Timbercorp victims on 7/2/17 states the liquidator *"We will not negotiate with you through action groups… "*

89. This is also emblematic of the abuse of the liquidator's position to intimidate and apply duress. Typically, people are terrified of Craig Shepard and industry power structures. He would know this is the case. Thus, it is disingenuous to add in the abovementioned letter: *"However you are encouraged to bring someone with you to support you should that assist in any way."* The victims are mostly in no position to advocate for themselves. Further HNAB-AG representatives (and others) should not be expected to give up work or other commitments to provide hundreds of additional, unpaid, hours to accompany

Timbercorp-Holt victims to meetings with KordaMentha to discuss their cases. These are often also highly protracted affairs (months or years). The first hardship program representative resigned due to certain concerns – and she is a trained professional advocate and qualified lawyer: what hope do ordinary people have? Mr Shepard also made his unwillingness to work with HNAB-AG very clear in respect of the deed in 2016. He refuses to engage further with HNAB-AG (although he will with Senator Xenophon) when we persisted given key concerns were not addressed after initial meetings achieved minor amendments. As noted elsewhere, other deeds are simple, clear, do not contain factual errors and provide certainty and closure. Other liquidators and lawyers confirm this view.

90. Subsequent to this, HNAB-AG wrote to Colin Neave in the new role of Fairness Officer which commenced in January 2017. Given ANZ's stated position regarding Holt-victims, and that it can only guide, but not instruct liquidator Craig Shepard, we requested ANZ refund these settlements which are being procured on ANZ's behalf by KordaMentha. Mr Neave did not reply. Gerard Brown replied ignoring the purpose of the letter, engaged in deflection with disingenuous reference to the senate committee's recommendation and dismissed complaints about the hardship program of which we know he is acquainted while he reframed it a positive and successful process. He replied to our response to his reply (to our letter to Mr Neave) with a slightly longer version of his first brief reply continuing to ignore the purpose of our letter (see Appendices G,H, I.)

91. On 15 December 2016, **ANZ announced the appointment of a Fairness Officer, Colin Neave** with fanfare. In an article in Fairfax on 15/12/16 by Adele Ferguson and Sarah Danckert, Mr Neave is quoted as saying, *"along with looking at products for vulnerable customers as suggested by Mr Elliott,* (he) *would also review some of the other older products ANZ has released to the market, rather than simply assessing new products. In many ways looking at the older products would be more important because some have been in place for many years and it could well be timely to look at them, there might have been issues that have been 'put in the too-hard basket', and that might be something that will be of very real interest."* The journalists conclude the article with *"Victims of collapsed managed investment scheme Timbercorp, which ANZ co-financed, will be hoping he reviews the hardship program that is being run. A number of victims plan to attend ANZ's annual meeting for the third year in a row."*

92. Apparent from the fanfare about Mr Neave's new position and its objectives patently being failed within weeks of it commencing, the choice of Mr Brown to reply is interesting. He duped representatives and members of HNAB-AG into meeting with the first hardship advocate in December 2014. Evidence exists. Graham Hodges has acknowledged the purpose for the basis of the meeting as understood by us (openly electronically recorded). We understand from Mr Hodges that Ms Lowe *'went ballistic'* concerned it would discredit her in the eyes of those she hoped would engage. However, due to failures in consumer protection and legislation there was, and is, no real option for victims: people are captive to inadequate legislation and consumer protections and effectively forced into engaging with the hardship program or Timbercorp direct or proceed to court action. The hardship program is a farce. It is not "independent" - the liquidator can, has and does, overrule proposals for settlement based on the assessment compiled by the hardship program representative with demands on a different scale.

24) **Appropriate levels of staff to conduct work necessary to best advise parliamentarians is paramount**:

93. Increased staffing levels would assist in ensuring parliamentarians are informed and best able to fulfil their role given they have significant busy loads and demands on their time. Nothing should substitute for meeting in person with a percentage of those on the spectrum of impacts from mild to grave. Time is necessary to ensure opportunity is taken to listen to, and question, a victim to best understand the problem and consider possible solutions.

94. Senator Xenophon's assistance has been much appreciated as has his support for redress. From December 2015, he made commitments to assist HNAB-AG regarding concerns about significant inconsistency of settlements in comparable cases, or even in far worse situations. However, as of March 2017 this remains an ongoing concern. The resignation of the first hardship advocate, Catriona Lowe, in mid-2016 citing concern about the handling of a *"significant minority"* of cases, in addition to reports regarding her replacement, Stephen Blyth, underscore serious issues. The senator's assistance is required also because the liquidator has not addressed major concerns about the deed of settlement which remain yet to be finalized regarding:
    (i) Lack of closure
    (ii) Uncertainty
    (iii) Errors in statement of fact
    (iv) KordaMentha's claim the deed is standard despite information from independent liquidators and existence of other deeds for agribusiness loans.

95. Unfortunately, Senator Xenophon has had to cancel or postpone most efforts to schedule time to discuss the matter leading up to, and since, June 2016 when two meetings were held with KordaMentha. Electronic communication has also been difficult to engage in discussion or obtain a response or action. He was unable to fulfil his commitment to phone distressed victims in December 2015 or since, including a man the senator recognized was at serious risk having attempted suicide and a couple whose disabled son had unexpectedly died. They were among 9 example cases provided to the senator to illustrate concerns with the liquidator with the aim of obtaining assistance regarding the concerning themes in handling of cases. While repeated delays over lengthy periods of time may relate to well-intentioned over-committing, these commitments are reasonable (indeed necessary) actions for a parliamentarian to undertake. Resources need to be available to meet and honour what is necessary for parliamentarians to do their job.

96. Understanding of trauma would best assist those who are part of power structures to appreciate the outcome of their actions, comments and influence.

Insurance scandals: professional indemnity, health, and income protection

97. Regrettably, members of HNAB-AG have also experienced harrowing encounters with insurance companies. Due to ongoing situations we are reluctant to offer specific details for fear of victims involved being penalized. These involve major companies.

98. In brief, as an overview, the following has been reported by victims making a claim:
    (a) Inordinate delays of months or more than a year

(b) Intimidation including when aware of very significant distress and suffering
(c) Onerous demands for documentation not relevant to a claim
(d) Repeated efforts to seek information that is not relevant in different ways
(e) Repeated demands for information already provided
(f) False accusations reported to be made by the victim's doctor (and denied)
(g) Harassment designed to overwhelm the victim into giving up the claim
(h) Parts of a claim for which coverage was taken out not paid, and ignored until discovered (and many months to pursue it by the company – still not sorted)
(i) Pointless progress forms required at unnecessarily frequent intervals
(j) Changing timeframes for progress reports and denying despite evidence
(k) Significant churn with case managers who appear to have little training or understanding of trauma thus aggravating and escalating distress: some sadistic
(l) Treating vulnerable claimants with disdain, disregard, disrespect and taking advantage of people who feel humiliated or traumatized by their circumstance.

99. In relation to professional indemnity, inadequate regulations permitted Peter Raymond Holt to hold only $2million. This amount would not cover the losses inflicted on many as a single individual claimant due to the negligence and deception of his firm - far less the hundreds who were affected. It would have covered a few who had small losses. Two million dollars is staggeringly inadequate. It was all the industry required he pay to cover his firm (of many staff) which provided services to hundreds of clients. At least 500 are documented to have been placed in Timbercorp. Industry and successive governments are responsible for this. Among Mr Holt's clients related to their own field / industry people had to hold $20Million in PI and they did not work with, or have responsibility for, people's finances worth multi-millions if not billions of dollars.

Preliminary comments pertaining to victims

100. The definition of *"white collar crime"* must ensure public awareness of what it constitutes is at least as clear as what defines rape, assault, coward's punch, child sexual abuse or domestic/family violence. Many seem to think it refers to fee-gouging, services charged for and not provided etc. There is often no reference to innocent people and their families being devastated personally and/or financially through losing their life-savings and home and/or being placed in insurmountable deceptive-debt often resulting in bankruptcy. Life-long financial and personal consequences with intergenerational family and social impacts occur.

101. Related terminology has been addressed in previous submissions.

102. Psychological trauma and long-term stress due to inadequate avenues for redress compound the shock of discovery and its consequences. This also leads to severe physical impacts on health resulting in stress-related disease or escalating of pre-existing ill-health. It also directly relates to development of significant mental health impacts such as depression, anxiety, insomnia. Suicidal ideation is high amongst victims, particularly where years of fighting to stop the financial bleed from unscrupulous lenders and liquidators is protracted. It is often inhumane. The lack of redress for victims and accountability of culprits adds insult to injury. Victims are typically not treated with compassion and dignity. Re-victimisation causing even deeper distress results from inadequate consumer protections and redress.

103. The impact on sense of self, marriage, children, extended family, friends, work, career, forced relocation from community, retirement possibility and world view is a significant aspect of suicidality, including attempts and completions.

104. Some key myths about failures of consumer protections re white collar crime:
   a) it is a victimless crime
   b) it is a non-violent crime
   c) victims always share some degree of responsibility for its occurrence
   d) the notion of *'buyer beware'* applies i.e. onus on the consumer to identify legitimacy and be aware of any pitfalls (legal / industry loopholes, negligence, deception and fraud even though it may evade industry / colleagues)
   e) existing avenues are adequate for redress
   f) lawyers understand the issues, will pursue genuine cases and obtain justice
   g) if you can't prove it you must have been complicit or known the risks
   h) you should have done your own due diligence (despite the point of engaging a specialist / professional with qualifications is to understand what you do not).

105. Dictionaries define the word 'victim' as a noun which identifies an injured party or casualty; someone who is wounded including fatally; or who is prey or a target:
Merriam-Webster:
- *"a person who has been attacked, injured, robbed or killed by someone else"*
- *"one that is acted on and usually adversely affected by a force or agent"*
- "*one that is tricked or duped"*

Dictionary.com:
- *"a person who suffers from a destructive or injurious action or agency"*

The Free Dictionary:
- *"one who is harmed or killed by another, especially by someone committing a criminal or unlawful act"*

Webster's new World College Dictionary, 5th Edition:
- "*a person who suffers some loss, as by being swindled"*

The American Heritage Dictionary
- "*A person who is tricked, swindled, or taken advantage of."*

106. People whose experience meets these definitions at the hands of the banking, insurance and finance sector are typically ignored by those with vested interests or are often not sufficiently engaged with by those genuinely seeking to contribute to protections for consumers. The onus must not be placed on victims as in the current status quo. It is imperative those involved with efforts to bring about change recognize the markedly inadequate understanding of the traumatic impact of failures of consumer protection and trying to seek redress. And that recognition of the vulnerability and the stress of prolonged duress are utilized by unscrupulous individuals and organizations against victims.

Primary factors silencing victims of the industry

107. Varied significant factors silence victims. These include:
1. Industry denial, spin and cover-up including provision of inaccurate and misleading testimony to parliamentarians and media
2. Lack of community and industry awareness of the crimes and impacts
3. Victim-blaming - plus fear of it (and of being re-victimized, humiliated, ashamed as is typical of victims of abuse of any type of power: this is a defence against facing the

greater distress of realizing one can be rendered utterly powerless and at the mercy of another)

4. Inaction or protracted grossly inadequate response of industry and successive governments regarding accountability of culprits and support for victims
5. Energy consumed by overwhelming trauma and efforts to deal with misconduct-related debt, loss and impacts on all aspects of life without adequate supports
6. Comments made by purported authorities (including industry, mental health professionals, journalists, commentators, parliamentarians) which stem from unconscious bias, assumptions, ignorance on aspects of the issue, outright denial of facts and political agenda
7. Demoralization, hopelessness and despair due to efforts (often made under considerable distress) to provide details to power structures, with no response or often worse, after initial assistance commitments are not followed through.

The Problem of "Experts" and Commentators Not Adequately Consulting with Victims

108. While professionals have considerable invaluable knowledge about aspects of consumer protection it is a grave error - and central to ongoing failures to address serious concerns - when individuals or organizations do not recognize that they have not sought information from relevant sources to be adequately informed. This includes in-house consumer advocates. Many have no exposure to *multi-lender, multi-product white collar crime*. Victims of this have been turned away from financial counsellors, consumer advocates, community and private lawyers and other industry members.

109. Often law firms have conflicted interests being on a retainer with industry bodies. For instance victims were turned away from help from the service, Justice Connect due to senior lawyers being retained by KordaMentha. Major law firms lost valuable time in delays which emerged as being related to concerns there would be no money accessible from Peter Holt on winning the case. Victims are then discouraged from pursuing action with outrageous demands for *'disbursements'* which appear designed to ensure the law firm's work is paid and is not a genuine *'no-win, no-fee.'* An example is $200,000 quoted for 2 individuals. Noble sentiments were expressed to media about fighting rogue advisors and being fair to victims but this was mere PR and advertising. Agenda is compounded when professionals do not listen to victims: important information is lost.

110. Commentary and advice to parliamentarians becomes dangerous to society and fails victims when people with certain expertise believe they are qualified to comment on aspects and issues about which they appear not to recognize they lack knowledge and experience. In some instances, this may be intentional where driven by personal, industry or political agenda. It is tragic, given the implications, when it is a merely a consequence of uninformed perspective, assumptions and failure to engage. We have witnessed this with various commentators whose view on social issues is otherwise often helpful, reasoned and, it would appear, informed. (This is separate to agenda.)

111. An example of limited subject exposure is Research Fellows, Andrew Bushnell and Darcy Allen from the **Institute of Public Affairs** who provided a submission in December 2016 to the *Senate Inquiry into Criminal, Civil and Administrative Penalties for White Collar Crime*. HNAB-AG would generally agree that penalties other than prison are best in terms of the cost to the community and also, as typically it fails to be a deterrent. However, we strongly disagree with key premises which are incorrect. Designing policy and strategies based on aspects of their view which are false assumptions would leave

consumers at peril and inadvertently, assist industry culprits to persist, unaccountable and undeterred in certain activities.

112. The Institute of Public Affairs fails to understand that white collar crime is not a non-violent offence. It does not define what it understands non-violent to mean. It states *"Violent offenders need to be incarcerated-it is the only way to keep the community safe."* This suggests it views non-violent offenders do not risk community safety. Given the consequences of physical and mental health impacts including suicidality it is difficult to dismiss or minimize the risk posed. The personal, social and family impacts may not always draw blood, or result in graphic and visible injury, but like sexual abuse or rape, the less invisible physical and emotional injuries are real and potentially life-threatening.

113. Medicine and neuroscience reveals impacts on all the body's systems including endocrine/immune, cardiac, gastrointestinal and neurological. The difference is these are not immediate or visible like a bomb, mugging, shooting, knifing or murder etc. In terms of multiple victims of the same offender/s targeted at the same time, nor are they located together in the one spot or time when discovery of white collar crime is made. The crime is invisible and often not known for years. Its impacts also emerge over time as the regulatory system fails to provide adequate, swift redress far less compassionate.

114. We agree with Bushnell and Allen that the goal of the justice system is to keep the community safe from crime and criminals and that consequence is vital to maintain a system based on individual rights and personal responsibility. They state the *"overarching theme"* of their submission is the *"fundamental principle of proportionality-that the 'punishment must fit the crime'"* Again we agree. However, because they do not understand the consequences of the crime, their view of appropriate punishment is grossly inadequate. Indeed, it contributes to problems.

115. Industry members who are negligent in protecting the best interests of their clients or who perpetrate deception and fraud to the point of creating resultant trauma, as well as CEOs and senior executives who enable or participate in serious white collar crime where lives of innocent people are affected, should go to prison. However, the best outcome would be rehabilitation (not subjection to assault, demeaning and dehumanizing treatment). We would like to see this for any offender. We also recognize some may require life-long prison but that is another topic. White collar criminals are not different: they are just well-heeled criminals in suits who use pens and computers rather than traditionally recognized weapons. These people can inflict as much damage, pain and anguish as thugs, rapists, paedophiles, arsonists, terrorists etc.

116. However, to ensure the punishment fits the crime, as advantage of their position and power was taken for financial gain, it is imperative that penalties primarily address this for both the victim and as a deterrent for offenders. This includes funding the cost to the victim and the community. Penalties in terms of financial cost must also apply where an industry member uses legislation and knowledge of mechanisms to safeguard his/her assets from the reach of creditors in fake-debt bankruptcy, business insolvency, trust funds and including putting assets in a spouse's name or involving their children etc. and has inadequate professional indemnity to pay penalties.

117. Consequently, penalties which are a multiple of the loss inflicted – or potentially risked before discovery – are essential. If offenders are required only to refund their profits from crime there is plenty reason to try to get away with it. However, if they had

to pay back a multiple of it, this eats into shareholder profit and stakeholders are unlikely to be happy. This would raise awareness of practices and create pressure to ensure safeguards were in place. In addition, it would contribute to the cost to the community for inquiries and reviews as well as other services (including prison). Organizations should be financially penalized at a higher amount to make an impact. Individual private advisors and individual employees could be penalized at the lower end of a multiple fine. A spectrum of 3-10 times the loss inflicted or risked seems reasonable. If it is not enough this would become apparent in time. Zero tolerance for working in the industry (not just the role or organization) would ensure much of what constitutes white collar crime would be reduced if not eliminated swiftly provided enforcement occurred. ASIC cannot be left to enforce penalties. (See Appendix A.)

118. A prosecution and prison sentence as the system stands is likely to capture the "fall-guy". While important to set an example, this will not change the culture based on what is already known about offenders who abuse their power over other human beings. Hence, substantial fines which are a multiple of loss incurred or risked are pivotal.

119. As well as meaningful financial penalties for the crime being necessary it is imperative to recognize reform is a social responsibility. As Bushnell and Allen note, research supports prison is *"strongly correlated with repeat, and escalating, offending."* We hasten to add this applies to systems such as in Australia. It is not the case in all countries. The attitude to prison and prisoners and expectations of, and by, police conduct is widely divergent from Australia in Norway even in maximum security facilities. We encourage parliamentarians and others to investigate Norway's approach.

120. We have noted in submissions to related inquiries we vehemently advocate for a **Restorative Justice Style program** whereby (related to determining financial restitution and compensation and redress) offenders, their supervisors, senior executives and CEO are required to participate in a professionally facilitated forum where the victim can speak of the impact and/or ask questions. Ideally the offender/s and enabling associates will learn from such engagement in being exposed to the human consequences of their predatory or irresponsible actions. Hopefully, they will choose to make amends too.

121. On the erroneous basis that white collar crime is a non-violent offence, Bushnell and Allen state in relation to the cost of prison and failure to deter repeat offending, that prison should be for those we are *'afraid of'* not merely *'mad at.'* Without exposure personally, or to victims of the type of white collar crime which financially devastates people and its personal ramifications, many people, like these no doubt well-meaning Research Fellows, have no real understanding of the terror and trauma inflicted. It can extend over many years. It can be life-long. Victims of Peter Holt and the lenders and products with which he collaborated are very afraid for the public and unsuspecting clients. Earlier victims of Mr Holt's firm and their industry associates existed last century – well before the vast majority of those who discovered the white collar crime to which they were subjected and revealed by the GFC. Reports had been made to ASIC. ASIC did nothing (see Appendix A).

122. Contrary to views expressed by the Institute of Public Affairs, while there is no doubt we are, to use its terminology, "*mad" - as hell* at Peter Holt, lenders, product issuers and certain liquidators we are not seeking prison as revenge. We want the truth exposed, penalties imposed for restitution and compensation (including to cover victims where offenders have been able to protect their assets). We also want penalties to fund

safeguards and meaningful redress for the future. Imprisonment is a lesser on the wish list of most victims (beyond the joy in healthy revenge fantasises). This does not mean it should not occur particularly where impacts have been severe. Professional disqualification and ban from working in the industry (not just of a licence for certain activities) with zero tolerance for serious (i.e. trauma and financial devastation inflicted on victims) white collar crime is necessary to deter offenders and demand accountability.

123. To this very day industry persists in a slap on the wrist response to offenders and handsomely rewards many. Coverage of NAB at the second 'bank grilling' on 3/3/17 reveals head of wealth, Andrew Hagger, who overcharged superannuation clients $36.5million in fees, received a total pay packet increase from $3million to $4.1million in 2015/16 – the highest second only to the CEO, Andrew Thorburn. Graeme Cowper, the 'biggest' of 55 planners "dismissed" between 2009-2015, left NAB in 2009 related to an investigation costing NAB $7million in compensation to 102 clients. Mr Thorburn defended Mr Hagger claiming he *"has actually led this business well and lifted the standards… part of the reason.. . the standards and risk management in our wealth business is much higher than ever before."* Liberal MP David Coleman queried this confidence given ASIC recently released information that NAB was required to pay $35Million for 4 years of customer breaches. Jackson Stiles reports Mr Thorburn told the committee Cowper "*was given a large payout, a confidentiality agreement and a 'very nice' letter of recommendation"* despite NAB admitting he breached its code of conduct.

124. Bushnell and Allen say *"white collar crime is not special, and white collar criminals should not be singled out for special treatment. The principles that apply to the punishment of nonviolent offending also apply to white collar crime."* We are perplexed by the word *'special'*. It is profoundly disturbed they lack understanding of the extensive trauma and life-altering impacts of the type of white collar crime victims' experience. It is difficult to imagine that Bushnell and Allen would dismiss it as ordinary offending, denying the most severe consequences should they find themselves to be victims of it - or their parents, adult children or other loved ones.

125. We are unsure why they contend an idea exists that white collar crime should be treated differently. Whether or not there is *"populist sentiment that the corporate sector is inherently criminal and unjust"* is irrelevant to the fact that individuals, and sections of the sector, have patently engaged in unethical and unconscionable conduct. Just because some people may be of the opinion most clergy can be trusted not to sexually abuse, while others believe few clergy can be trusted, does not change the fact that a certain percentage of clergy have inflicted gross damage, pain and suffering in sexually abusing members of their flock. Populist view is irrelevant to what constitutes crime or meaningful penalties. Bushnell and Allen admonish those who make sweeping generalizations including about the type of crime using it as a foundation with regard to action by the criminal justice system. Ironically, much of what they state is sweeping generalization based on inaccurate assumptions and failure to recognize relevant facts.

126. HNAB-AG has no desire for punishment being equated to *"…the accused's membership of a particular class"* in respect of *"education, wealth or social status."* From our point of view this is a peculiar claim in relation to victims with whom we are acquainted. The concern which relates to the status of white collar criminals is **professional advantage** through knowledge of, access to, and ability to manipulate

legislation and industry regulation or information to their advantage to both procure money from victims and then cover it up or claim no responsibility.

127. We agree entirely with the Institute of Public Affairs in the view the **punishment must fit the crime**. Hard-earned money, homes and retirements have been stolen from people who reasonably could be expected to trust purported professional advice. People have been placed in unauthorized debt and not been provided with genuine informed consent about risk or obligations. Some victims were placed in loans without their knowledge at all. Cash has been utilized from their accounts for purposes other than agreed. At a minimum, if the punishment is to fit the crime, restoration of money lost, enforced repayment of deceptive loans and penalty interest on these as well as related fees must occur. **Restitution** for direct losses, indirect financial losses must occur. **Compensation** is essential also for a fair, ethical response. It should cover incalculable financial loss and also pain and suffering, including the time to address the crime since discovery. (See elsewhere: section 'E' including Table 1 and Table 2.)

128. The Institute of Public Affairs concludes by saying that *"Treating white collar crime differently from other nonviolent crime is an unconscionable departure from the principle of equality before the law. The only reason to treat this class of criminals in a special way is political cynicism."* It is disturbing the Institute does not understand the lethal impacts of certain types of white collar crimes. Ironically they seek to blame politicians ignoring the unconscionable and inhumane treatment of victims from sections of an industry lacking in ethics and conscience even if not wholly corrupt. We welcome the opportunity to help the Institute understand the often diabolical long-term, life-long and intergenerational personal and financial impacts of the abuse of power and trust by the banking, insurance and finance sector. Information parallels the dynamics and impacts on victims of institutional responses to betrayal of trust or abuse of power (Appendix B).

129. HNAB-AG is concerned about uninformed public comments made by some well-known social and political commentators. There is not the time or resources to contact individuals toward addressing failures in their knowledge (for reasons outlined elsewhere in this submission regarding the impacts on victims financially and personally).

130. It is concerning that having written to mental health expert, Professor Ian Hickey, in April 2016 about comments he made on *The Drum* (including wanting to get on the band-wagon if compensation was to be paid) that 11 months later he has not replied or taken up the request to meet. He was asked about the need for a royal commission. It was apparent he had little understanding of the issue and impacts. He jested that everyone has grievances with banks and calls for a royal commission was a bit of 'bank bashing'. Two of the authors are also trauma counsellors. The need for research and professional development for professionals working with this population is apparent.

131. These comments have striven to underscore that consumer protection can only best be approached in a meaningful endeavour to rectify concerns about the banking, insurance and financial services sector with a view to safeguarding the community, ensuring accountability and providing redress to victims by appreciating:

1) the immeasurable impact of failures to safeguard people

2) the marked limitations of those not impacted, and without experience of the repercussions, to speak for, and about, those who are victims without extensive consultation, and exposure over time, to the range of these individuals on the spectrum of white collar crime, particularly at the worst case scenario end

3) the necessity for senate committees, parliamentarians and others involved in inquiries, reviews or examinations to seek ongoing feedback from, and engage directly with, victims (groups and individuals) rather than rely on industry, or its subcontracted or employed representatives and advocates for hardship programs and internal schemes to provide accurate and fair testimony without omission, agenda or outright deception

4) that assistance agreed to, or offered, by parliamentarians or others if not followed through has devastating consequences for victims already in despair, compounding suffering and also often financial repercussions in that it signals to industry they will not be held accountable and may continue undeterred.

SPECIFIC DETAILS REGARDING THE TERMS OF REFERENCE

What we do now about the past shapes our future and quality of present experience

A. any failures that are evident in the:
i. current laws and regulatory framework, and
ii. enforcement of the current laws and regulatory framework, including those arising from resourcing and administration;

132. Iceland has much to teach about responding to irresponsible and predatory activities leading to the GFC and recovery from it. It did not bail out the banks. Representation of women on boards contributing to a strong moral compass appears directly related. All Iceland's major banks went into meltdown except for one bank run by two women which did not fail. The country's commitment to investigate, prosecute and send about 70 bankers to prison has resulted in its economy thriving. Australia would be best served by following Iceland's commitment to hold industry offenders accountable. (Useful interviews, including with female CEOs, can be seen in Michael Moore's film *Where To Invade Next.* It also covers many countries which approach various social and community issues differently from much of the world with data demonstrating the value and success. It highlights the need for open-minded curiosity, not assuming we know best and willingness to consider radical options based on win-win, respect and humanity.)

133. It seems the overwhelming majority of advisors, insurers, lenders and other industry members have not been prosecuted in Australia for the horrendous financial misconduct and its impacts exposed by the GFC. Many victims remain in dire straits over 8 years later. Tens of thousands of Australians are reported to be involved.

134. Fundamental to this is the failure to require and enforce the provision of cheap, simple and protective measures which would safeguard all parties, including and particularly, the consumer whose best interests must be central.

135. Currently, victims are forced at law (according to the interpretation of banks and liquidators) to pay loans in which people have been deceptively placed, or even without their knowledge at all, despite loan application documents stating in criteria for acceptance that it must be completed in full and where either little more than a signature is present (original or photocopied/scanned) or limited information provided.

136. Further, no due diligence by lenders is required to ensure the purported "borrower":

a) is aware of the loan application and understands the terms and conditions
b) has been fully informed of the risks and obligations and is financially sophisticated to enter the contract and product
c) has accepted or declined measures to minimize risk (e.g. stop loss order)
d) knows the witness to the documents on dating and signing
e) is able to service the loan
f) information has been accurately presented by the agent / representative / advisor / accountant / broker / industry member
g) is provided with a loan approval confirmation to his/her personal address
h) is provided with a copy of all relevant correspondence and statements to his/her personal address which are pertinent and not sent only to the industry member who is advising and/or managing the client's financial affairs / portfolio.

137. At the most basic level safeguards must include:

i) meaningful informed consent (simple, plain language over 1-2 pages devoid of jargon and legalese as per examples in Appendix D and E)
ii) provision to the borrower of the fully completed loan application by the adviser / industry member well before meeting for signing
iii) provision of loan approval by the lender directly to the borrower well before meeting for signing (permitting time to seek other advice / second opinion)
iv) signing loan documents in the presence of all parties (borrower, lender, adviser / industry member, product issuer) with an independent witness not related to the industry – perhaps a qualified consumer advocate trained for this role
v) provision of hard copies of the signed documents to all stakeholders at the time of signing (i.e. multiple original copies, not one, and not a photocopy or merely electronic copy which is more able to be manipulated or doctored)
vi) provision of all statements and correspondence direct to client as well as adviser
vii) electronic recording of advice and agreement meetings and interviews
viii) disclosure of remuneration prior to pursuing a loan or product.

138. Original contracts must be provided to all parties, signed by all in each other's presence or, particularly, where prohibitive regarding location, counter-part original documents should be distributed for all parties to sign with electronic copy of all versions to verify and avoid doctoring.

139. Similarly, signed and witnessed copies of meaningful informed consent are essential. PDS and SOA are inadequate as they currently exist. They are too long, technical and confusing in terms of industry as well as legal language. We have offered to help lenders design these. It has not been taken up by any. (Examples included in Appendix D and E.)

140. It requires whistle-blower protections of meaning and substance such that people come forward - rather than being silenced by fear of retaliation and consequence to reputation and employability, thus financial future or reputations. This will assist in

confirming misconduct and identifying financial crimes. It will also change the culture and reduce the need for claims in the future.

141. In our opinion it is essential there be *strong safeguards and incentives for whistleblowers* to come forward. Not one person has come forward in relation to Peter Holt. He had many staff. Some left any association with him years before we learned of this decision. They did not report him, his partners or other staff to ASIC. How much of this is due to no confidence ASIC would act, or to acceptance of it being industry culture (even if removing themselves from participating) and how much is related to fears about the very real and substantial costs to whistleblowers, is unknown. The example of KordaMentha / Timbercorp is typical (see Appendix J).

142. To determine responsibility – and if any shared responsibility exists - it is necessary to be clear about what is reasonable to expect of the various parties:

a) **Client** – to provide honest and accurate information about what he or she knows about, and has capacity for control over, regarding income, assets and liabilities, plans and goals and if relevant, regarding self-employment

b) **Industry agent / professional** (accountant, advisor, broker, representative etc.) – to provide honest and accurate information and act in the best interests of his or her client with due diligence from a position of competence and integrity to best advise to enable informed consent and manage their financial affairs

c) **Lender** - to perform due diligence and provide honest and accurate information to enable a prospective borrower to make a genuinely informed decision, including understanding the risks involved and consequences and ensure he or she is aware of, and able to, meet obligations to service the loan and also as assessed by the lender

d) **Product issuer** - to perform due diligence and provide honest and accurate information to enable a prospective client / investor to make a genuinely informed decision, including understanding the risks involved and consequences should the company go into liquidation or the product fail to exist or fall short of projected industry expectations.

143. Table 1 outlines key aspects of what constitutes clear and substantiating evidence:

Table 1: Identification of white collar crime

Evidence	√
Lack of clear written and signed client financial situation, goals, investment product preferences, level of risk aversion and data required to best advise required by advisor	
Lack of comprehensive and accurate statement of financial position provided regularly and on request to client	
Lack of written and signed informed consent in simple, clear, language	
Lack of confirmation that a PDS has been provided, explained and understood	
Lack of confirmation that a SOA has been provided, explained and understood	
Lack of counter-part original documents (where all parties sign and retain an original of the same document)	
Document witnesses who have not met the client or are staff/associates of the firm	
Incomplete documents	
False information on documents provided by industry member	

Table 1 continued/ -	
Lack of due diligence performed by lender to ensure borrower is aware of the loan's existence, the terms and conditions and that he/she can service it	
Lack of due diligence performed by product issuer to ensure client / investor is aware of its existence, the risk and the terms and conditions and that he/she can service it	
Correspondence or contact from the client requesting information not provided and/or assurances provided by the industry member which the client could expect to trust and would not know was inaccurate or misleading	
Correspondence or contact from the client expressing concern or asking a question with responses provided by the industry member which the client could expect to trust and would not know was inaccurate or misleading	
Lack of confirmation the client was adequately informed or understood commissions or conflicted remuneration was paid and / or evidence this influenced advice given and / or arrangements made on behalf of the client which were not in his or her best interests in terms of risk, serviceability, or stated plans and goals or circumstances	
Documentation, or lack thereof, which demonstrates similar patterns of behaviour in handling multiple clients	
Mismatch of client level of financial sophistication with product/s and risk	
Liabilities listed as assets (and interpreted to client as such)	
Inaccurate listing of financial information which is known to industry member	
No documentation of client declining the option of implementing safety measures (such as stop-loss order for margin loan)	
Leveraging which creates liabilities that are greater than assets	
Whistleblower witness accounts with proof including earlier reports to ASIC	
Substantiating evidence – particularly in scenarios of multiple victims	
Reports by more than 1 client prior to meeting / hearing of others' experiences given to unrelated people (industry members, lawyers, journalists, medical and counselling professionals or other credible sources) of the same or similar activities	
Affidavit or sworn testimony of other credible people known to the victim before concerns emerged in respect of what he or she recounted about advice and/or assurances given by the industry member	
Statements of other credible people who met with the industry professional in considering his/her services but may have chosen not to proceed for reasons not related to identifying it as deceptive, misleading and inaccurate	
Associates or former staff who departed from working with the industry member on the basis of concern about activities – even if not reporting to ASIC	
Whistleblower account of witnessing activities (without proof)	
Associates, former or current staff or colleagues who report cause to be concerned about the industry member's conduct	
Consideration of recognition of the inherent trust implied and imbalance of power which can be wielded against a client / consumer to his or her marked detriment and disadvantage e.g. (under the *Trade Practices Act*) factors deemed unconscionable in the selling or supplying of goods and services to a customer, or to the supplying or acquiring of goods or services to or from a business, include: - the relative bargaining strength of the parties - whether any conditions were imposed on the weaker party that were not reasonably necessary to protect the legitimate interests of the stronger party - whether the weaker party could understand the documentation used - the use of undue influence, pressure or unfair tactics by the stronger party - the requirements of applicable industry codes - the willingness of the stronger party to negotiate - the extent to which the parties acted in good faith	

144. The failures in terms of the regulatory system are staggering and substantial. An essential factor is the lack of existence of a reliable, competent, genuinely independent, ethical and trauma-informed dispute resolution scheme with panels (comprising at least an ombudsman, industry representative of the product/s in question, consumer advocate AND former victim - not a sole ombudsman / advocate) able to:
    a) Provide assistance with preparing and compiling documents (or lack thereof, when not provided by industry) for a panel to examine
    b) Assess a case – including *complex multi-lender multi-product scenarios*
    c) Determine and enforce restitution and compensation
    d) Impose penalties and hold individual offenders and their organizations accountable
    e) Benefit the industry, community, offender and victim through both:
    - implementing safeguards going forward in respect of the dispute, and
    - healing for the victim while also contributing to changing industry culture through a Restorative Justice-style program.

145. **ASIC**: From our experience concerns related to ASIC are not related to funding. We have detailed experiences to previous inquiries and reviews about ASIC in respect of concerns prior to government cutting $120million before it was reinstated. Turnover of staff appears frequent. We were passed on to new people repeatedly. Typically they knew nothing despite complaints (recent and in the past), meetings and documentation and ASIC's eventual ban of Peter Holt. Documentation details experiences. One staff member reported nothing on her computer regarding our complaint. ASIC was disinterested in meeting with victims, pursing Peter Holt or related parties. It did not inform us about a Security Bond (of a paltry $20,000) which existed for the purpose should there be a verified complaint. It took about 2 years to resolve once we advised of our wish to lodge interest. (See Appendix A.)

146. We are in agreement with much of the Interim Report authored by Professor Ramsay and his Panel regarding their *Review of the Financial System's External Dispute Resolution (EDR) and Complaints Framework.* However, we are wholly perplexed that ASIC is deemed fit and appropriate to oversee the formation of a new one-stop shop Ombudsman scheme. (We take this opportunity to underscore our support for a new scheme comprised of appropriately well-trained and audited panels as opposed to a tribunal. We vehemently oppose a tribunal design given the nature of these is adversarial and legalistic. It would benefit industry much the same as the current system does enabling protracted delays, appeals and advantaging those with deep pockets and industry contacts.)

147. In brief, along with industry, ASIC has provided inaccurate and misleading testimony to parliamentarians, in addition to demonstrating disinterest in hearing or pursuing complaints from victims. It required years of effort and eventual input post a senate inquiry at the encouragement of a liquidator (who had ignored our correspondence about it for 2.5 years prior to that hearing) for ASIC to consider criminal charges against Peter Holt. The lack of evidence (encouraging industry not to provide documents) thwarted proceeding. It is noteworthy that ASIC:

- testified to parliamentarians it was *"in consultation"* with HNAB-AG. However, only 1 meeting occurred regarding considering criminal charges of Peter Holt. At this meeting we were informed categorically *"no consultation"* would occur. ASIC did not take up our offer to assist with documentation or identifying who may be a good

witness in court despite access to 140 victims and intricate knowledge of circumstances. Further, it sought to bury its decision not to pursue charges (due to insufficient admissible evidence to the standard required to establish a breach of the law) by releasing it shortly before close of business on the eve of Easter 2016.

- did nothing about Peter Holt despite reports by victims much earlier than those who discovered his activities due to the GFC revealing deception and negligence.

- eventually issued a ban of 3 years against Mr Holt for providing financial services but failed to ban him according to its own criteria which met a minimum ban of 10 years to Life. Adding insult to injury ASIC staff claimed the view a 3 year ban would have a serious impact. ASIC staff appeared to have little idea he could still operate as an accountant and use staff who retained (or gained) a qualification in financial planning (then as little as 2 weeks) to provide and sign off on advice to clients. Peter Holt has boasted about playing the system. This includes securing his assets beyond creditors' reach (remaining in his multi-million dollar home, driving his luxury car and retaining his lifestyle). He entered insolvency and a seeming fake-debt bankruptcy while phoenixing his business. ASIC is either grossly naïve or incompetent – or perhaps is not unduly concerned with invisible, powerless victims.

148. For a summary of HNAB-AG's experience of ASIC (to May 2016) we sincerely hope the committee will read Appendix A. Disillusioning, demoralizing, frustrating, pointless and pitifully inept are understatements as reflective of victims' view of the regulator. ASIC has responsibility for what it enabled Peter Holt to subject his clients to suffer and for the lack of redress compounding the trauma on discovery many times over.

149. **FOS**: Concerns regarding existing schemes such as FOS have been described in detail elsewhere including our invited submission to the *Review of the Financial System's External Dispute Resolution (EDR) and Complaints Framework.* In brief:

A. **Numerous barriers to lodging a complaint** exist which extend beyond the limitations of a scheme's design e.g.:

1) **Overwhelming shock** on discovery of betrayal of trust and abuse of power with consequent trigger to major stress response (fight, flight freeze, submit);
- age and stage of life e.g. family commitment priorities on discovery; health
- ongoing unfoldment in multi-lender multi-product cases including demand for payment for deceptive placement in loans for 'investments' which never existed, have collapsed, become diseased or wiped out in some fashion and will produce no, or little, benefit or have been liquidated (shares, margin lending) or have been substantially misrepresented.

2) **Necessity to prioritize stopping the bleed** and deal with lenders, products and liquidators demanding money and claiming it is lawful.

3) **Depends on extent of losses and lack of ability or prospects** to address it and placement in debt:
- the greater the complexity and the lesser the financial sophistication, the less able a victim is to prioritize focussing on lodging a complaint given the lack of confidence in a reliable avenue as well as the need to radically increase income or return to work to pay debt and survive - or frankly, to just stay sane.

- victims had to refinance their home, sell it, downsize, rent or couch surf etc.
- marriages, children, extended families and relationships suffer
- capacity to cope with work is impacted (concentration, decisions, self-confidence)
- consequent mental health impacts (debilitating depression, anxiety, insomnia) and stress-related disease (cardiac, immune system etc.) can deepen making coping with basic commitments all-consuming or even impossible.

4) **Attempts to understand and address white collar crime re-activates trauma and may extend the shock and distress especially if new pieces emerge** – this is particularly so when a victim does not understand or cannot explain how it occurred or prove it where advice and 'explanation' of technical documents was verbal and not recorded electronically. However, often evidence makes no difference compounding despair.

5) **Not knowing where to go for help** – many do not know internal dispute resolutions schemes exist. However, people like Peter Holt do not comply. Further 45 days is allowed for a response before the victim can go to an EDR like FOS. In more than 99% of known cases of Peter Holt IDR and EDR made no difference anyhow.

6) **ASIC, FOS, community legal centre, financial counsellors and other unrelated industry members typically discourage pursuing a complaint** beyond the IDR as it is too time-consuming, costly, industry has deep pockets and can play the system to drag a case out depleting any money left, energy and applying pressure to withdraw, desist and acquiesce. Effectively the powerlessness of the victim and might of the industry is made clear. Advice to move on may be well-meaning and even accurate as the system stands but it enables misconduct to grow and fester undeterred. Shockingly, rather take complaints ASIC told victims they should just *"move on."*

7) **Psychological trauma counselling services may not be affordable or accessible, or adequately trained, even if victims recognize the need** – resources, research and understanding available to mental health experts about this type of trauma does not exist as currently does for family violence, sexual assault, torture, disaster etc.

150. **B**. **Design of schemes presents barriers**:

b) No affordable, competent assistance to collate, prepare or present material to internal or external schemes exists. (Industry bodies like CPA Australia had no interest when the CEO was informed conclusions informing disciplinary action due to Holt's insolvency were incorrect. This adds to the sense of doors slammed shut.)

c) FOS had a cap of loss of $150,000 on cases it took on in 2008. While it increased it to $250,000 and then $500,000 this precludes all authors of this submission and many members of HNAB-AG from lodging a complaint (if they could manage to compile it).

d) Inability to enforce or compel industry members to provide a full and complete copy of a victim's file - or to ensure what is provided is not doctored or shredded.

e) Time limits including 45 days to pursue an IDR, as well as the statute of limitations, practically trying to put a complaint together are all serious issues. Lodging a complaint is extremely difficult, if not impossible without expert assistance, for many. It is beyond the coping capacity of many for reasons outlined above. Having

intelligence, tertiary education or proficiency in one's profession or job does not equip people to be forensic accountants or finance experts to present their case.

f) Inadequate professional indemnity insurance, as well as hundreds of other victims involved, means that funds for redress are not available in many cases such as victims of Peter Holt. Further the design of legal separation by lenders and agents listed as *'authorized representatives'* means that victims cannot pursue all those involved in the chain which entrapped them.

151. **C. Trauma factors**:

1) Victims who are rendered powerless, typically avoid facing the terrifying reality of being at the mercy of someone else, having no means to influence being helpless in an overwhelmingly vulnerable situation where ones sense of security and agency is in peril by:
    i. denial of the fact of the occurrence of abuse / trauma or
    ii. rationalization or minimization of impacts
    iii. blaming oneself as if he/she could have influenced the situation when this is not reasonable or possible.

2) Victims of rape, child sexual abuse, family and domestic violence, home invasion, arson, coward punch or attempted murder etc. often feel deeply humiliated and ashamed as if they have some role or responsibility for what was inflicted by someone/people who took advantage of them. It can also stem from fear of being unable to explain or defend the truth in the face of those who lack understanding or have vested interests. Victims of natural disasters can also self-blame for the same reason despite it being apparent no human intervention could have prevented a flood, bushfire, earthquake, cyclone, landslide etc. It is also why some in society at large, not directly touched by a crime, may blame the victim: no-one wants to be reminded that any one of us can in fact be rendered utterly powerless.

3) We have noted elsewhere other factors related to trauma and its impact on pursuing redress both in respect of, and separate to, the state of current laws and regulatory framework.

4) It should be apparent to anyone who has carefully examined the consequences of banking, insurance and finance sector crimes / misconduct that law makers, policy advisors and those involved in the regulatory system and determining cases and redress must be properly trained in trauma-informed care and practice. Two of the authors are experienced trauma counsellors and educators as well as victims of gross white collar crime. This places them in a unique position to know what is lacking and what is desperately needed.

Human cost of predatory and irresponsible industry practices: lack of trust, devastated lives and beyond

b) the impact of misconduct in the sector on victims and on consumers;

152. Misconduct may impact most Australians in imperceptible ways or simply be an annoyance or minor gripe. For them they may simply distrust the banks, insurance and finance sector. However, the spectrum of misconduct is vast. Impacts of serious negligence, deception or fraud have been referred to above and documented in submissions to previous Inquiries.

153. Award-winning journalist, Adele Ferguson, noted victims of white collar crime have been described as '*The Forgotten People*.' Her revealing exposés with 4 Corners and Fairfax reveal something of the torment and trauma.

154. One couple who are members of HNAB-AG lost their home and property in the Black Saturday bushfires of February 2009 – barely a few months after the GFC exploded the lives of hundreds of clients of Peter Holt's firm. They report the impact of what Peter Holt and his collaborators did is far more traumatic than losing their property in the fires.

155. This says a great deal about white collar crime and its impacts: the loss of property and lives in a fire (or witnessed event in a particular location and time) is horrifically graphic. Government, national and community support is extended emotionally, practically and financially. It helps bear the trauma and begin to recover. The devastation is witnessed and the victims are honoured. It's in the media. Memorials pay tribute to the deaths and devastated families. Anniversary and follow-up stories cover the process of recovery and highlight delays or problems in progress. Most fellow Australians recognize that primarily these were innocent victims. The acknowledgment and support does not occur for victims of white collar crime. The fact Black Saturday pales for this couple in comparison with white collar crime is testament to the impact.

156. The isolation, and sometimes literal dislocation from former lives and loved ones, can be overwhelming and even unbearable. It is certainly life-altering for those severely affected. It takes tremendous effort to build a new life. Being able to do that should not be confused with resolution of the ongoing trauma symptoms (e.g. anxiety, depression, insomnia, hypervigilance, overwhelm, distrust of others, suicidal ideation etc.) and re-activation of these to triggers which can be life-long.

157. Typical of corruption and failures to address abuse of power, it seems that persistence from enough victims, advocates, whistleblowers, media and others is necessary before power structures are prepared to listen or act. In general there is limited understanding of the type of unconscionable conduct to which we were subjected or its harrowing repercussions and impacts. Research is needed and concerted campaigns to educate and raise community awareness. No foundations exist to raise funds for people who have had their lives devastated and are suffering a range of serious financial, personal, family, social, career and health impacts.

158. Impacts have economic repercussions for the wider community given health, social and work issues. This includes severe stress-related impacts from disease to deaths (cancer, cardiac, gastro-intestinal and immune system etc.; well-being concerns through to severe mental health issues, including suicide attempts and completions). It involves family breakdown, separations and divorce with consequent far-reaching financial, personal and family impacts. It can result in the commencement of, or escalate existing, family violence and sexual abuse or old previous trauma histories.

159. All of these factors have serious impacts on children, from unborn babies to young dependent adults. It has been associated with a rise in domestic / family violence and sexual abuse due to unavailable parents in distress or taking it out on family.

160. It also impacts older adults highly distressed about their middle-aged or elderly parents' well-being and financial circumstances when their home has to be sold, savings are diminished or wiped out and placement in deceptive debt occurs.

161. Even with strong emotional and practical support from family white collar crime leaves people with no dignity, mortified at financial dependence and constraints - and susceptible to traumatic stress-related disease, depression, anxiety and suicidality.

162. It is comparable to the impact of any other crime or abuse which threatens ones sense of safety as a result of betrayal or trust in the abuse of power. It impacts ones sense of self, others and world-view. (See Appendix B.)

163. Men in particular struggle with the shock and sense of having let down, and not protected, their families even though they may understand there was nothing they could do short of having a crystal ball to detect deception and negligence. It can take victims years to understand how, and what happened, once it is exposed. It is often more difficult for men due to the ingrained cultural expectations of their role and power. Typically but not always, the older a man is, the less comfortable he is with acknowledging or communicating distress levels. Frequently, men are not comfortable expressing anxiety, depression and despair to their spouse/partner or they choose not to because of their wife's own high levels of anguish and distress. Many couples are not able to discuss their financial situation.

164. This relates to very high rates of suicidal ideation especially among men who are victims of white collar crime in our group. The notion of seeking professional counselling is not only typically not an option in terms of how they view themselves but it is also a further financial burden they simply cannot afford. Over the years the authors have had countless men contact them for emotional, and crisis, support. We have helped direct many to professional support. The fact we too are victims of the same experience, and the moral support at meetings and in emailed updates, has provided safety for many to reach out. Fortunately, this has quite literally saved lives.

165. We have no data on those victims who are too traumatized to reach out, come to meetings or maintain contact due to trauma levels. Most victims are too traumatized and overwhelmed to take action in respect of the industry or to seek parliamentarian help – or even to try to understand what happened. In a state of overwhelm, people who are normally competent and intelligent report being unable to open, far less read or absorb and understand, documentation even years later. The vast majority are financially unsophisticated. It can take several years to begin to understand enough to be able to try to communicate concerns about it. People are typically out of their depth.

166. The other point we wish to make is that too often many parliamentarians, industry and other power structures perceive situations through the eyes of their lives from relative or marked financial security. Generally, they have a higher level of financial understanding and access to reliable advice. Failure to understand can be aggravated when some have come from poor or disadvantaged backgrounds and have the belief that if they can pull themselves up out of difficulty, anyone can. It is not that simple.

Nor is disadvantage the same issue as financial abuse or white collar crime. It does a grave injustice in failing to appreciate the complexity of relevant re-victimizing social and political factors.

167. The toll of writing these submissions, appearing at hearings, pursuing and speaking with parliamentarians cannot be conveyed. The burden is considerable in feeling responsible to persist in exposing the truth. It is understandable that most people give up and focus on rebuilding their life. In so doing that creates guilt knowing they become part of the problem in being silent and enabling these activities to occur. The distress at so little outcome and change, for so much effort and pain and anguish, is too much for us to bear at times. Some of us draw strength from victims who are unable to speak out or take action. We know the time has come to face the scourge of the financial sector.

Price of no moral compass: profit driven culture

c) the impact on consumer outcomes of:

ii. executive and non-executive remuneration,
iii. incentive-based commission structures, and
iv. fee-for-no-service or recurring fee structures;

168. The impact on consumers of conflicted remuneration and obscenely paid executives and CEOs driven by profit rather than ethics, personal responsibility or social conscience is staggering. It would be radically reduced through swift change in industry culture if pay was inversely related to the amount of loss incurred, or risked, in white collar crime related to an industry member and his/her organization.

169. Pivotal to the tragedy of white collar crime for individual victims as well as the destabilising consequent social and national economic aspects, is not so much the exorbitant salaries and bonus paid to CEOs and senior executives (which is another issue in itself) but the fact it is tied to profit rather than ethics.

170. Lenders' promoted images and vision statements are inauthentic. They are sales techniques. It is advertising to create an illusion of trust and confidence. Meantime, consumers are lured and trapped in fine print and detail they do not understand and are deceived by advice they should have been able to trust. Best practice and ethical excellence must be based in responsibility to conduct business honestly. The rights and welfare of the consumer must underpin efforts to be productive and profitable. Clients and customers of the banking, insurance and finance sector should not be treated as unwitting pawns whose money can be gambled or robbed blind.

171. Profit should not be made at any cost. It should not occur on the backs of consumers including those who may never know how they have been diddled or may not be significantly impacted in the scheme of things. And profit should never be permitted on the backs of innocent victims whose lives are devastated beyond financial ruin with years of anguish. Diminished choices and quality of life is not acceptable. Nor is pain and suffering for related personal and health repercussions.

172. In our experience executives and power structures behave as if, and appear to believe, and actually be – mostly untouchable. They make a mockery of senate inquiries

and parliamentarians providing misleading and inaccurate information and placating them with commitments to victims they have no qualms in dishonouring.

173. Donations or conflicted remuneration related to political parties must also be stopped given the history of worrisome influence in terms of what certain parliamentarians will listen to and act on. Power, greed and agenda links the industry to politics. The position taken, or even interest or willingness of some parliamentarians to meet with victims, far less take responsible and ethical measures to address their plight and safeguard consumers, appears evident. This elephant in the room must not be ignored.

Incentive-based commission structures, additional and recurring fees: encouraging and rewarding crime and highway robbery

174. Linking the bulk of remuneration for CEOs and executives inversely to the number of (genuinely) independent substantiated complaints and also the amount of money or value lost or risked, would swiftly alter industry culture. Stakeholders, particularly shareholders as well as employees would be motivated to ensure adequate safeguards and protocols were in place. As noted in this submission and others we have provided, these measures would not be expensive to implement. This is what makes the devastation and loss of lives a tragedy: much of what has occurred to victims like members of HNAB-AG was easily preventable. It will not stop all white collar crime but it will markedly impact the ease with which it occurs and the encouragement of industry to risk or misuse other people's money, homes, families, careers, health and lives.

175. There is overwhelming evidence that the white collar crime to which Holt clients were subjected, was incentivized and driven by conflicted remuneration. Although he claimed to only make money when clients made money – which lured people in and created confidence – in actuality, unbeknown to most clients, he gained substantially from money through commissions paid by lenders and kickbacks related to products. Over time, he also introduced and rationalized, charging clients a monthly fee to manage their investments as well as a fee or percentage of their portfolio. None of it was in the best interests of the client. It was entirely for the profit of Mr Holt, his partners and related financial structures and lenders and product issuers.

176. Regarding ethics or requirements, Mr Holt omitted to disclose openly and clearly, or even at all, how he was handsomely remunerated. It is estimated he amassed millions of dollars, in cash or kind, from such commissions and fees on the basis of at least 500 clients. SOAs and PDSs were not always provided. They were not highlighted as important to understand or seek independent advice: indeed, it was to the contrary.

177. The personal and financial impact quite simply has been life-altering: it is immeasurable and devastating. It has impacted those who started with Mr Holt as working teenagers through to the very elderly. The financial spectrum covers a large hit in proportion to income and assets (e.g. $30,000) through to total financial ruin, loss of home and/or bankruptcy. This includes people on incomes of $40,000 to those who were earning executive salaries and some with considerable wealth. Most owned their own home, or had substantial equity in it. People had worked hard their entire lives to create financial security. The irony is people endeavoured to be responsible for their lives and futures as self-funded retirees.

A costly '6 Degrees of Separation'

d) the culture and chain of responsibility in relation to misconduct within entities within the sector;

The web of deceit and cost of varying degrees of separation

178. The aftermath on discovery of the web of deceit and negligence by Peter Holt's firm exposed that the financial system and its members are able to protect themselves, and have each other's backs, through insidious technicalities which are not known or explained to the client/consumer. The financial advisor / planner or accountant knows how to present him or herself to reassure the unsuspecting client of appropriate qualifications, expertise, experience and relationships with major and other banks and product issuers. The consumer is none-the-wiser that he or she largely unprotected by the regulatory system.

179. Letters and email listed Peter Holt as an *"authorized representative"* and he also reinforced this inference as being aligned with products and industry. It suggested collaboration and acceptance of competence by these industry organizations. It lures the consumer/client into the web where they remain captive. People are then devoured by the expert services they were led to believe they could trust. This includes the major banks and industry in general, not just the frontline 'professional' crook. Mr Holt's experience as a former ATO-auditor creates false confidence in his integrity.

180. While not exclusive by any means in our experience to *"low-doc loans",* unless the structures and mechanisms to separate banks from those borrowers offered *"low-doc"* loans via brokers, advisors, agents etc. are recognized as a means to avoid responsibility by the lenders (and advisors), then innocent victims will be targeted and remain unable to obtain redress from predatory practices.

181. Adjunct Associate Professor of Social and Political Sciences at University of Sydney, Michael West has written of low doc loans, banks and mortgage brokers, *"Although the loan contract itself is between the two parties, the borrower and the lender, and article 25 of the Code of Banking Practice says the banker ought to establish if the borrower can afford the loan, the banks contend that the brokers are not their agents."* Instead the lender secures itself against risk as in the case of Mortgage Miracles client, Julia Eastland, a 71 year old pensioner where:

1) the banks and other lenders are the "investors" and
2) they lend money to the "trust"
3) of which the lender is a trustee and
4) another industry body is the "program manager and the "servicer" of the trust and then
5) using money from the banks, the trust then buys a pool of loans from the "mortgage managers" and
6) then organize finance for the loan introducers who are separate from the bank.

182. Michael West describes this as *"a costly 6 degrees of separation"* between the lender and the crook who fudged the loan documents which protects the bank. As he says, *"There is a corpse but no murderer, just a mute, multi-headed structure-beast*

lurking near the crime scene." He reports lawyer Graeme Hancock describes *"the low-doc loan debacle is systematic and widespread."*

183. As well as property deals, loans can be sold for whatever purpose where the client is told not to worry about repayments as they can be made from the principal of the loan. West says victims are often *"financially unsophisticated people so the 'media noise' from their cases is unlikely to get too loud."* Elderly people are obviously easy targets. However, a vast range of people in terms of age and profession or trade were targeted by Mr Holt's firm. Clients were placed in loans for investment, BT margin lending and agribusiness through low doc loans.

184. Many victims of Peter Holt and his collaboration with numerous lenders experienced this in agribusiness loans and BT margin lending. He, his partners and staff took advantage of people's lack of financial sophistication and /or choice to have qualified professionals guide and manage their investments to ensure their safety. The firm recommended products, 'explained' them (which included misleading information, omissions, and outright fabrication), outlined why and how their expertise was necessary in applying for and managing an investment and what the client needed to sign to permit this to occur. No due diligence occurred from the lenders or the product issuers. Clients did not know what they needed to know to protect against the industry. Industry is invested in keeping a borrower/investor in the dark – not proactively ensuring real consumer protections where in place. How this could have been prevented is addressed elsewhere in this submission.

185. **BT Margin Lending** was a major disaster for Holt victims. The structure of the scheme was such that at no time was BT at risk while the victim, entirely unknowingly, was placed to risk everything. This meant people could be – and were – left with debt to another bank which had been used by Mr Holt to provide an "investment loan" for his espoused safe, secure, sound, strategy for setting up BT. There is circumstantial evidence that Mr Holt provided outright deceptive and false information about the risks including that the client's home was not at risk and was not used as security in procuring the loan. We now understand it to be a double-gearing scenario (which provided Mr Holt with yet additional commissions and benefits). (See Appendix M for data provided to BT and also its reply to HNAB-AG's letter.)

186. Had Peter Holt and his staff advised clients that a *'stop-loss order'* could have been put in place people would have been able to choose how much they were willing to lose when, and if, the stock market dropped by that amount – however, little or significant. This would have allowed for informed consent. The real risk had been misrepresented entirely. It would have meant the unsuitability of this product for some, if not many, would have been identified. It would have enabled all to make an informed decision. Measures to ensure it was clear one's home was used as security for the so-called investment loan would have meant people could have been informed to proceed with, or decline, the double-gearing. Victims learned of this measure after the GFC. Most heard of it for the first time in 2015 including the authors of this submission.

187. BT did nothing to ensure clients knew about this option or that it had been declined or accepted. Moreover, BT did nothing to ensure clients knew they even had a share portfolio. Two of the authors discovered such an 'investment' only recently. In the case of one author, unbeknown to her until recently, along with a Timbercorp loan taken out

in 1999 by Mr Holt (the same year as the BT shares) these were placed in a Trust in which Mr Holt had set up for her home purportedly to safeguard it.

188. Some years later she was recommend by Mr Holt to remove her home from the Trust as he claimed laws had changed and it no longer served any protective purpose. He did not inform her of investments in that company name (which now she cannot access without expense and complication) having closed it in 2004. It emerged in 2008 that his motivation had been to access the substantial equity in her home for the commissions and trailing fees he made on placing her in BT Margin Lending after obtaining a $500,000 *"investment loan"* (unbeknown to her, secured against her home despite Mr Holt having maintained a principle of investing was never to risk one's home which was imperative to her and thus gained her trust).

189. Material and sworn affidavits exist from people the client confided in prior to the discovery of his activities which indicate Mr Holt lied and/or was grossly incompetent in his assurances and explanations. He claimed he had designed a buffer to create greater safety than the banks required in the inevitable event of a share market drop. He explained expertise in his set-up design meant the dividends from investments would cover loan repayments, maintenance and management fees. He said tax deductions were provided by the government to encourage people to support these investments given the limitations of superannuation for our, and future, generations. He carefully groomed people and took advantage of people being out of their depth and their respect for his (purported) expertise. When we struggled to understand his plans and strategies he noted he could no more do our jobs than we could his. Of course, this is exactly why people seek out specialist expertise.

190. People are victims of Peter Holt as well as BT and the lender providing the "investment loan" (which includes CBA, NAB, Westpac, etc.). Victims have no recourse regarding Peter Holt's role due to strategic use of his financial and legal knowledge securing assets beyond reach of 'creditors' (his victims) and entering voluntary bankruptcy and insolvency. Victims have no recourse to BT because it claims it is not responsible despite gross failures of due diligence. Likewise, lenders providing investment loans are protected by the set-up. Money is made, in gargantuan amounts, by making no real efforts to ensure 'clients' were genuinely informed. It is disgraceful to suggest victims should have done their 'due diligence.' If we knew what to do, how to do it and what it meant we would be far less likely to have engaged an industry professional. It makes money by effectively keeping clients in the dark – and then blaming them as if there were financially sophisticated.

191. Employees from major banks, such as [redacted] from CBA, were introduced as *"mobile lenders"* sent out to Mr Holt's firm to assist with arranging loans, including *"low-doc loans."* This provided added reassurance to clients that the firm and banks worked closely together. It gave the impression all was above board and could be trusted (this was before 2008 and the emergence of rolling scandals). *Low-doc* loans were explained as designed for people who were self-employed or in business or whose tax returns were more complicated such as with investment portfolios. [redacted] and others like him, reinforced they were familiar with the strategy Holt outlined and nothing was out of the ordinary. [redacted] did not look askance, baulk, contradict, query or suggest further information might be necessary when Mr Holt would advise certain action. For instance, this occurred regarding confusion as to what to list as income when it ranged considerably - and knowing it was soon to decrease due to plans for the future. Nor did

he ensure informed consent has occurred or serviceability been assessed. Consequently, the banks providing "investment loans" also have ethical responsibility in Margin Loan catastrophes.

192. Consumer protection to stop structured separation must be implemented with past unethical conduct held accountable by way of restitution and compensation.

193. Each player in the industry was concerned only for maximum profit without regard for risk to the client/consumer. Thus, ultimately each is responsible for the consequences to victims. This must be rectified with redress provided retrospectively. Successive governments and industry overall have enabled it and are responsible too.

194. **Holt's admission to ASIC and BT's role**: When ASIC (eventually) gave some attention to complaints about Peter Holt, it is noted in the banning report he acknowledged he required more training to be competent in respect of BT margin lending. Yet he, and the industry, have got off scot-free in terms of being required to provide redress – money must be restored and compensation paid for the ordeal (now spanning over 8 years) or the crooks and fraudsters are rewarded. BT's role in this has also been ignored. BT had a responsibility to ensure applications it accepted, and management of margin loans, made on behalf of consumers from industry members were handled by professionals who were properly trained and competent. We are aware that around the time of the GFC commencing, BT provided staff to try to help Holt's firm when it struggled to manage clients' share portfolios.

195. BT did not contact people until it had liquidated their portfolios. Confusingly, sometimes victims were informed after that it had been 'resurrected' - this appears to relate to issues with Holt's office. It is not possible to convey the shock on discovery of your shares being liquidated. It was not something people had any idea was possible.

196. Most of the victims had not heard of the term *"margin call"* far less understood it or that it was a risk for their BT margin loan share portfolio prior to the GFC and liquidation of their portfolio. Both Mr Holt and BT are responsible directly for this catastrophe.

197. An online electronic survey was conducted with our members in 2015 in respect of BT margin loans. It outlines the above information and elaborates. A letter of complaint was sent to Brad Cooper, CEO on 11 March 2016. The typical response from industry was received. It includes:

- Denial of responsibility
- Deflection from key issues and inadequate response
- Disinterest and lack of concern regarding offer to help design safeguards for future 'investors'
- Disingenuous comments
- Referral to FOS (despite statute of limitations and knowing individual losses exceeded its cap)
- Refusal to engage in further dialogue (directly stated in this case).

198. As part of the *multi-lender multi-product white collar crime* to which most victims of Holt's firm were subjected, we believe a **Commission of Inquiry** or **Royal Commission** is the most appropriate avenue to examine **BT MARGIN LENDING**. In turn this would allow for recommendations regarding reform and redress going forward. However, a forum to

examine cases and award retrospective restitution and compensation must urgently be established separate to a thorough inquiry regarding the industry.

199. A **Senate Inquiry into Margin Lending** may be useful. However, in our experience industry has no qualms about providing misleading and inaccurate information. This may impact willingness of victims to participate. A panel of genuinely independent industry experts, consumer advocates and victims (and also any whistleblowers) of a given product, could collaborate and advise a committee so that the most relevant questions are posed. The capacity for such a panel to challenge comments in real time is necessary. While a further inquiry may help expose the level of misconduct and corruption, in our view, a thorough investigation with the power and mandate to focus on consumer protections and redress for victims seems patently long overdue.

200. Recommendations must include the ethical responsibility to provide full restitution of losses and compensation: nothing will give us back the personal and health impacts or the loss of more than 8 years of our lives - or however long it may be until proper redress occurs.

201. **Agribusiness MIS**: Clients of Peter Holt's firm were placed in numerous agribusinesses such as Timbercorp, Rewards, ITC, TFS, FEAP, Mahogany and so forth. Typically, these emerged as Ponzi schemes and/or were badly managed. Forestry and horticultural products became diseased, wiped out for some reason or were never viable – or even planted yet demands for loan repayments were made by liquidators. These monies were not returned to the client but spent on other things or taken by directors before the company went into liquidation. Issues regarding loans – again sometimes unbeknown to the 'investor/borrower/client' – involve the same concerns about carefully designed degrees of separation by the industry which protects those making money and discriminates against the consumer who thus, is a victim: a sitting target for unscrupulous and corrupt white collar criminal individuals and organizations.

202. As part of the *multi-lender multi-product white collar crime* to which most victims of Holt's firm were subjected, we believe a **Commission of Inquiry** or **Royal Commission** with the broadest possible terms of reference is the most appropriate avenue to examine **AGRIBUSINESSES AND RELATED LOANS** and liquidators. Superannuation, insurance and other industry concerns must be included. A separate forum for retrospective restitution and compensation must be dealt with immediately.

203. Much has been provided to the senate economics committee in other Inquiries about the example of Timbercorp and liquidators KordaMentha. However, numerous other agribusiness also warrant thorough examination through the most comprehensive and reliable avenue possible. Regrettably, feedback about progress of KordaMentha's hardship program was not sought from HNAB-AG after the hearing in November 2014. However, Hansard of the subsequent hearing in August 2015 specifies that feedback was sought by the Chair, Senator Dastyari, from the liquidator, Craig Shepard, and his hardship program advocate, Catriona Lowe.

204. Information about serious concerns reported to HNAB-AG, and from the experience of representatives endeavouring to help victims by collaborating with the liquidator and advocate, as well as requests for assistance, was provided to Senator Dastyari and [redacted], his adviser at the time. For unknown reasons the substantial support and efforts prior to the end of 2014 from Senator Dastyari and [redacted] suddenly

ceased. The impact was evident. It has had devastating personal and financial consequences for the victims including giving up hope and feeling betrayed once again. It signalled the all-clear for Craig Shepard and KordaMentha's hardship program to continue, and escalate, distressing conduct and unreasonable demands which continue to date, March 2017. (See Appendix J, K, L.)

205. Senator Xenophon agreed to assist HNAB-AG towards the end of 2015. Information was provided including example cases of the range of concerns people reported. He met with representatives of HNAB-AG and KordaMentha and its hardship program advocate a few times from December 2015. He also agreed to assist with serious concerns about the deed of settlement. At March 2017, both of these remain cause for marked concern.

206. While Mr Shepard agreed to some amendments in the first meeting in June 2016, those were not the primary concerns. He also agreed to make these retrospective. He committed to providing documentation protecting those who had already signed a deed. Disturbingly, he insisted any alterations would only apply to victims of Mr Holt who were members of HNAB-AG. Mark Korda informed a senate hearing there are approximately 500 Holt victims. The liquidator is aware that roughly 140 know of HNAB-AG and have joined. It means about 360 victims of Timbercorp - Holt collaboration will sign deeds which seriously disadvantage them and contain false information.

207. A second meeting about the deed occurred in June 2016 and included many members of HNAB-AG in addition to representatives; Senator Xenophon; Craig Shepard and Andrew Ryan from KordaMentha and its new hardship program advocate, Stephen Blyth (he replaced the first advocate, Catriona Lowe, who resigned due to concerns about a *"significant minority"* of cases). Gerard Brody from CALC kindly facilitated the meeting at our request. A further phone discussion achieved minor amendments in September 2016 (HNAB-AG was not present). Senator Xenophon has provided assurance he is committed to continue to assist HNAB-AG. However, no further progress has occurred due to his schedule and priorities. It urgently requires finalization.

208. KordaMentha's arbitrary demands and unnecessarily complex and problematic deed, along with no real avenue to hold the Liquidator accountable has meant, unnecessary and further protracted anguish has been inflicted. The impact is immeasurable.

209. Of note: [redacted] of *Macpherson + Kelley* (which ran the abysmal Timbercorp class action, not focusing on issues pertinent to many) has been asked more than once to provide notification of the existence of HNAB-AG to their clients. This was motivated by the survey about BT margin lending and being all too aware of peoples need for moral support. Action did not commence until recently when the consequences of failure to do so regarding settlements made by those not pursuing legal action was underscored. However, only their clients with whom [redacted] speaks will be given the information. It could be emailed. The fact information regarding Craig Shepard's deed amendments applying only to Holt victims who are members of HNAB-AG may influence people's choice. Further, despite being a law firm, M&K breached confidentiality providing contact details of all Timbercorp victims to AGAG when it formed some years ago. Membership of AGAG is not free and is run by ex-Timbercorp employees and focuses on pursuing legal action regarding Timbercorp. AGAG does not provide support and advocacy regarding white collar crime.

210. It is also worth noting that it seems evidence exists connected to an internal source that Timbercorp knew it was in trouble at least a year before it collapsed. Without being compelled to give testimony this is unlikely to emerge given it has not to date.

211. A **Senate Inquiry into Liquidator KordaMentha's Hardship Program and Related Concerns Regarding Timbercorp (In Liq.)** may be useful until a *Royal Commission* or *Commission of Inquiry* can include this matter, compel evidence and prosecute inaccurate and misleading testimony and misconduct.

Restitution and Compensation: Including a Retrospective Scheme of Last Resort

e) the availability and adequacy of:

i. redress and compensation to victims of misconduct, including options for a retrospective compensation scheme of last resort, and

ii. **legal advice and representation for consumers and victims of misconduct, including their standing in the conduct of bankruptcy and insolvency processes;**

(i.) **Redress and compensation to victims of misconduct, including options for a retrospective compensation scheme of last resort**:

212. Retrospective redress including, and distinguishing, *restitution and compensation* is needed for victims of financial negligence, deception and fraud at the hands of banking, insurance and finance sector. This relates to accountability of individuals and organizations. It is also necessary as part of the driver for regulatory reform. Unless penalties are a multiple of losses incurred, or potentially incurred where caught in time, there is little incentive for meaningful change in industry culture. It should apply to the finance industry involved in the deception or negligence as well as any organizations associated with providing data which enables inaccurate representation of data. This includes those which are engaged by industry to provide reviews of complaints when these are inadequate or skewed in selection of data examined and /or interpretation in favour of the organization paying for the report (e.g. Deloitte, page 67).

213. Successive governments have enabled the situation to develop to devastating proportions. Through no fault of their own, tens of thousands of Australians have been placed in financial distress through to ruin, loss of homes and bankruptcy. The personal consequences are dire. It impacts all aspects of life. There are high levels of suicidality and actual deaths from suicide and traumatic stress-related disease.

214. Severe ill-health as well as attempted and completed suicides underscore how lethal, and how insidiously violent, white collar crime can be. Its invisibility and subsequent major physical impacts including death, mean that not only industry but some parliamentarians, consumer advocates, academics, journalists, commentators and (surprisingly) high profile mental health advocates who have not worked with this population, have little insight or understanding into the fact financial abuse of power is as dangerous as any other weapon. It has intergenerational, family and social impacts.

Currently, the level of lack of awareness of issues and funding for research into these crimes is comparable to sexual abuse and family violence many decades ago.

215. We fully support the notion that people have a responsibility to put energy and effort into building what is important in their lives. However, the idea is patently false that if something goes wrong there must *always* be *shared responsibility* for its occurrence - as if somehow the victim must have realized what was happening and permitted it, participated or collaborated. This is *victim-blaming.* It is shirking responsibility which should be attributed to a professional or organization who should have been able to be trusted to provide the service or advice sought in the client's best interests. Victim-blaming stems from ignorance or vested interest.

216. There are circumstances in which people are targeted or, by virtue of circumstances beyond their control or influence, are severely impacted through no fault of their own. Society recognizes this for instance at the hands of a murderer or rapist and in situations of domestic/family violence. The notion of ***unconscionable conduct*** is based on recognition of power imbalance and taking advantage of it. It includes concerns over:

- the relative bargaining strength of the parties
- whether any conditions were imposed on the weaker party that were not reasonably necessary to protect the legitimate interests of the stronger party
- whether the weaker party could understand the documentation used
- the use of undue influence, pressure or unfair tactics by the stronger party
- the requirements of applicable industry codes
- the willingness of the stronger party to negotiate
- the extent to which the parties acted in good faith.

217. **Restitution** i.e. *reinstatement of direct and indirect financial loss* should be part of accountability for fair and ethical redress. Unless culprits are required to restore what they took advantage of, and / or risked, as well as a multiple of this in penalty, there is little incentive to change behaviours and much to encourage and reward it to continue.

218. **Compensation** would also be part of accountability with fair and ethical redress in terms of *incalculable financial loss* and *pain and suffering* as well as the *time (often many years) to proper and meaningful resolution*.

219. Over 8 years later, victims of the office of principal director Peter Raymond Holt, are still contacting HNAB-AG only having recently discovered concerns about his role in collaborating with banks and product issuers. They were subjected to the same deception and conduct as hundreds of other former clients but had believed Mr Holt's assurances that their losses were due solely to the GFC and were beyond his firm's, or the industry's, ability to influence or control. We understand some people continue to trust his services and are none-the-wiser. Denial is a powerful coping mechanism in the face of trauma and betrayal.

220. Consequently, it is evident there must be no confusion that **retrospective redress include the cases of victims** who:

- did not meet the criteria or exceeded the financial loss cap of FOS or other schemes at the time of discovery of losses
- did not know about IDR or EDR schemes (regardless of their lack of suitability)

- were too distraught and overwhelmed by the traumatic circumstances in which they found themselves, to focus their energy beyond stopping the financial bleed (including signing settlements under duress or without understanding implications and trying to increase income to pay debt) and attend to personal impacts (such as selling their home, cope with consequent marital conflict and distressed children, relocate, seek help for severe anxiety/depression) etc.
- had to enter bankruptcy or insolvency arrangements
- borrowed money to reduce or pay out misconduct-related debt hoping this would enable them to move forward with the least trauma given the lack of available options for redress
- were not able to proceed to court e.g. due to lack of funds; lawyers concern the victim could not pay their fees or access professional indemnity insurance or that banks have deep pockets and the victim would not stand a chance against strategic manipulation of industry law and the legal system in order to escalate distress to pressure people to give up
- were forced into settlements with lenders or liquidators to avoid litigation and which thus means legally they have relinquished their right to seek financial redress from these avenues
- can demonstrate a valid basis for a claim.

221. Those most affected financially and/or personally must not be further disadvantaged by typical (traumatic stress-related) responses of collapsing into learned hopelessness, powerlessness or long-term denial of deception.

222. The matter of people being forced, in all truth, into signing deeds of settlement (which require they agree there was no duress, and they accept responsibility for the debt etc.) is important as this is emblematic of the way victims are re-victimized. The lender or liquidator has all the power, particularly in cases where devastating financial ruin has occurred. Unless this is considered, victims would be unable to include these losses in seeking retrospective redress because at law they have *'agreed'* not to do so. There must be consideration for this injustice in funding redress – including retrospective - for people, typically, in these diabolical circumstances.

223. It is essential that all victims, particularly those of the most serious white collar crime, not be relegated to oblivion now that the problem has been recognized by many in the industry and amongst parliamentarians – powerful sources seek to minimize or deny the reality. To this end, ethically, redress must be *retrospective*. Ensuring there is responsibility applied for their previous actions may also result in offending industry members and organizations learning in terms of behaviour as a result. Otherwise they are effectively rewarded. They learn they can get away with it and only have to change behaviour once discovered - and if years afterwards will be pardoned. *Retrospective compensation* is likely also to increase shareholder concern for ethical practice and apply pressure for assurance through specific procedures being implemented to mitigate risk.

224. Banks already provide redress by way of full *restitution* in instances of *credit card fraud*: banks do not pursue the victims for the amount of debt in which they are placed by hackers and fraudsters who misuse and abuse their credit card details. If the banks did not, it is likely no one would use a credit card facility. Hence the industry is motivated to fund staff to detect, as soon as possible, and endeavour to avoid, this type of activity. Banks are not proactive, responsive or helpful, far less willing to reinstate losses when it comes to in-house activity or in collaboration with external advisers

utilized to bring in business. This reinforces the nature of the problem. If banks and industry did not profit from these activities they would already have strategies and procedures in place as they do with credit card fraud.

225. Industry offenders should not be permitted to profit on the backs of victims of past white collar crime or prior to any new legislation or expectations. It is not ethical. Nor is it meaningful as it rewards past actions while victims continue to suffer. Proceeds of crime should not be permitted to be retained or benefited from. Industry members involved must be required to provide redress to victims. Industry and government have a responsibility to assist those where an industry member has evaded responsibility (i.e. secured assets beyond reach; declared personal bankruptcy or placed the business in insolvency; utilized knowledge of legislation e.g. to create a *separation* to distance from responsibility for advice or conduct etc.) because these activities have been enabled due to inadequate safeguards.

Identification of Genuine Cases versus Fraudulent Claims

226. We appreciate there may be concerns about a retrospective redress scheme in terms of fraudulent cases being put forward. The vast majority could be confirmed as genuine if certain factors were assessed by competent, informed, independent professionals. We outline an overview in Table 1 (page 35-36).

Calculation of Restitution and Compensation - including Retrospective

227. Once a complainant's case has been determined as genuine, the next step is to determine what is appropriate, fair and reasonable restitution and compensation. Financial best interests should be at the heart of the calculation as these are at the root of the problem. The capacity to fund this going forward would be addressed by imposing penalties that are a multiple of loss incurred, or potentially incurred before discovery. This would rapidly, and effectively, deter much of these activities as it would impact the very thing which has motivated white collar crime i.e. money and profit.

228. Redress (including retrospectively) which is ethical would cover the **direct losses** from the negligent or deceptive advice or fraudulent conduct and its consequences, as well as the **indirect financial losses** incurred in endeavouring to salvage the situation or limit further loss after discovery. Some impacts would be complicated, but not impossible, to assess such as the loss of increased value of the former home from when it had to be sold to the time of resolution of the case (or at its peak value in the intervening years). It should include being forced out of the property market for that time and consequent increased difficulty getting back in**.**

229. **Incalculable impacts** such as pain and suffering, family breakdown, psychological distress to self/partner/children/elderly parents/key relationships and effect on work (colleagues, business partner/s, clients) as well as career or capacity to work are immeasurable. Relocation and disconnection from community and previous supports can be marked. It includes significant impacts on health (physical and emotional / mental).

230. Table 2 is predicated on failures to date of the regulatory and legal system to protect a victim of gross white collar crime. It notes categories for consideration in calculating restitution and compensation and covers major examples. It is not comprehensive.

Table 2: **Calculating restitution and compensation for victim/s and family**

1. RESTITUTION	
a) Direct losses:	**$**
Money paid to products / loans before discovery of negligence, deception or fraud and/ or due to unethical execution of loopholes in contract	
Money paid in related costs: insurance, maintenance etc.	
Money paid in loan repayments since discovery to avoid litigation	
Money paid in settlements with lenders or liquidators to avoid litigation or bankruptcy (due to inadequate protections for victims)	
Money paid to industry member for services	
Money paid in penalty interest where repayment was not / could not be paid	
Money secured by lenders / product issuers e.g. liquidation of share portfolio	
Money lost in superannuation MIS and/or mismanaged	
Money utilized without informed consent including from cash accounts	
Lost income due to efforts to salvage situation, seek redress etc.	
b) Indirect losses:	**$**
Income, savings, refinancing home, borrowings and/or inheritance used to reduce or eliminate deceptive debt	
Sale of home and/or assets to reduce or eliminate deceptive debt (including cost to sell: e.g. real estate agents, auctioneer, lawyers)	
Necessity for quick sale forcing acceptance of offer/bid lower than lowest in the range quoted by real estate agent (and cost of misconduct by REA)	
Lost money in rental accommodation having had to sell one's home	
Cost of buying a cheaper home e.g. broker, stamp duty, conveyancing etc.	
Cost of relocation (removalist; storage; etc.)	
Exclusion from property market: inability to buy and sell in same market; cannot benefit from significantly reduced interest rates; loss of increased value of property from time of loss to resolution of dispute)	
Furniture and other items given away or sold at fraction of value to reduce or avoid storage and/or not fitting into forced change of residence	
Loss of, or reduced, income due to impacted capacity to work	
Fees for legal advice and / or action	
Fees for counselling due to related trauma and distress	
Medical costs for stress-related illness or escalation of pre-existing condition	
Financial ramifications of divorce or separation	
Reduced, or no, money for superannuation contributions post-discovery	
Limited, or insufficient, money contributed to superannuation on advice before discovery	
Expenses in pursuing assistance from industry and parliamentarians etc. (time off work; travel for rural or relocated victims etc.)	
Miscellaneous e.g. atypical (for the individual) depression-related significant weight loss and/or gain which requires purchasing clothes	
Inheritance: diminished or eliminated estate (and distress where victim knows beforehand he/she one cannot provide for children as expected)	
2. COMPENSATION – incalculable financial loss and personal:	**$**
Pain and suffering	
Time to resolution / payment of restitution: lost years - anguish / stress	
Thwarted efforts to seek resolution by power structures	

Table 2 continued/-	
Impact on family (including extended) and key relationships	
Impact on pets and animals (e.g. have to give away as rentals disallow) – can be deeply painful and distressing, including for the pet	
Impact on career; capacity to work; energy and focus; etc.	
Impact financially and personally on business partners, staff, colleagues, clients	
Reduced or no financial position / security due to advice actively, or indirectly, stopping preferred investing e.g. investment in property; cash shares etc.	
Trauma due to treatment by industry (banks, liquidators) or others (parliamentarians, industry) who do not respond to help sought, or seek to understand, or abandon commitments, or accept misleading and inaccurate statements of industry: lack of dignity, respect, compassion and action	
Trauma in pursuing payment of income protection claim / insurance etc.	
Impact on health – physical and emotional / mental health	
Suicide: attempted and completed	

231. Research shows the median dwelling increased by 85% in Melbourne and 90% in Sydney, almost doubling, since the GFC (listed as 2009). This means victims of white collar crime who lost their home at that time and could not afford to buy another cheaper one, have lost that increase in value as well.

232. Moreover, these victims are even less able to buy a home again. Economist, Jeff Oughton at ME Bank told Money editor Jackson Stiles on 7 February 2017 that not only are house prices rising faster than you can save in Sydney and Melbourne but that for 25% of Australians their incomes are falling. Research is cited elsewhere in this submission that for people over age 45 (which includes many victims of financial misconduct) they have almost no hope of owning a home if they do not have one they are paying off by that age. The rolling impacts are immense.

233. The issue of restitution and compensation must include the marked distress for many elderly people about not being able to leave anything, far less what they worked for, to their children. In addition, children of deceased victims of white collar crime are also victims having intended inheritance impacted. We are aware of a 15 year old boy whose father died of cancer. KordaMentha's handling of the case was inhumane and all too common. The timeframe to death was known but the liquidator harassed the ill man (via a proxy) for his remaining months, insisting on provision of documents that according to industry were not necessary. The liquidator claimed "rigour." The man died, unnecessarily, not knowing if his son's financial future would be secure. The child had been relocated to the USA to be raised by his aunt: his entire life is impacted in losing his father. KordaMentha has also required pending inheritance (including before an ill parent is dead) be part of assessing settlements. Another elderly couple have been forced to live in a caravan. They worked hard their entire lives and are deeply affected feeling they have failed their children by being unable to provide an inheritance: it is the psychological meaning more than the financial benefit. Several victims also had to use inheritance to pay misconduct-related debt.

234. We also know of elderly people (often estranged from family and/or isolated from friends and community) around whom serious questions arise related to accountants / financial advisers having power of attorney and guardianship. In one case the husband is now deceased and the wife has Alzheimer's and lives in a nursing home. The adviser

could block access to the mother if the adult children tried to take action to examine his actions. This means waiting until her death is necessary to avoid upsetting her or risk being unable to visit. There is no avenue that is reliable and not costly (in financial and emotional terms). Concerns about his *'advice'* and role are significant. It highlights concern that cases must also be able to obtain redress and impose penalties after a victim's death. Deception may only emerge when documents are accessed after death.

235. Money editor Jackson Stiles, wrote on 1 February 2017, that Dr Patrick McConnell at Macquarie University - a banking regulation expert who advised firms in the US, Europe and Australia for 30 years - said *"The ABA are addressing some of the major issues, but from the perspective of what's best for the banks to cover their arses, not what's best for the consumer, the banking environment and the economy. They've got a very vested interest and they're pushing it… I don't criticise them for doing it - I criticise ASIC for letting them. ASIC…. has ceded the field to the banking lobby…."* He fears the new bank consumer advocates will be used to keep complaints internal, away from regulators and media rather than have them dealt with by an externally independent body. HNAB-AG can attest to gravely serious concerns with lenders and some liquidators regarding in-house responses. We also concur with Dr McConnell's contention a consumer advocate should be proactively heading off problems in terms of examining a new product. (See Appendix M.)

236. We have reported elsewhere in this submission that despite efforts of lenders to present as if they are being responsible it is not occurring. They are not engaging in sufficient change in culture, safeguards and ethics. See concern re ANZ's newly appointed *"Fairness Officer"* regarding the response to HNAB-AG (Appendix G, H, I) and section G.

(ii.) **Legal advice and representation for consumers and victims of misconduct**

237. Issues regarding poor legal advice, inability to afford good quality legal advice and the consequences for victims are substantial and require investigation and urgent action. It is a labyrinth to seek assistance which largely leads to a dead end (Appendix C). It highlights the need for restitution and compensation as a matter of urgency as well as for thorough investigation of the banking, insurance and finance sector.

238. In brief, from reports to HNAB-AG and experience of the authors, concerns about individual lawyers, law firms and legal advice include (in no particular order):

1) Lack of transparency regarding the reason for delays on advice (driven by law firm's concern there was no money to access from offender) disadvantaging victims from lodging a complaint and being in the queue before professional indemnity runs out.

2) Advice not to make repayments on loans in dispute incurring penalty interest (often exorbitant) i.e. Macpherson & Kelley.

3) Class actions which do not address issues pertinent to particular groups e.g. Mr Holt's victims.

4) Discovery Mr Holt was behind initiating the M+K class action and hence its focus was influenced by his agenda (and took heat off him).

5) Misuse and abuse of authority and power with overt or covert intimidation and threat – a minor but relevant example (and not the only one) is the highly defensive response which escalated to intimidation attempts by an individual lawyer when contacted upon discovery of implication on the firm's website that she was working with HNAB-AG. Our approach was not hostile. A senior partner handled the matter professionally. We were too busy with other efforts to help victims to take it further.

6) Lack of capacity of free community legal centres to assist – or understand the complexity of multi-lender multi-product white collar crime.

7) Providing services which support the industry member engaging what is erroneously touted as *"free, independent, legal advice"* but is merely to 'explain' a deed (i.e. reiterate the liquidator and hardship program's stance), and not in fact to provide advice in the victim's best interest e.g. lawyers such as John Berrill engaged by KordaMentha.

8) Mishandling of cases, including action taken which is not the instruction of the client, resulting in impact on the case outcome and/or debt the client did not commit to which in turn is then used against the client to waive or reduce the debt claimed to be owed to the firm by having the client sign a deed of settlement which effectively silences him or her.

9) Industry block access to certain law firms by keeping them on a retainer so there is a conflict of interest preventing representation of victims.

10) Justice Connect declined to assist victims after initially being concerned and receptive to an outline of issues related to KordaMentha. The change in stance resulted after the lawyer spoke with colleagues at Justice Connect: it emerged senior lawyers were on a retainer with KordaMentha.

11) Stories reflect a lack of confidence in impartiality and justice due to lawyers and their friends and associates protecting each other's back. One report involved someone who became head of the Law Reform Commission.

12) Lawyers have phoned HNAB-AG for information, particularly about KordaMentha and Timbercorp (In Liq). It is apparent the view they hold and convey to their clients is often based on the view they glean from other lawyers or parties and not from their own assessment and investigation of the issues.

13) Many victims have expressed relief (but also anger and disbelief) that they have received more help, information and guidance (which is free) from HNAB-AG representatives and / or members at meetings than lawyers to whom they have paid thousands – and often tens of thousands - of dollars.

14) When firms agree to *no-win, no-fee* arrangements but fear there is no money accessible from the offender, they issue exorbitant quotes for

'disbursements' (e.g. up to $200,000 for 2 people). This way their fee is effectively covered or it prevents victims from proceeding because the very reason they have sought help is they are financially crippled. Knowledge a victim's home has to be sold and/or that he or she is in a highly precarious financial situation and faces bankruptcy potentially (because of the white collar crime resulting in seeking help) serves only to give greater power and control to lawyers over the victim's options.

15) It has not been explained to date, how a loan application can specify that it won't be accepted unless it is filled in completely yet it is. Victims are then held responsible for repayments even when they did not know a loan existed at all – not merely when they were misinformed and deceived.

16) It is not reasonable or acceptable that the legal system has permitted, and collaborated in designing, complex documents in technical and legal jargon which fail to provide genuine informed consent. They are designed effectively to protect industry to gain from unsuspecting consumers. As noted elsewhere former victims and consumers must be part of the design of meaningful informed consent.

17) Law firms approached regarding Peter Holt and his collaborations with banks and product issuers dismissed out of hand concerns that all 3 should be sued. It is not clear whether they figured lenders and product issuers would have pockets so deep they knew victims would have no real chance to fund or cope with the strain of the ordeal while played by the system. The fact that Peter Holt and those of his ilk could not have achieved what they did without lenders and product issuers being complicit (by negligence or collaboration) was either not understood by lawyers, put in the 'too hard' basket or deemed an insurmountable legal challenge due to lack of resources of victims or some such reason.

18) A junior lawyer of a major firm sought to provide victims of Holt with the contact details for HNAB-AG just after our first meeting in 2011. We requested this be held off until after our next meeting (for various reasons related to the level of trauma amongst people and the plan in place for that meeting). In the meantime, the lawyer was displeased by a comment in an email trail in which she was copied, regarding dissatisfaction of the firm's handling of the case. She then refused to pass on the details she had sought for other Holt victims even though she had recognized their need for the support of other victims. Her dubious moral conduct and punishment of innocent parties is disturbing regardless of the truth of the comment which aggrieved her. The senior partner involved was aggressive and attempted to intimidate in response to complaining about her conduct. This is another form of abuse of power to which victims are subjected without recourse.

19) It appears many, if not all, law firms do not have a complaints department or procedure. This reflects the confidence that lawyers have in their power to quash complaints and silence victims when it comes to their own unethical or problematic conduct. Part of a lawyer's role is to demand appropriate procedures are in place to protect people. It should apply to their engagement with people.

20) Bankruptcies and insolvency arrangements which victims are forced into are an appalling indictment on the state of affairs in relation to consumer protection failures. These have further life-long repercussions for victims. People report feeling like they have copped a prison sentence for a crime others committed.

21) We are aware of so-called industry professionals such as Graeme Watters who promotes himself as an insolvency expert. His strategies and tactics are of the utmost concern. People who were not clients of Peter Holt have tracked us down at meetings to divulge information (to avoid a trail to identify them). Others, including Holt victims report they did not know they were caught up in dodgy dealings until they were too far entrapped. Their silence is bought because they fear they could be misrepresented technically as complicit participants. Other victims realized concerns and did not proceed.

22) Of note is that Graeme Watters handled Peter Holt's insolvency. They have known each other for many years. Mr Holt has referred many clients to him over decades. HNAB-AG has raised concerns about Mr Watters years ago but it appears nothing has been done. He continues to operate. No wonder white collar crimes flourishes and these offenders do not fear authorities.

23) Similarly, HNAB-AG advised KordaMentha about the likelihood of Peter Holt's personal bankruptcy being a fake debt scenario with assets secured beyond creditor's reach. Mr Holt still resides in his multi-million dollar home, drives a luxury car and appears to have continued on with a comfortable life-style while his victims struggle in various states of distress including genuine bankruptcy and insolvency.

24) Only after HNAB-AG persisted in efforts which saw a special hearing into Timbercorp in November 2014, in which the matter was raised, did KordaMentha act in respect of concerns about Peter Holt's fake debt bankruptcy which included a huge debt to Timbercorp. This was two and half years after HNAB-AG notified Craig Shepard. KordaMentha then raided the office of the Trustee Andrew Wily – who worked and resided in Sydney (not Melbourne where Mr Holt is located). Mr Wily 'resigned' from the position and appears to have gotten away scot-free.

25) Mr Wily has been in federal court regarding other cases alleging a fake – debt bankruptcy ring. This has also involved John Voitin (lawyer for Mr Holt's bankruptcy) and Simon Nixon, a criminal lawyer (who is listed as Holt's largest 'creditor'). We have documented this to prior senate hearings. Grant Thornton lawyers took Peter Holt to court regarding his fake-debt bankruptcy in 2015. We endeavoured to ascertain the outcome last year and were informed it had not concluded. We have not been informed if there has been any change. Information about this has been provided to previous senate inquiries.

26) Mr Holt's lawyers had the gall to request a subsequent hearing be scheduled as soon as possible because Mr Holt and his family were under significant stress…!

27) Laws must be put in place to annul genuine bankruptcies and insolvencies which victims of white collar crime have been forced into without further delay. Restitution and compensation must also occur.

28) Restitution and compensation must be separate to, but not as a substitute for a royal commission or commission of inquiry. A thorough investigation is necessary to understand what occurs, how best to avoid it and to prosecute offenders. This is not essential to determining redress for many victims which must occur as a matter of urgency.

29) Redress for victims must not be left for some time after, what may take years to investigate, once government appreciates the benefit to the community and economy of a commission of inquiry or royal commission. While politicians equivocate or endeavour to protect industry and corporate interests, every Australian is at risk. For 99% of the community the risk translates to serious impact if not catastrophe in the face of gross white collar crime. This is nothing short of unacceptable and disgraceful.

Vast social and intergenerational toll

f) the social impacts of consumer protection failures in the sector, including through increased reliance of victims on community and government services;

239. The brief outline here reflects the limited time we have to provide this submission and the vastness of the topic. The social impacts of consumer protections failures are immeasurable. Marriages and relationships have ended. Families have fractured including damaging the capacity for rebuilding healthy functional regrouping. Capacity to work has been diminished through to severely impacted and impossible. In certain cases this flows on to impact clients long-term in vulnerable situations for whom services could no longer be offered. Career trajectories have been altered. The social impacts in terms of loss to the community of skills and services are significant in addition to related economic consequences.

240. It is evident the impact has economic repercussions not only for the victim but the wider community given the health, social and work related consequences. This includes severe stress-related impacts from disease to death and well-being concerns covering severe mental health issues, suicide attempts and completions. It involves family breakdown, separations and divorce with consequent far-reaching financial, personal and family impacts.

241. It can result in the commencement of, or escalate existing, family violence and sexual abuse or old previous trauma histories. Substance abuse occurs in people where this was never an issue including the elderly and at severe levels. Self-injury has also been reported along with various risk-taking behaviours in people who did not engage in these activities before financial devastation at the hands of the industry. It is

exacerbated by enduring no redress over many years later. For many this is the worst aspect of the trauma. Family violence and sexual assault may occur where this was not an issue prior to the white collar crime. Any serious threat or impact on people (adults and children) will reverberate throughout their lives in different ways. People will also respond differently. Social attitudes and response of authorities plays a significant role in the recovery of victims or struggle to do so. It is a complex topic.

242. The cost of a wide-range of severe health concerns is substantial given the level of stress-related disease and directly related mental health impacts.

243. Social impacts result from the severe distress of victims across all aspects of their lives. This has a rolling impact on their children, extended family, social circle and colleagues. Parental distress and conflict, divorce, relocation and dislocation from supports and community networks including school as a result of financial distress or ruin, means social impacts are also intergenerational. We are aware of children whose career choices have been shaped by the white collar crime to which their parents were subjected. This may be positive. However, many suffer due to the emotional unavailability of distraught parents and resultant depression, anxiety, suicidality. Experiences and impacts are conveyed to younger generations and shape their belief in themselves, others, authorities and worldview. This will have ramifications in the future as well as in present day and near future for society.

244. The reality of homelessness and how easy it can be for someone to suddenly end up there (or in a caravan, tent, garage of friend's spare room) despite having been highly functional, held a responsible job, and owned a comfortable home due to hard-earned income and effort is all too apparent to victims of white collar crime. The indignity and travesty is unspeakable.

245. While HNAB-AG is intimately aware of a plethora of social impacts, we are not in the position to provide concrete data about related costs. Research is urgently needed to calculate these costs related to people in our circumstances. We do not know of any: we truly are invisible and forgotten to most, left on the scrap heap of the finance industry.

246. The brevity of response to this section reflects how vast it is rather than that it is minor. Society and future generations are shaped by what happens now, what is learned and what is not. It could not be more important or relevant to all Australians. Consumer protections drive a safe, productive and strong society when they are meaningful. Failures contribute, sooner or later, to crises and catastrophe for economies and countries as well as individual victims.

Ethical panels could address consumer protection and shape confidence in industry culture

g) options to support the prioritisation of consumer protection and associated practices within the sector; and

247. Beyond redress for existing known victims occurring without further delay, the highest priority going forward is the formation of a new well resourced, truly independent, competent, trauma-informed and ethical body to review cases, determine

losses and enforce proper redress be paid (by offenders or an industry / government safety net pool where that is not possible as outlined previously). Unless this includes urgent action, utilizing a similar format, to process retrospective existing cases it will not signal adequate concern to the industry for accountability. Moreover, innocent people will continue to endure terrible anguish in precarious financial and emotional situations. The compounding financial roll-ons over which they have no control are pivotal in feeding the nightmare from which they cannot wake or stop. Many have been in limbo or going backwards financially for years. It is not something we imagined would be condoned or allowed to occur in Australia.

248. Assistance to compile necessary details to present a case to a panel is needed from an independent accountant and preferably also an independent advisor or expert in the products in question. Panels designed to assess the case and calculate restitution and compensation, as well as decide penalties offenders (as a multiple of loss incurred or risked) and recommend other penalties (zero tolerance ban, rehabilitation in prison etc.) will be most effective if they include, at minimum:

- an industry expert in the product/s in question
- a forensic accountant
- a consumer advocate au fait with the industry
- a former victim representative
- and an ombudsman to write up the case (but not direct it or have greater authority or power than any other panellist).

249. All panellists should undergo thorough trauma-informed training in order to understand the state of the victim and how best handle to conduct interviews without aggravating distress. Genuinely independent and frequent audit of cases and panels is paramount. To underscore the human cost, panellists, (and be held accountable, or honoured for their work in righting wrongs) should also participate in the Restorative Justice-style program at the end of a case.

250. Retrospective cases could be assessed immediately by engaging panels of trusted professionals of the calibre of industry whistleblowers (e.g. Jeff Morris and Dr Benjamin Koh), and advocates (e.g. Alan Kirkland, CEO of Choice), forensic accountants and others accepted as reliable and competent by victims. Panels must not be selected by the industry offender and its organizations such as ABA, or government. These panels focusing on retrospective cases would serve the purpose of being a trial run or pilot study with real cases such as victims who are members of HNAB-AG. It would provide invaluable feedback for developing the design and implementation of a new one-stop-shop style body. Funded is warranted from an industry pool and also government for reasons outlines in this submission and elsewhere. Panels must have the powers to compel information and decide on redress and conduct a case as per outlined above. This includes awarding enforceable restitution and compensation.

251. HNAB-AG has provided a detailed outline in an invited submission to the *Review of the Financial System External Dispute Resolution and Complaints Framework* headed by Professor Ian Ramsay. More information can be provided by HNAB-AG on request about how a new body could be designed and operate. Victim consultation is paramount.

252. Until a new ombudsman-style body with well-paid and resourced, truly competent, panels are designed and established, lenders and product issuers could utilize the unique experience and insights of existing victims and their representatives to design

simple, clear 1-2 page informed consent measures for the ordinary, financial unsophisticated consumer. Tighter requirements for ensuring serviceability of loans and responsible lending must occur. Any parliamentarian who does not see the value of these measures has a responsibility to meet with a range of victims to hear their perspective on why this is necessary. Those not affected and not informed should not make decisions which influence the lives and well-being of those who are directly influenced.

253. Consultation in an active and real sense with victims, to design simple, clear, genuinely helpful measures for informed consent can, and should, occur standardly. This must include outcomes from cases of white collar crime to improve information about existing products (see comments earlier re assessing white collar crime and penalties). Consumer advocates and financial counsellors are not always adequately aware of the problems and issues which exist particularly in cases of *gross multi-product, multi-lender white collar crime*: it requires genuine engagement with victims and representatives of victims groups. Paid consultancy would not only indicate value of the collaboration but assist victims who, without redress, will struggle to provide the time to do this voluntarily given the necessity to deal with the financial and personal consequences of the situation in which they have been placed.

254. Typically, efforts by victims to inform, seek help and engage in dialogue are met with no response at all or an onslaught of defensive justification of the government's position with no real opportunity, interest or concern for dialogue with people whose circumstances demonstrate what is occurring is well short of enough or adequate.

255. Josh Frydenberg, Federal Member for Kooyong, sent a typical reply to an elderly couple to their request he support the call for a Commission of Inquiry – however, to his credit, at least he replied which many do not. (See Appendix O.) He demonstrates the problem of parliamentarians not actively seeking to understand from those affected who are often in circumstances which make necessary persistent efforts to be heard too difficult. Ignoring typically results in extinguishing behaviour. It also eventually incites reaction when injustice is profound. The world is seeing this today. Politicians do not always know best and are not always best informed. Authentic engagement is necessary to best serve the public. Minister Frydenberg is aware this elderly couple had to sell their beautiful, hard-earned home and continue to struggle on every level with the fall-out of white collar crime. They try to make ends meet from their small business despite being well past retirement age and having both endured various grave health impacts as a result of their ordeal. It is regrettable many politicians do not offer genuine dialogue.

256. While there are industry members committed to reform, it must be recognized that much of it is PR driven by efforts to stop a royal commission or commission of inquiry. For example, KordaMentha's hardship program and ANZ's support for it is an attempt to pacify parliamentarians and others while continuing to control victims. The liquidator may have hoped that (often only slightly) better settlements for people in its hardship program (than its demand of others for 85% of doubled, and now even trebled exorbitant penalty interest debt) might silence people. However, while settlements in the program are reportedly mostly 20-70% they range from 0-84%. The highest end is only 1% less than those deemed not in hardship. They are inconsistent in comparable or even, worse, cases. The unnecessarily protracted ordeal due to the unreasonable parameters, taking months and even years to conclude in the program, as well as the duress, and aggressive conduct of the liquidator is harrowing and frankly, sadistic.

257. Any suggestion the industry overall can, is and will, police itself is naïve. A recent example of disingenuous commitment of banks to dispute resolution despite proclamations to parliamentarians and media is ANZ's new position of Fairness Officer. This relates to KordaMentha and Timbercorp (In Liq.). (See Appendix F, G, H, I.)

258. HNAB-AG has fought for several years to seek accountability and redress - or at least the best ethical outcome possible under the law (which is waiver) - in relation to liquidator KordaMentha's handling of Timbercorp regarding what it claims to be legally enforceable settlements (yet to be proven). The so-called 'hardship program' outcomes demonstrate KordaMentha's ongoing failure to act on creditor ANZ testimony in 2016 to an inquiry that victims of Holt *should not be pursued.* In January 2015, Graham Hodges, ANZ Deputy CEO stated the bank had conveyed to KordaMentha it viewed victims of Mr Holt as a *"specific and special group"* and had *"strongly encouraged"* the liquidator to treat them *"incredibly generously"* (i.e. waiver or a nominal fee) with *"compassion"* and as *"swiftly as possible."* This has not occurred in almost all known cases. People getting waiver were put through months of anguish and harassment.

259. The response from ANZ to our correspondence regarding its position stated above by Graham Hodges, Deputy CEO, at the first annual review of the major banks typifies the disinterest, disingenuous stance and underscores the (often outrageous) spin to present a wholly different image to parliamentarians and the public. In short, victims are treated with contempt not dignity or compassion. Commitment to *'fairness'* and ethics in addressing scandalous industry conduct is insincere.

260. On 31/1/17, HNAB-AG wrote to Colin Neave in his role as ANZ's first "Fairness Officer." On 6/2/17, a very brief reply was written by Gerard Brown, Group General Manager Corporate Affairs. He was inappropriate to select to reply given previous complaints include him: on first meeting with ANZ he deceived us into meeting with KordaMentha's, then newly appointed, hardship advocate Catriona Lowe, claiming she would report misconduct to ASIC. (She denied that was part of her role.)

261. Typical of past experience with ANZ over much of the time since January 2015, Mr Brown did not address the purpose of our letter of 31 January 2017. It was clear and unambiguous. Moreover, comments he made, as well as issues he did not address raised in our letter, underscore our experience that engagement by the ANZ with victims is not as the bank seeks to characterise. Like other banks – ANZ is not unique – ANZ will look parliamentarians, media and colleagues in the eye while making statements which are inaccurate or misleading. Nor do they seem concerned about repercussions should facts emerge including if taken to task such as in the new Review of the 4 Major Banks. This is a major factor in schemes, including hardship programs, being a poor and inadequate response. They are not designed to be fair or provide redress for victims. Government willing to engage authentically with victims would save time and money.

262. Mr Brown's response does not augur well for ANZ's espoused commitment to review bank and financial products to see if they are fair, boost customer service and improve customer outcomes, and assist in establishing the bank's remediation principles with a consistent set of standards to which it would adhere - as is the official position.

263. Mr Neave's comments to renowned journalists Adele Ferguson and Sarah Danckert in Fairfax, 15 December 2016, regarding older products inspired us to contact him. He said, *"In many ways looking at the older products would be more important because*

some have been in place for many years and it could well be timely to look at them, there might have been issues 'put into the too hard basket' and that might be something that would be of very real interest." The article referred to Timbercorp and hoped he would review its hardship program. (ANZ has 50,000 complaints a year of varying seriousness.)

264. Data and reports provided to us contradict Mr Brown's claim the hardship program is *"a robust and fair process"* (this is also reinforced by Catriona Lowe's resignation as KordaMentha's Timbercorp advocate regarding a *"significant minority"* of cases). Reports made to HNAB-AG emphasize the need for a meaningful inquiry. His comments are false and underscore why a commission of inquiry or royal commission into the banks and finance sector is necessary.

265. Disdain and disrespect is evident with Mr Brown raising irrelevancies in his reply. He draws illogical conclusions: settlement by 300 plus people is not evidence of the hardship program being fair or robust - or any other endorsement. He is aware it merely reflects some people see it as the lesser of two evils when compared with litigation given the current failures of the regulatory and legal systems.

266. Disturbingly (along with comment of Chairman of the Board, David Gonksi, at the AGM on 16/12/16) Mr Brown notes that the *Senate Inquiry into Forestry MIS's* recommended KordaMentha and HNAB-AG work together to resolve matters. In the attachment to our letter to Mr Neave, we referred to related problems beyond our control. Good-will from the party holding power is pivotal. KordaMentha is patently disingenuous in commitments and falsely characterizes how it treats victims.

267. Further, while we initiated and continued with substantial efforts, we are entirely at the mercy of KordaMentha to genuinely engage – or to act reasonably. It is alarming should any parliamentarian expect victims have power to *"ensure"* a liquidator collaborates, as Mr Brown also suggests. However, it is difficult to imagine senior bank executives would, in all good faith, anticipate such a possibility exists particularly with Craig Shepard whose manner Gerard Brown and Graham Hodges acknowledged in a meeting in January 2015 (in an open electronic recording) or given information from HNAB-AG provided to ANZ subsequently.

268. Confirming our experience, on 7/2/17 KordaMentha wrote to people with debts to be concluded stating, *"We will not negotiate with you through action groups…"* At best the senate committee's recommendation was naïve given the chair, Senator Dastyari, was informed of serious issues and lack of progress in collaboration from early 2015 (well before the second hearing and report). Mr Shepard spuriously adds in his recent letter there is a *"Borrower Assist program"* and *"Independent Hardship Advocate"* which he purports will consider issues in resolving matters. He invites contact for *"a genuine discussion"* about circumstances. Facts do not add up to the liquidator's portrayal.

269. It seems Mr Brown seeks to play games in being condescending and dismissive. This, along with outright denial and efforts to discredit victims, has been typical of sections of the industry in dispute scenarios. Mr Brown ignores the purpose of our letter and then provides the current hardship advocate's contact details. He suggests HNAB-AG encourage our members to contact Stephen Blyth *"as quickly as practicable to assist in achieving"* resolution. He is aware victims have these details. Moreover, engagement in the program has not resulted in swift, or fair, resolution for our members as Mr Brown implies will occur.

270. HNAB-AG encourages people to make their own decisions about addressing their situation based on information available. Without doubt, all victims want the deceptive debt in which they were placed to be resolved as quickly as possible.

271. Nor does Mr Brown comment on serious concerns about the deed of settlement even though he raises the hardship program as if it had been the purpose of our letter to Mr Neave. (The deed is part of the advocate's role according to previous correspondence from the former advocate, Ms Lowe. Concerns are: lack of closure and certainty, inaccurate and false statement of fact, demand the victim relinquish any right to a defence while the liquidator retains all (rather than taking normal legal action) etc. on merely *forming a view* a breach has occurred. (See Appendix L.)

272. HNAB-AG doubts, in the current climate, that most victims would trust an in-house dispute resolution scheme. External schemes are not adequate as they stand, for reasons outlined elsewhere. Valuable time is being lost, adding to unnecessary financial distress and personal anguish in not prioritizing redress for existing victims or the implementation of a well-designed, properly resourced, ethical, highly-trained, competent and independent body offering panels to swiftly address cases.

'Fair go' for all Australians not just elite 1%

h) any related matters

273. The experience of our members is that few people in authority are any more inherently able to understand, anticipate or respond to the related concerns and issues than any other individual in society unless they have had personal experience of *extensive and complex white collar crime* or adequate exposure to victims.

274. Those who have been responsive demonstrate certain qualities in leadership: integrity, compassion and courage. Those in the industry and among parliamentarians who are helpful have not only *high empathic, but also high sympathetic, qualities*. This results in integrity. It is worth noting that high empathic skills alone can be problematic. This can be used to manipulate victims for some purpose or agenda (e.g. to accept a settlement or desist from a course of action or comply in an objective). Sympathy is distinct from empathy: sympathy results in care about impact on the person, not simply an ability to empathize i.e. to recognize, feel or have awareness of impact. Compassion or sympathy is thus different from simple empathy. Like any quality or skill empathy can be utilized to benefit others or to disadvantage causing harm in benefitting only the empathizer. Sales and advertising utilize empathy as do some politicians. This can be helpful. However, a master manipulator or con-artist is well able to empathize but has little or no sympathy or compassion. Inauthenticity is increasingly unacceptable in the world where profound injustice is either enabled actively or by ignoring or denial.

275. Reports from our members indicate that financial counsellors, consumer advocates as well as industry members, lawyers, parliamentarians and their advisers often cause considerable grief due to their lack of empathy - *or* worse when they display empathy but then reveal lack of sympathy. At times this results in increased suicidality due to deep despair and hopelessness escalating.

Corporate data skewing and failure to meet with victims, whistle-blowers and front-line staff

276. Of utmost concern, and reflective of what enables and protects white collar crime, covered in the media (this very month – showing not much is changing despite claims) is Deloitte's review of CommInsure. It is described as selective and inadequate by Maurice Blackburn lawyers.

277. CommInsure commissioned Deloitte after media investigations spearheaded by Adele Ferguson revealed rejected and delayed claims despite documented cases of sick and dying super fund members. Former CommInsure chief medical officer, Dr Benjamin Koh claimed doctors were pressured to change their diagnoses to enable this outcome. Reports by Deloitte, DLA Piper and Ernst & Young looking at different parts of CommInsure and its board concluded there was no support for concerns of *'wilful or widespread misconduct.'* Mr Mennen from Maurice Blackburn says TPD claims within super were under-represented in the review. The least contested area is retail death claims for which 98% were reviewed compared with only 10% of TPD claims which had *"by far the highest sample referred to in the report"* according to Mr Mennen. He said that was despite TPD being notorious for the *"highest denial rate across the industry".*

278. The CBA, CommInsure's owner, paid for the report. Further, it is reported that the review was published without interviewing a single customer. Opposition Financial Services spokesperson, Senator Katy Gallagher, is entirely accurate in saying this was *"simply inadequate and offensive to the victims of this scandal."* Mr Mennen said claims-staff and whistleblowers also were not spoken with as part of the review. He noted that *"Looking at files won't tell you if a doctor has been pressured to reject a claim: there won't be a note in the file saying that."* The government does not appear to give due weight to the danger of reviews not being genuinely independent or the consequences of these incidents.

279. Deloitte and any other firms involved in skewing data to reflect a desired outcome (rather than the facts) should be penalized in a meaningful manner: this means fines that hurt, not which are factored into doing business, and other actions as outlined elsewhere in this submission for offenders must be implemented without delay. Regarding Deloitte and 2 other reviews, APRA member Geoff Summerhayes told a Parliamentary Committee recently that *"APRA is satisfied the reviews are robust, complete and independent."* Ignoring, rationalizing or denying misconduct is central to fuelling corruption in the industry. No rational politician could genuinely support such reprehensible conduct as fair, democratic or in the interests of consumer protection and willingness to clean-up industry without independent safeguards and checks.

280. What gain may be imagined is unclear for someone to become a whistleblower–or as a victim– to go public, persisting with efforts to expose white collar crime and consumer protection failures. Truth matters and innocent people must not suffer.

Key tactics in industry cover-up: victims hushed up and sudden action on cases when an inquiry called or government intervenes

281. Predatory practices and irresponsible lending are covered up by placing victims in a no-win situation and utilizing their distress and anguish to aggravate duress so they sign

settlements to extract from the ordeal. This means at best they may be given waiver for deceptive misconduct-related debt (but not restitution or compensation). The extent of the trauma is evident in that some people even feel gratitude to the offender, for negotiating waiver or some level of reduced repayment of the debt which industry claims is legally enforceable. This is *Stockholm Syndrome* in action (identification with the perpetrator as a defence mechanism to manage a situation in which the victim is powerless and in the control of his or her captor). We have seen this amongst some settling in KordaMentha's hardship program as well as numerous other scenarios.

282. Deeds of settlement generally require the victim to remain silent about the settlement amount and terms as well as the – usually horrendous – experience to get to that point. Years are more typical than months or weeks. KordaMentha's deed is an example of an unreasonable scenario whereby the liquidator retains all the power and the victim is forced to relinquish rights to any defence should he form the view a breach occurred. Normal practice is that the 'debtor' is sued and the liquidator would have to prove his case. People could effectively be forced to pay the full amount of deceptive debt in which they were placed by Mr Holt in collaboration with Timbercorp *plus* countless years of exorbitant penalty interest – and have no legal leg to stand on. Independent liquidators and lawyers assure us it is not standard or reasonable.

283. Further, KordaMentha's deed requires victims to accept liability – which essentially demands people make a false statement in a legal document. Oh, the irony! Craig Shepard claimed (incorrectly) that unless liability is accepted in the manner outlined in his deed that it could not be executed and people would have to pay the whole misconduct-related debt (mostly doubled by that point).

284. If this is examined from the standpoint of other crimes for which a person is a victim it is patently obvious that gross injustice is occurring. Craig Shepard effectively requires through the deed what is equivalent to demanding a rape victim 'agree' that it was consensual sex. This is utterly disgraceful. Moreover, it is similar to demanding a rape victim pay the rapist or associates to extract from a legal case where technicalities re-victimize him or her.

285. We are aware of a case with another bank and product where the victim sought to conclude the case in 2013. She lost her home and life-savings in 2008-9 due to white collar crime. (The victim does not give permission to say which bank or what product due to fear of the consequences as it is not yet completed.) Unbeknown to the victim for some months, the bank lost the complaint. She did not follow it up because she was too overwhelmed and distressed by her situation. She reports sometime later deciding to investigate bankruptcy to eliminate the uncertainty in which she had been trapped for years. She held off as co-incidentally, the bank then notified her of having discovered her complaint and said a response would be formulated within a couple of months. The response arrived late and was an outright denial of her concerns. The Timbercorp matter escalated shortly after and she could not attend to both at the same time.

286. Three years later, still struggling with the threat of bankruptcy, she wrote to the bank requesting they end the uncertainty by bankrupting her or waiving the deceptive debt. At the last minute she involved her local Federal member who is with the Liberal Party. It would seem this had a marked effect in the direction of the case. While it took some time, the bank agreed to a waiver. However, it took over 5 months to obtain a deed which reflected facts (in contrast to KordaMentha's deed). Moreover, before

signing it, the victim is still awaiting for a complete copy of all material pertaining to her from the lender and also the product issuer. Disturbingly, having directed the victim to the product organisation for her file, the lender suddenly required the product issuer send her file to the bank before the bank would then forward it to her. This raises the query of document doctoring and 'file-cleansing.' Consumer protections fail to safeguard people from this and victims are left with the consequences. It is extremely doubtful waiver would have been achieved without the intervention of the concerned Liberal party member. However, restitution and compensation remain issues. The lender and product issuer have benefitted substantially from their activities at the victim's cost on many levels. Crime should not pay. Government must ensure this changes.

287. Settlements typically legally forbid victims from pursuing compensation in the future. Technically this means that even should evidence emerge in the future which supports a victim's claims, the offender is protected and the victim loses out again. The legal system is not an option for the overwhelming majority of people: it is not only too costly but it is too much emotionally. The law is not always the same as justice.

288. KordaMentha is an example of industry members which use the threat of speaking out about a victim's personal situation publically if he or she speaks to media. Craig Shepard has claimed this is about his right of reply. It is apparent it is more about intimidation, harassment and aggression.

289. Another disturbing occurrence is that complaints can drag on for years with the industry blocking, thwarting, intimidating and being hostile until enough media attention occurs and/or an Inquiry is called. Suddenly, avenues not possible before emerge such as settlement of a case (with all the limitations for the victim outlined above) or establishment of an internal review or 'hardship' program (a misnomer and a farce). Gestures are made and views expressed to parliamentarians which sound reasonable but amount to little or nothing.

290. Yet again – this very month of the submission deadline, March 2017 – (so not much is changing despite 17 inquiries into the banking industry since the GFC….) – Fairfax ran an article about **Small Business and Family Enterprise Ombudsman**, Kate Carnell talking about the human cost of predatory banking practices. She reported that people who should be running, often successful small businesses, are living in garages. A report she made into the lending practices of big banks to small businesses noted that many people had not missed a payment yet banks were able to default loans. (We also understand the typical Australian mortgagee probably does not know the bank could revalue their home and foreclose as they choose even where repayments are not in default.)

291. However, of critical relevance to the above review is that not only were some small businesses too traumatized by their experiences to participate in Ms Carnell's inquiry and subsequent report, but others had their problems suddenly disappear as soon as the ombudsman got involved. While resolution – especially after arduous trauma – is an individual's good outcome (assuming it was fair – and that is not, by any means, a given in our experience), the means to resolution by way of the threat of what the ombudsman would reveal should be deeply troubling to government and power structures. The motivation is apparent in that, as journalist Cara Waters noted "*these settlements meant the small businesses were no longer able to participate in the report."* As Ms Carnell is quoted as saying, *"Some of the challenges in this case is whenever there is a settlement the confidentiality requirements are fairly dramatic."*

Comment regarding understanding by parliamentarians and industry of issues related to white collar crime

292. Last year, watching the episode of Annabel Crabb's *Kitchen Cabinet* featuring Prime Minister Turnbull cooking at the home of his daughter, Daisy, one of the author's wondered if he could imagine complete financial devastation of his daughter, through no fault of her own, at the hands of the finance sector. If he *can* understand how that could happen then his lack of response to support urgent redress for victims, thorough investigation, design of genuine protection for consumers and meaningful penalties for industry is difficult to fathom.

293. If the prime minister *cannot* imagine that his daughter could find herself in this situation, then this is all the more reason a royal commission, commission of inquiry or similar such investigation, and commitment to meaningful reform and redress, is required.

294. Any parliamentarian who understands that serious white collar crime can result in obliteration of an innocent person's home and life-savings after lifelong hard work and/or placement in negligent or deceptive debt will recognize grave concerns exist regarding the industry which urgently must be addressed. Years later, is not good enough. Countless inquiries since the GFC have not resulted in redress for victims of people like Peter Holt – or substantial change in industry culture.

295. Senate inquiries are not enough. We have observed outright false and misleading information provided. Senators are busy and, of serious concern, may well not have the time to give to be fully informed, check information or think to obtain feedback from the victims involved. Some may assume they know all that is necessary to know. Some may have their own agenda or be influenced by politicking. Moreover, there also appears to be little willingness to respond to, or investigate, reports of concern about testimony to hearings even when evidence exists that it is inaccurate and misleading. Industry knows it and has little, if any, qualms about playing the system – and making a mockery of it.

296. However, politicians (or anyone) who do not understand how *multi-lender, multi-product white collar crime* can occur, also makes the case - for precisely the reverse reason - as to why a thorough, independent, unbiased investigation focused on the purpose of designing meaningful reform with proper redress for future victims should be one of government's highest priorities.

297. Retrospective restitution and compensation must occur now as a matter of urgency. It does not require a royal commission or commission of inquiry to commence or be completed: the value of such an investigation is to expose the deep tentacles, uproot the rot and ensure solid safeguards to minimize corruption.

298. Victims have an invaluable contribution and unique insights. Involvement of victims of unconscionable conduct in white collar crime must play a central role in an advisory and review capacity in order for outcomes to be meaningful, efficient and effective. Their role is essential to the design, establishment and operation of a resolution body.

299. An untrustworthy, unstable national economic basis is a recipe for disaster. Fraud and misconduct is a financial cancer. It will persist and grow, undermining the economy and social fabric from every angle. Money directed toward creating an ethical, efficient

and robust system, including restitution and compensation, is an investment Australia cannot afford *not* to make – and without further delay.

Summary: Consumer protection - resolution, transformation and evolution

300. Establishing genuine consumer protections, particularly meaningful design of informed consent, with evidence of due diligence having been performed, will change the landscape going forward.

301. Funding retrospective redress may result in short-term pain for banks and shareholders. Shareholders have had ample opportunity to pressure banks to change their practices over many years since the GFC in 2008 exposed concerns. Requirements to provide restitution and compensation, retrospectively, and going forward, will create much needed confidence and trust in the stability of the banking, insurance and finance sector because it underpins ethics and responsibility. It would ensure a strong, secure foundation of the industry translating to profits based on confidence in ethical practice.

302. A real-case pilot study using panels for investigation, to determine and enforce retrospective restitution and compensation, recommend other penalties as well as participate in a restorative justice-style program on conclusion of individual cases, could be established as a matter of urgency with known victims such as those in HNAB-AG. It would provide invaluable feedback for developing, designing and implementing a new one-stop-shop style body. Funding from an industry pool and government is appropriate for reasons outlined. This should cover restitution and compensation.

303. Assistance through various means such as halting payment of tax assessed as due to the amount of loss incurred (for as many years) until a case is resolved would allow someone in hardship a modicum of financial alleviation would also encourage power structures to resolve a case. The amount assessed as due for tax could be retained or refunded where taken through employers. It could be kept aside in a trust to contribute to restitution and compensation in cases where serious hardship is not a concern. The ATO's interest would be safeguarded in this way in cases which prove not to be genuine.

304. Other practical easy to implement measures such as waiving stamp duty on purchasing a home for victims of white collar crime would go some way toward compensation. It should apply to any victim of white collar crime who had to sell his or her home, downsize, refinance, divorce or separate, relocate, borrow from friends or family, use inheritance or superannuation or other means to reduce or pay debt incurred from deceptive or negligent practices or who were unable to ever enter the property market due to the impact on savings or earning capacity as a consequence of the trauma inflicted. This could also include interest-free loans from lenders involved by way of assisting people to rebuild their lives. Most members of HNAB-AG have endured over 8 years of compounding loss and anguish but earlier victims of Peter Holt have suffered even longer.

305. Failing to provide meaningful consumer protections or hold the industry properly accountable undermines the principles which are essential to drive trust, and hence growth, in the sector. In turn this impacts the Australian public's perception as well as of those internationally. Trust and confidence based in meaningful, responsible, action - not advertising slogans or fabricated, biased, official reports and testimony - and

reflected in genuine statistics with satisfied consumers is what is needed to gain, and keep, favourable perception.

306. Dr Ray Nichols, former head of the politics department at Monash University, has said that democracy at its best flourishes when there is an educated public, a responsible independent media and transparency in politics, policy and governance. The consequence of the lack of this around most of the world seems evident today. It is certainly true of the experience of victims of white collar crime. Australian democracy has failed us. Consumer protections have been, and remain, flagrantly inadequate. Democracy can tip into fascism without enough checks on self-interest and corrupt power structures. Consumer protections require knowledge, accountability and clarity from all stakeholders to provide authentic reform and safeguards.

307. Disregard for the impact on fellow humankind is at the pulsating heart of a dangerous, raging, multi-headed financial beast which threatens individuals, Australia and the planet. Denial is a useful short-term defence mechanism, not a solution. Vision, integrity and courage are required for long-term resolution, transformation and evolution. Parliamentarians owe it to victims, Australian consumers and the global economy to ensure the banks, insurance and finance sector is strong and ethical through authentic meaningful accountability and redress.

308. We hope a Royal Commission or Commission of Inquiry will occur with the broadest terms of reference. We note former Liberal Party treasurer Michael Yabsley has joined the call. His personal experience with the banking sector has informed his understanding. He notes there is understanding in Federal Government that the industry has left victims in its wake for decades and that *"if these systemic failures are not addressed by a royal commission the Coalition will find itself on the wrong side of history, in much the same way it did in relation to the apology to the Stolen Generation."*

309. Crimes cannot be undone or the trauma they inflict. However, unlike the tragedy of victims of institutional responses to sexual abuse, or the Stolen Generation, who also deserve compensation, victims of white collar crime could have their direct, and indirect compounding, financial losses reinstated. Compensation for the incalculable financial losses, as well as the immeasurable personal toll on all aspects of their lives, is in order for these victims too. This must occur as a matter of urgency, separate to, not as a substitute for a royal commission or commission of inquiry.

310. Finally, as evidenced by questioning of ANZ today, 7/3/17, as part of the *Review of the 4 Major Banks*, the difficulty in navigating the complex issue for Matt Thistlewaite, MP without adequate time to explore the issues or have victims participate in questioning, resulted in the purpose being confused and the opportunity lost. It enabled the bank to continue to obfuscate. We can demonstrate Graham Hodges and Shayne Elliott misled and took advantage of the situation, deflecting with irrelevancies. Mr Hodges avoided a challenge to his statement at the previous hearing that Holt victims should not be pursued, and hence our request that ANZ reimburse loan money collected by KordaMentha. This illustrates our contentions throughout this submission.

Thank you for considering these comments. On behalf of all victims we extend our gratitude and admiration to those parliamentarians who are behind moves to reform and redress the scourge of corruption in, and by, power structures. Further details or input will be provided on request should it be helpful.

Appendix A – HNAB-AG's Experience of ASIC

At 16 May 2016

SUMMARY: HNAB-AG's EXPERIENCE OF ASIC

Reinstating funding and beefing up ASIC powers **fails beyond measure to address white collar crime or help victims**.
ASIC is central to the flourishing profitable business of white collar crime. **ASIC's attitude and culture is encapsulated in 2 encounters** with victims in HNAB-AG: ASIC provided misleading testimony to a parliamentary committee; and threatened possible delay in a decision about pursuing criminal charges if ASIC's resources are used in responding to journalists (see below and items 7 and 8). ASIC demonstrates contempt for parliamentarians, whistleblowers and victims.

ASIC testified to parliamentarians it was '*in consultation'* with HNAB-AG. In only one meeting on considering criminal charges regarding accountant/adviser Peter Holt, this amounted to informing us – categorically – *no consultation* would occur: i.e. **ASIC's consultation was to inform us there would be no consultation**.

Throughout, while careful to invite information, ASIC did not take documents offered. We know of one person interviewed. Assistance offered, to identify who might have material or may be good court witnesses, was declined. Concern about the conduct of banks involved through Holt never raised an eyebrow.

After a journalist, at her own volition, contacted the regulator for information about Peter Holt, ASIC emailed HNAB-AG this extraordinary and bizarre threat: *"Please also note that ASIC's progress on this matter may be delayed if resources are diverted to responding to media enquiries regarding the matter."*

Anyone under the delusion ASIC has been merely hamstrung by lack of resources would be disabused of that notion if they spoke with victims. A brief look at ASIC's responses to white collar crime involving at least 500 victims of banks through accountant/adviser Peter Holt shows that ***before $120million was cut***:

1) **Melbourne accountant and adviser Peter Holt had been reported to ASIC years before 2008** when his last batch of victims emerged. Yet ASIC did not stop him: it even reassured people who inquired to check on him. The GFC exposed massive white collar crime to which hundreds were subjected by **Holt's firm in collaboration with major banks**.

   Victims lost their homes, life-savings, retirements and were placed in overwhelming, unauthorised debt, which will cripple many for the rest of their lives and resulted in bankruptcy for others. Deception and fraud placed people in loans that were **grossly misrepresented** or even, unimaginably, about which they **did not know even existed**.

2) ASIC told victims wanting to lodge complaints to *"move on"* and *"start over"* displaying **total disinterest in pursuing action or safeguarding the community**. Was it too much effort, incompetence…? Or what…?

3) In January 2011, a few victims met after an invitation to a creditors meeting with **Greg Andrews**, the liquidator for Holt's business. HNAB-AG was formed. We immediately set about collating data to take to ASIC from the initial 40 people who could be located. In July 2011 after persisting to meet with ASIC, **data and concerns were summarized** over 3 hours with a PPT presentation. We were accompanied by an elderly couple, from a previous batch of victims, who lost everything and now live in a caravan.

Interest in their meticulous documents also was not apparent. No alarm was sounded despite ASIC's claim it took our reports very seriously.

4) In **September 2012, finally ASIC issued a ban of Peter Holt**. However, the ban was only for 3 years despite HNAB-AG having detailed that his conduct met ASIC's own **criteria for a minimum 10 year to Life ban** and **warranting criminal investigation**. Victims later discovered it was based on 8 cases. It did not include data HNAB-AG provided or other documents and material offered to assist ASIC.

   Moreover, in ASIC's report (never provided to victims) ***Peter Holt even acknowledged needing more training in managing margin lending***: he lost multi-millions of dollars with **BT margin lending** in which people discovered they were double-geared and/or his claims were not true and he had deceived them by omitting critically important information.

   It cost people their life-savings, forced the sale of homes and rendered some bankrupt. The personal cost is worse: marriages, children, families, work and health. Victims were **deceived on an unbelievable scale**. Banks provided *'investment loans'* and BT margin lending collaborated with its external *'authorized representative.'* **BT did not check details or that 'clients'** (i.e. targets) **were informed to be able to consent**.

5) In the hope of extending the meaningless 3 year ban, HNAB-AG sought to meet with ASIC again when Peter Holt appealed ASIC's decision to the ***Administrative Appeals Tribunal*** (AAT). Information was presented to underscore the need for a Life Ban and criminal charges. However, a couple of weeks later **Holt uncharacteristically withdrew his Appeal**: it begs the question who told him what - and why?

6) HNAB-AG made submissions to various **Senate Inquiries** including into the (abysmal) ***Performance of ASIC***. In 2014, after lobbying parliamentarians in Canberra, media coverage of Peter Holt by ABC's ***7.30*** and ***Lateline,*** and Adele Ferguson at **Fairfax** related to serious concerns about agribusinesses such as **Timbercorp** it resulted in victims appearing at the ***Senate Inquiry into Forestry MIS***. Only then did **KordaMentha**, the liquidator for Timbercorp, finally encourage ASIC to examine Holt.

   KordaMentha finally launched a **Federal Court case** examining **Holt's personal bankruptcy as a fake-debt scenario** to secure his assets beyond creditors reach. This included $2.46million he owed to Timbercorp. This was a full 2.5 years *after* HNAB-AG wrote to alert the liquidator, **KordaMentha**, about Peter Holt: no response or action occurred prior.

   (If the court case is settled, this activity will be swept under the carpet…)

   Some 6 years after receiving complaints from the *last lot* of victims of banks and products through Holt's firm, **ASIC eventually announced it was considering criminal charges** against him.

7) It seems ASIC want to be seen to be acting: its **fraud squad** made much of appearing keen to meet with HNAB-AG. Its response over the many years prior had not engendered trust or confidence: consequently, a further meeting was a low priority. People were (and still are) in terrible distress, debilitated from years of protracted trauma. High levels of suicidality exist. Years after these crimes emerged, victims struggle with **overwhelming financial and personal consequences**. Still ongoing is

the aggressive, sadistic, pursuit of Timbercorp victims by liquidators at **KordaMentha in its inhumane and farcical "hardship program**.**"**

Despite reservations, representatives of HNAB-AG made the effort to meet ASIC in May 2015. Unsurprisingly, ASIC made it clear we would not be informed about any aspects in considering the case: **there would be no transparency or consultation** around its consideration. ASIC's decision about pursuing criminal charges was to take 2 weeks but took until March 2016, another 10 months on. This was about a year after it commenced.

ASIC **refused our help** in suggesting who among our group of 140 cases may have good evidence or be good witnesses in court. As at the outset, ASIC **demonstrated no interest in boxes of documents** amongst the representatives - far less the larger group of at least 500 victims.

We know of one person interviewed the month before ASIC's decision. There is no way of knowing if any others were sought out or if the investigation was thorough: it is **hard to be confident** as representatives of **Holt's victims were shut out**. From the outset in 2011, ASIC's response was less than concerned despite its noble proclamations.

8) The **disturbing attitude of ASIC** is revealed in an email reprimanding HNAB-AG (as if we would have control) over **ABC journalist, Sarina Locke** who diligently contacted the regulator for information about Peter Holt regarding agribusiness MIS: ASIC threatened, *"Please also note that ASIC's progress on this matter may be delayed if resources are diverted to responding to media enquiries regarding the matter."*

9) It is unknown if the **decision around criminal proceedings blew out from 2 weeks to a year** due to extensive investigation (despite not involving victims with documents offering help) or even if anything serious occurred. What is certain is that **ASIC sought to bury its decision**.

   At 4.23pm, on Thursday, 24 March, the eve of the 2016 Easter holidays, as the minutes drew towards the close of business, ASIC's Tim Mullaly emailed HNAB-AG about its decision to pursue criminal charges into banned adviser Peter Raymond Holt, *"After a full assessment of a range of information resulting from enquiries made, ASIC has concluded that there is insufficient admissible evidence to establish to the standard required that there has been a breach of the law."*

   Regardless of admissible evidence issues, **ASIC did nothing about a clear pattern of deception across hundreds** of victims of Peter Holt and associated lenders and products. Predatory financial crooks must laugh at inordinately pathetic *'penalties.'* ASIC knows it and enables them.

   About its decision, ASIC managed to add insult to injury, commenting it appreciated people *"might be disappointed."* (Yes ASIC, just possibly victims may be utterly distraught and despairing….)

10) ASIC failed to advise victims (who had contacted it) of a **Security Bond of $20,000**. This was held should *'a complaint'* be made about Holt. The spectacularly inadequate *'security'* bond (plus interest in the bank of $12,000) would have been returned to Peter Holt, had ***G.S. Andrews and Associates*** (liquidators for his company) not behaved with integrity and professionalism, informing HNAB-AG it existed. ASIC only later advertised in a newspaper: no-one appeared to see it as no other victims applied.

Obtaining it was a relentless ordeal that took over 2 years from inquiring in March 2013 to receiving the money in September 2015 (allocating it only to some applicants: that fiasco with ASIC is another debacle…).

Senator Deborah O'Neil kindly tried to assist, communicating problems to **Commissioner Kell**. The battle took innumerable email and endless effort over 2 years from **HNAB-AG**. Eventually, the paltry $20,000 was obtained by the few initial members of HNAB-AG (a volunteer group) who applied with the express purpose of using it for operating costs, expenses incurred travelling to Parliament House and related activism. To top it off, ASIC could not advise if the bond would incur tax or not. It is disturbing the regulator did not know. Of the almost $19,000 contributed, $6,000 is held should recipients be taxed. After expenses incurred so far, it leaves about $5,600 which is expected to be depleted this year.

The liquidator used the interest towards costs of managing Peter Holt's bankruptcy. It is noteworthy, that had Holt's company not been in liquidation, Holt would have made $12,000 profit (i.e. the interest). Holt would have been *out of pocket for only $8000* on a claim. The fact this **satisfied ASIC and successive governments** as adequate protection for the public demonstrates how **out of touch leaders and industry** are about the **impacts of white collar crime and abject misery inflicted**.

Meantime, hundreds of victims have lost homes, life-savings, retirements and been placed in insurmountable debt or bankruptcy. In addition, there is immeasurable traumatic toll in terms of personal, family and health impacts including emotional and mental health and suicide.

11) Further, ASIC / industry legislation did not require adequate **professional indemnity** to be held. Holt had only $2million PI (which it seems also covered his numerous financial services staff). It meant almost all of his victims have been denied compensation, far less received restitution.

Lenders deny responsibility even though without their complicity Holt could not have achieved all he did. They accepted loan documents which did not fulfil their own criteria and/or having not done due diligence. The ***"authorised representative''*** title Holt advertised, and their close collaboration with him (typically not ever speaking with the 'client'), meant **protection** for them when the crimes emerged. Lenders and products **hide behind legislation designed to protect them and the very rich**, not the public. **Government is responsible** for the legislation.

12) ASIC did not check products were legitimate or accurately represented leaving unsuspecting Australians unaware **Product Disclosure Statements** were just advertising for dodgy products (if ever received or advised to read). The **ATO** has responsibility in this too. Clients were shown articles where government ***'endorsed'*** products. It was never explained as simply meaning product rulings for tax had been issued.

It did not mean investments were deemed ethical, solid and sound, helping farmers and the economy or Australians as we aged to relieve the burden of superannuation being insufficient and to encourage self-funded retirees. It was **key to selling products** spruiked by greedy industry and individuals motivated by gargantuan profits and conflicted remuneration.

These people are more than unscrupulous: they are **predatory criminals**. Just like churches, schools and other organizations protected paedophiles for decades, so white collar criminals are protected by industry and regulators which is the **responsibility of successive governments**.

13) Perhaps it was an error that an auto-reply in 2015 stated the ASIC staff member was **on leave for 5 years** until July 2020: however, there was no effort toward a suggestion of **who to contact** in her place or how.

14) There is much, much more. Suffice it to say, absurd delays, lack of response, PR spin in letters, turnover of staff, hand-balling, arbitrary flexibility oscillating with rigidity over deadlines such as the Security Bond fiasco, and the sense of lack of understanding, humanity or care about the financial and extensive personal impacts on victims, is astounding.

Whistleblowers such as **Jeff Morris** and journalists like **Adele Ferguson** have done more (and without millions of dollars of funding) to expose white collar crime and demand changes than ASIC. **James Wheeldon**'s exposé in April 2016 of the activities of **Chairman, Greg Medcraft** is nothing short of alarming. In plain sight, **ASIC is as far from the solution as it could be**. The regulator is a sick joke. Denial of the reality insults victims, grinding salt into gaping wounds.

Leadership is needed NOW: it requires genuine consultation with victims

Victims of industry members and organizations **where no whistleblower comes forward**, are in the most powerless, helpless and dangerously precarious situation. When at their most vulnerable, debilitated and distraught victims are barely able to scramble to deal with the nightmare in which they have been placed. It can take years to unravel and understand. The more vast the numbers of victims of complex deception, fraud and negligence, the less likely anyone will help without a whistleblower to advocate if not provide the smoking-gun, so the more the ***well-heeled corporate criminals in suits get away with it: laughing all the way to - and with - the banks***.

Lawyers and financial counsellors typically do not understand or are not willing to do the painstaking work of sorting through voluminous documents. Nor can most victims afford it. Community services are limited. **Inadequate legislation leaves victims abandoned and re-victimized**. Valuable time is lost in legal considerations. Culprits know how to play the system allowing time to **sanitize files and to enact strategies to protect themselves**.

Helping the invisible, abandoned, victims is a David and Goliath task. It is another reason why **a royal commission is vital**. ***Will we only be heard then?***

A new organization is needed run by panels of competent experts, including former victims and whistleblowers, empowered to compassionately see cases through. A royal commission to examine the enormity of corruption is imperative. Australians have been traumatized beyond decimated financially or losing life-savings and homes. This adds to the taxpayer burden. Even victims taking their own lives have not been enough for successive governments. ***What will it take?***

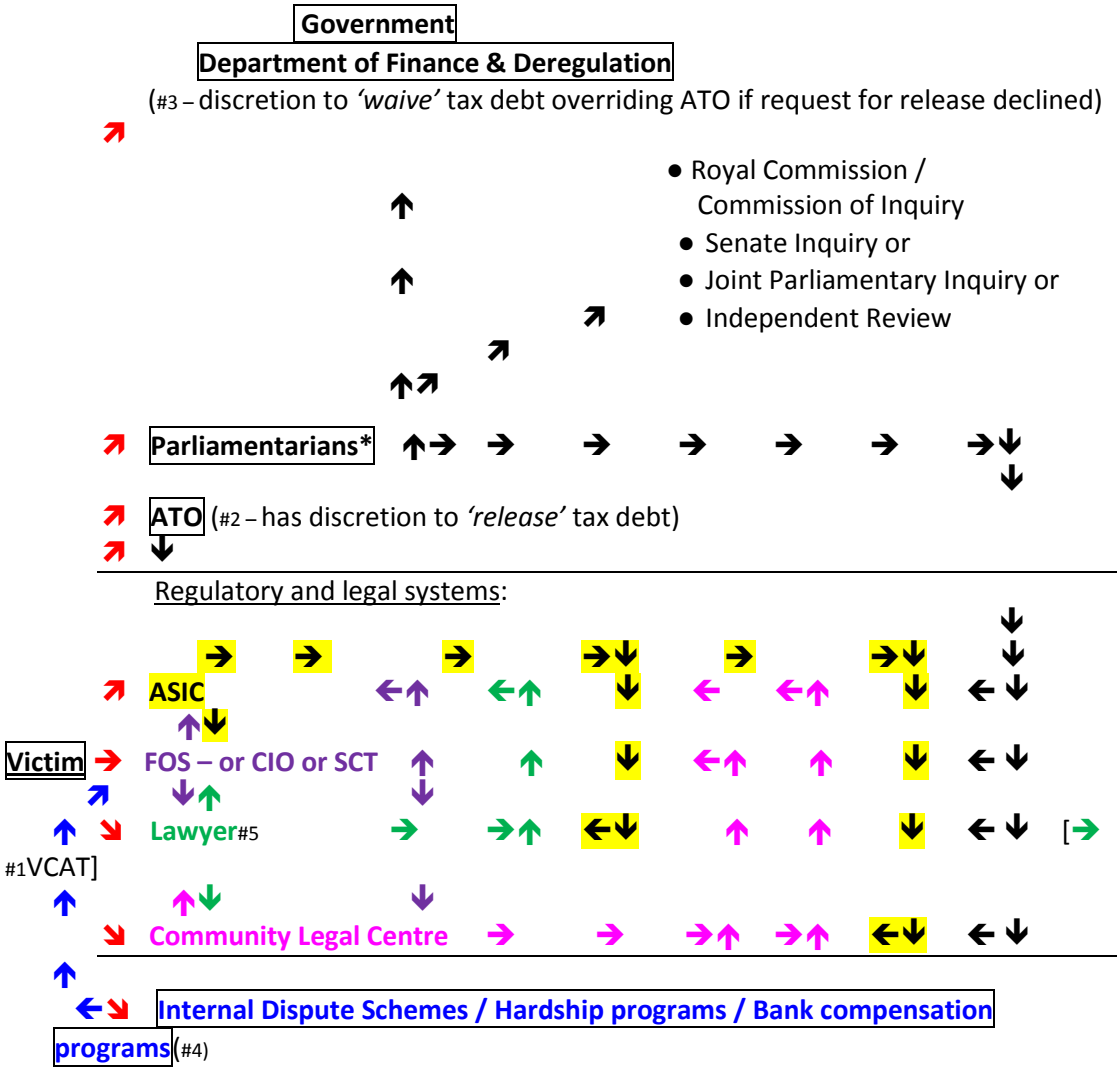
Appendix B – Parallels of Institutional Responses to Abuses: Financial, Sexual and Family Violence

Type of crime ➔ **Dynamics ⇩**	**White Collar Crime / Financial Abuse:** ("Misconduct" "Poor advice") **- negligence, deception, fraud**	**Sexual Abuse in Institutions (e.g. orphanages, sects, schools, churches, synagogues, mosques, scouts)**	**Family Violence / Domestic Violence / Abuse**
Power structures set regulations: responsible to hold accountable, remedy injustice, unethical and criminal conduct	Successive governments: Regulatory system / legislation, Boards, Lenders, Product issuers, FSI: associations etc.	Head of organizations eg. directors, principals, successive Popes, Grand Muftis, Rabbis, Archbishops, CEOs, executives	Successive governments, Family Court, Legal system, Police Force
Criminals protected by incompetence, disincentive and vested interests	Offending executives, board, staff, banks, insurers, product issuers, liquidators, advisers, accountants etc.	Offending staff, caregivers, clergy, rabbis, imams, caregivers, teachers, leaders, etc.	Offending spouse / partner, parent, relative
How do they get away with it?	Lack of consultation with victims to understand or find solutions; Uninformed commentators and / or authorities who deny, ignore, minimize, deflect, conceal, spin, buck-pass about systemic issues, a compromised culture and vested interests in cover-up and denial; Posturing until enough community awareness creates pressure; Regulatory system / law does not provide justice (even if accessible): inadequate penalties; Inadequate means to change culture; limited support for victims; Systems re-traumatize, demoralize and intimidate, disempowering victims when at their most vulnerable, distraught and depleted		
Who are the direct victims targeted? **• *'Direct' = legally defined as victim***	Teenagers, young adults through to the elderly including people who are ill or disabled	Babies through to the elderly including people who are ill or disabled	Babies through to the elderly including people who are ill or disabled
Who are directly impacted personally *even if not legally defined as a victim*?	Babies, children, non-offending adults in role of (existing, former and/or subsequent) partner / spouse, dependent relatives, concerned parents (including ill and elderly) extended family and / or close friends – even when unaware if a victim keeps it secret; Animals and pets; Intergenerational impacts; Failure to respond can be worse than the original abuse		
Who are the indirect victims?	Those who care about a direct victim but are not dependent (e.g. friends, colleagues, health professionals, whistleblowers / advocates);those economically impacted (such as business partners, employers, colleagues); Society in terms of health, social and economic costs incurred		
What are the damaging impacts?	Betrayal of trust and power = loss of hope, dignity, self-confidence; Family, social, economic, career, health: all aspects of life; Trauma leads to varying psychological and neurophysiologic impacts including compromised immune systems and stress-related diseases, personal and social consequences (substance abuse, homelessness, poverty, violence, inability to cope, suicidality etc.); Family relations affected: separation, divorce, alienation, isolation Intergenerational impacts and also repetition if unaddressed		
Literature on impacts, healing	Little on related specifics	Extensive, vast research and therapeutic literature	

Continued / -

Dynamics	**White Collar Crime / Financial Abuse:** ("Misconduct" "Poor advice") **- Negligence, deception, fraud**	**Sexual Abuse in Institutions (e.g. orphanages, sects, schools, churches, synagogues, mosques, scouts)**	**Family Violence / Domestic Violence / Abuse**
What are *specific* uninformed victim-blaming attitudes used to protect criminals?	Victims at fault because: - irresponsible / at fault: 'buyer-beware' - must or should have known risk - disgruntled - greedy - deserve it	Victims at fault because: - did not object - asked for it (by dress, place, time, relationship etc.) - seduced / aroused offender: invited it - liked it: body aroused *[biological design and/or in defence]* - deserve it	Victims at fault because: - provoked it - deserved it - need to be taught lesson / punished - need to suffer - retaliation - deserve it
What is *general* uninformed attitude?	People make it up or seek to blame others for some gain or to deny responsibility		
Resources available	Trauma-informed counsellors / health professionals specifically trained in the neuroscience and psychology of extreme stress / trauma; *(regrettably not in WCC specifics)*		
Resources not available in all 3 cases	Beyond a few victim / survivor support and advocacy groups, the same level of specifically relevant resources and understanding of the issues are <u>not</u> available as for physical assaults (e.g. next column) ➔	- Victim / survivor support groups - Advocacy nationwide - Specialists counsellors, health professionals trained in these areas - Special Professional Development training - Extensive research facilities and educators - Emergency practical and emotional support - Dedicated clinics / units / specialist centres - Specific charities / organizations - High profile / celebrity advocates - Dedicated help lines - Community awareness and prevention programs with government funding	
Community awareness	Limited awareness or health impacts; Few personal impact stories in print /film; Some film and documentaries re industry big picture	Substantial; Extensive clinical literature re psychological and neurobiological impacts over 200+ years and numerous personal accounts:	Substantial; Extensive literature since 1960s re psychological and neurobiological impacts with many personal accounts
Advocates, commentators, journalists and parliamentarians raising awareness	- Whistleblowers: e.g. brave people like **Jeff Morris, Dr Koh** etc. - Award-winning business journalist **Adele Ferguson** (has done what ASIC has not) and others: - various **senators, parliamentarians** and **some industry members** for years	Nationwide mental health organizations, advocates, media, journalists, politicians and campaigns after victims eventually heard (after enough research/awareness); *Royal Commission into Institutional Responses to Sexual Abuse*	Nationwide mental health organizations, advocates, media, journalists, politicians and campaigns after victims eventually heard (requiring enough statistics and graphic exposure); Victoria's *Royal Commission into Family Violence*

Appendix C – Referral maze: seeking assistance for white collar crime



*MPs from successive governments, opposition, micro-parties, independents – if they are willing to meet with you.

[➔#1VCAT was rarely mentioned but was posited as a cheaper alternative for lawyers whose motive appeared to be financial gain from a victim's plight rather than stopping white collar criminals – despite noble proclamations to the media.]

[➔ #2ATO – objection to tax assessed as due can be lodged on grounds of financial decimation due to white collar crime.]

[➔#3DoFD – has discretion to 'waive' a tax debt if ATO declines objection for release. It is preferable to have your local Federal Member make representations on your behalf to the Minister for Finance and Parliamentary Secretary to the Minister.]

[➔#4Internal Dispute Resolution schemes: Complaints; Hardship; Compensation – these are portrayed as reasonable and independent, referring you to FOS if dissatisfied with outcome despite cap. Complaints have been lost.]

[➔#5Lawyers have also 'lost' original documents and mismanaged cases causing costs to victims and ultimate loss or inability to pursue the case. People have nowhere to go then. So confident is a major law firm of having ultimate power that is does not have an internal dispute or complaints program. Intimidation and bullying prevail.]

Appendix D – Informed Consent: BT Margin Lending

SUGGESTED DRAFT - Informed Consent Checklist for Prospective Clients re BT Margin Lending

BT Margin lending has an ethical responsibility to ensure this product and you are suited based on your circumstances, goals, serviceability, understanding of your responsibilities, options and inherent risks. We need to ascertain that information provided to you, and us, by your accountant / adviser / planner is correct. You must be appropriately assessed and properly informed in order to provide consent to our product. Successive governments have not provided adequate consumer safeguards via the regulator or within the industry including lending institutions. Seek **additional independent advice** if you are advised an informed consent checklist is merely a formality and report it to the police.

Please **circle YES, NO or UNSURE** as your answer to each question:

1. Have you ascertained - in writing - from your accountant / adviser/ planner that he or she has relevant qualifications, has never been banned by ASIC or disciplined by any industry body (e.g. CPA Australia etc.), found guilty of providing inappropriate or misleading or deceptive advice, negligence or fraud or had allegations of any unconscionable conduct reported (e.g. FOS, ASIC) - and has at least $2 million professional indemnity insurance *per client* should you and others need to pursue action?
   - **Yes / No / Unsure**

2. Have you provided your accountant / adviser / planner written financial goals, clarification of products which interest you (e.g. shares, property, managed investment schemes, bonds etc.) and the risk level you accept (i.e. low / conservative; moderate; high / aggressive investor)?
   - **Yes / No / Unsure**

3. Have you been provided with a BT Financial Services Guide (FSG), Statement of Advice (SOA) and Product Disclosure Statement (PDS) regarding BT margin lending as well as a summary of the key points about what is required of you and the risks, in language which you fully understand and has been checked by a lawyer or member of the financial services industry who is entirely independent of your accountant / adviser / planner or BT?
   - **Yes / No / Unsure**

4. In addition to 3, this checklist will help you ascertain suitability for you of a BT margin loan: circle your understanding:
   (i) It is a loan against cash, or an investment loan, requiring sophisticated understanding? - **Yes / No / Unsure**

   (ii) It is a high risk investment (not low) and is not for cautious investors without expertise? - **Yes / No / Unsure**

   (iii) A stop loss order can be established for the level at which you wish your portfolio to be sold automatically, day or night, to prevent further loss that you are not willing to risk? - **Yes / No / Unsure**

   (iv) People's homes can be used as security (i.e. the bank can take your home)? - **Yes / No / Unsure**

   (v) A superannuation fund can no longer be used for new loans (those before 2009 are OK)? - **Yes / No / Unsure**

I / we have answered questions above and will complete page 2. *[Cross out 'client 2' if loan is to be in 1 name]*

Prospective BT client 1: Prospective BT client 2:

Signed: _____ _____

Continued

5. A margin call is possible where you have to find money at very short notice (even 24 hours) to avoid liquidation (i.e. BT selling up your portfolio leaving you with the investment loan debt and zero share value) and buffers cannot prevent this?
   - **Yes / No / Unsure**

6. Your accountant / adviser / planner or any authorized representative of BT handling your margin loan should have expertise, resources and staff to competently do so and any concerns or queries should be reported to BT immediately a query or concern arises should you proceed with a margin loan?
   - Yes / No / Unsure

7. Have you answered all questions here or on other related documentation on the basis of your knowledge or comfort level without being advised by your accountant / adviser / planner to disregard any aspect or on the basis of a reason provided as to why he or she claims it is not relevant in your situation or under his or her management?
   - **Yes / No / Unsure**

IMPORTANT SAFEGUARD: If you answered *'unsure'* or *'no'* to any question you have not been given adequate advice or guidance to safeguard your finances. Ethically, BT will not proceed with this product and recommends that you seek further information if a margin loan is of interest to you as well as seek independent advice from a lawyer and / or other member of the financial services industry. **You should keep this original sheet signed by all parties - and sign a separate one for BT's records if you wish to proceed with a BT margin loan**. *[Cross out 'client 2' if loan is to be in 1 name.]*

Prospective BT client 1: Prospective BT client 2:

Signed:…… ……
Print name:…… ……
Today's date:…… ……

Witness undertaking: I attest to the fact the client/s answered these questions him/herself and understand/s the product and risks and signed in my presence on this date and wishes to proceed with a BT margin loan.

Witness 1: Witness 2:
Relationship to client 1:…… Relationship to client 2:……
Signed:…… ……
Print name:…… ……

BT Margin Lending representative (not external authorized representative) in attendance:
Signed:……
Print name:……
Date:……..

External authorized representative in attendance (accountant, financial adviser, other):
Professional position:……
Signed:……
Print name:……..
Date:……..

Appendix E – Informed Consent: Agribusiness

SUGGESTED DRAFT - Informed Consent Checklist for MIS / Agribusinesses

The following are statements for you to seek written clarification, and confirmation, by your accountant / advisor / lender / product issuer before you commit to an investment. Product Disclosure Statements and Loan Contracts can be too complex and open to error, or deception and fraud, in interpretation.

I understand that agribusinesses including this one (specify……):

1) have product lenders that pay various fees to the agent / accountant / adviser / planner who recommended them. In this case, it is a **total** of **$(specify)**, being commission of **$(specify)** as **(specify)**% of my investment plus trailing fees of **$(specify)** and other benefits **(specify).**

2) are often high-risk speculative schemes suitable for people with considerable incomes requiring cash-flow by deferring tax to harvest and that these are not conservative, safer or better alternatives to superannuation or other investments. The risk to me in this one is **(specify: high, medium, low)**.

3) are not suited to investors who are not highly sophisticated financial investors with industry knowledge and who must be reliant on the interpretation or representation of documents by an accountant / financial planner or not someone genuinely independent. The person who recommended this to me **(specify)** is / is not aligned with the product or related company and has explained how and why it is among the range of best products for my interests at this time.

4) are not "endorsed" in the sense of recommended or promoted by the ATO: it means the ATO has issued a '*Product Ruling' for tax benefits for the product: it does not guarantee any legitimacy. (See note p 2.)

5) are sometimes entered into via a loan but can be bought outright which I **(specify)** have / have not done here. I would be committing to a loan of **$(specify)** of **(specify frequency)** repayments at **(specify)**% interest rate. I have been advised I am able (and may have to) fund it with my direct income rather than anticipated investment dividends. I **(specify)** do / do not understand the loan structure and that it is / is not a non-recourse loan and what that means. I sought genuinely independent advice (not from the lender or adviser) about the terms and conditions.

6) also incur maintenance, lease, insurance, harvest (and other: **specify)** fees of **(specify)** that I must fund myself and no other fees or repayments are due at any stage.

7) are not all the same - in this one, I own the crop / land / other (**specify which**)_____. In the event of environmental / economic / mismanagement / other (**specify**)_____ difficulties, I (**specify**) will / will not lose my (**specify**) financial input / any return / be held responsible for other charges including paying out the loan? Other information I should know is (**specify**)_____.

8) should be checked by a professional, entirely unrelated and independent, of my (**specify**) accountant / financial adviser who recommended this MIS. I confirm I understand this is necessary.

PROTECT YOURSELF: It is **essential** to provide written goals and circumstances to your accountant / adviser and seek his or her written clarification and commitments. For a printable **Induction Form** go: www.halttosafeguardyourfinances.com

Continued overleaf/-

Continued/-

Informed Consent Checklist for MIS / Agribusinesses

IMPORTANT SAFEGUARD: If you could not complete the above 8 items about agribusiness MIS with 100% clarity and confidence you have not been given adequate advice or guidance to safeguard your finances. Ethically, the agribusiness must not proceed with this product. It is recommended that you seek further information if agribusinesses are of interest to you as well as seek further independent advice from a lawyer and / or other member of the financial services industry. **You should keep this original sheet signed by all parties - and sign a separate one for the MIS's records if you wish to proceed with this agribusiness**. *[Cross out 'client 2' if loan to be in 1 name.]*

Prospective agribusiness client 1:	Prospective agribusiness client 2:
Signed:……	……..
Print name:……	……..
Today's date:……	……..

Witness undertaking: I attest to the fact the client/s answered these questions and understand/s the product and risks and signed in my presence on this date and wishes to proceed with this loan.

Witness 1:	Witness 2:
Relationship to client 1:……..	Relationship to client 2:……
Signed:……	……..
Print name:……	……..

Agribusiness Lending representative (not external authorized representative) in attendance:
Signed:……
Print name:……
Date:……..

External authorized representative in attendance (accountant, financial adviser, other):
Professional position:……
Signed:……
Print name:……..
Date:……..

*(Note: this has changed now but would have been relevant to Holt victims)

Appendix F – Inadequate & Misleading Responses from ANZ

(Updated 27.2.2017) Evidence is available for the following brief examples:

David Gonski, ANZ Board Chair

- Date: 18/12/14 at ANZ AGM: Mr Gonski claimed he had written a reply to Susan Henry: none was ever received
- Only the same *pro forma* letter written by [redacted] to various people (dated 12/12/14) was received after the AGM. It did not address concerns and specific queries. It provided no meaningful response.
- Date: 16/12/16 at ANZ AGM: Contrary to ANZ's claim of concern for cultural change and fairness, he silenced two HNAB-AG representatives from providing relevant information about KordaMentha's role with Timbercorp victims of Peter Holt pertinent to assistance sought from ANZ which was thus thwarted from being asked.
- Mr Gonski dismissed concerns about Timbercorp, correctly noting ANZ did not have influence as a creditor and not being the liquidator but ignoring and blocking discussion about action ANZ could have taken and could still take.
- Mr Gonski cited a recommendation in the report from the *Senate Inquiry into Forestry MIS* that KordaMentha and HNAB-AG should work together to resolve concerns. Mr Gonski would know that victims of Timbercorp / Peter Holt have considerably less, if any, power or influence than ANZ with the liquidator. He should also know, if he does not, that the liquidator refuses to discuss matters with HNAB-AG representatives any further after substantial disingenuous engagement which has been reported by HNAB-AG to Graham Hodges, Deputy CEO and for which extensive documentation exists. Mr Gonski should also know KordaMentha's hardship program advocate, Catriona Lowe, resigned in June 2016 due to concerns which she was not able to resolve with the liquidator regarding a *"significant minority"* of cases. It is not a reasonable expectation that an aggressive and unscrupulous liquidator would engage meaningfully with a victim's group if an experienced lawyer / consumer advocate was sufficiently thwarted. He would also be aware of extensive concerns reported to parliamentarians in this regard.
- Nor was a general question permitted about safeguards in terms of whether ANZ is consulting with victims of white collar crime in designing meaningful informed consent and learning from their experience and insights (as we proposed in 2015). Consumer advocates, industry and academics do not always understand aspects of multi-lender multi-product deception, or the range, and depth, of impacts on victims. The company managing the microphones indicated ANZ wanted to know the question our representative, Kathleen Marsh (then an ANZ shareholder), wished to ask. After at least 10 minutes of behind the scenes discussion we were informed the bank refused to let the question be posed.
- Note: No letter was sent before the 2016 AGM given the previous experience of ANZ not responding to serious and specific queries asked by many people.

Gerard Brown, Group General Manager of Corporate Affairs

- Date: 18/12/14 An impromptu meeting after the 2014 AGM was held in response to a protest prior, and comments made at the AGM. Graham Hodges, Deputy CEO, coaxed HNAB-AG to agree to a meeting with KordaMentha's so-called *Independent Hardship Advocate* after we had refused (as our concerns are not hardship related per se) by saying that she would also report fraud and misconduct to ASIC. Mr Hodges said ANZ would arrange the meeting. Email confirmed the meeting later that day from ANZ and Susan Henry emailed acceptance and detailed the purpose.
- Naomi Halpern and Kathleen Marsh noted the purpose in written notes at the meeting. Present were ANZ and representatives of 3 other groups (TGG, AGAG and a group from WA). They groups reported the same recollection as the 9 Holt victims present who are members of HNAB-AG.
- ANZ began electronically recording the meeting. Gerard Brown *himself*, decided against it when we accepted recording it on the proviso that we could all have a copy.

- Date: 19/12/14 Mr Brown made a surprise appearance at the meeting Graham Hodges arranged (for victims of Timbercorp's collaboration with Peter Holt) with Catriona Lowe, KordaMentha's *'Independent Hardship Advocate.'* Mr Brown's presence became clear when he introduced the meeting. On being challenged, he outright denied the purpose agreed the day prior (and recorded). He claimed the purpose of the meeting was to discuss hardship. (2 victims left the room in disgust; 1 became suicidal again; all were distressed.) People in dire financial straits and suffering significant anguish had taken (another) day off work for the meeting.
- Date: 8/1/15 In a meeting at ANZ with HNAB-AG representatives, Mr Hodges confirmed he had said what we understood was the purpose of meeting i.e. reporting to ASIC (which, to his and our surprise, he later discovered was not part of her role).
- Date: 31/1/15: On contacting Mr Hodges in response to escalating suicidality concerns amongst victims, he emailed, and Gerard Brown phoned, Susan Henry with the inappropriate advice to get HNAB-AG representatives to encourage people into the hardship program and to contact Catriona Lowe, the 'advocate' at the time. She is not a trauma counsellor. (The highest risk for suicide is actually after a trauma threat has ended. The lack of adequate response is deeply disturbing.)
- Date: 16/12/16: This example is minor in terms of Timbercorp but it reflects the attitude to victims. Recognizing only Mr Brown at the back of the AGM, and as police appeared to have left, and no security for the venue were apparent, Susan Henry asked him to inquire about, and provide, the name of the shareholder who was rude and physically abusive. Her own name had been made public on endeavouring to speak. Mr Brown agreed. However, given previous experience of him she was not confident his agreement could be trusted, and as MCEC's security response was delayed and reluctant, she endeavoured to capture the shareholder's identity by photographing her and then the surrounding witnesses. Mr Brown has not provided the information – or indeed any concern or apology from ANZ.
- Date: 6 and 14/2/17: Mr Brown responded, despite letter of 31/1/17 being sent to Colin Neave in new position of Fairness Officer, and noted in Fairfax as related to our concerns. Its purpose was ignored. He cited the senate inquiry recommendation (see Gonski), persisting in a further reply to our response to him of 9/2/17 and despite liquidator, Craig Shepard's letter to victims on 7/2/17.

Graham Hodges, Deputy CEO

- Mr Hodges provided the most receptive response at the initial meeting on 8 January 2015 although certain comments revealed a lack of appreciation of the trauma or for the dignity of victims. However, there was no action we are aware of (4 weeks later) on learning HNAB-AG members were still not being processed individually as a *"specific and special group"* with *"compassion"* (i.e. waiver or a nominal fee), or *"swiftly as possible"* as he had said ANZ had *"strongly encouraged"* the liquidator.
- Date 31/1/15: see information re Gerard Brown re response to escalating suicidality.
- March – April 2015: The Independent Hardship Advocate, Catriona Lowe, was first asked to pursue this on 1/3/15 with Graham Hodges. Weeks later HNAB-AG had to persist with the request. She eventually responded that her understanding was not ours after speaking with Mr Hodges. Further, she stated she would not treat Holt-victims any differently. Indeed a survey in May 2015 indicated the overwhelming majority did not feel the description of ANZ's encouragement was their experience.
- On 24 August 2015 Mr Hodges refused to read, hear or discuss the survey data in respect of KordaMentha or concerns about Ms Lowe (e.g. delays of many months; prioritizing getting people to agree to writs served by email – cheaper and easier for the liquidator - over severe emotional distress including suicidality; pressure to provide personal information beyond financial e.g. psychologist and medical reports; and despite the lack of transparency of the process, at least 2 major errors had been discovered by victims etc.). Mr Hodges dismissed concerns on the basis of his view that she was *"the best in the business"* which by logical extension insinuated our data was not accurate or worthy of consideration. His bias did not demonstrate respect, fairness or willingness to consider, or act on, the plain truth and facts.
  Note: The 2 cases he looked at that day (as those victims attended the meeting requested with Susan Henry) remain unresolved at ***January 2017***.

Appendix G – Correspondence to Colin Neave in new position of ANZ Fairness Officer (commenced 2017) – see reply from Gerard Brown following

Holt Norman Ashman Baker Action Group (**HNAB-AG**)
PO Box 5043, Moreland West LPO
MORELAND WEST VIC 3055
www.halttosafeguardyourfinances.com
Email: hnabactiongroup@gmail.com

By email - ATTENTION: Mr Colin Neave
Fairness Advisor, ANZ

31 January 2017

Dear Mr Neave,

I write to you on behalf of the *Holt Norman Ashman Baker Action Group* (HNAB-AG). I am hopeful that ANZ is endeavouring to put meaningful strategies in place to assist people and that your appointment marks a turn in the tide of confidence which is much needed for both the public and the bank. It is not possible to convey the gratitude to those who have provided genuine assistance to combat white collar crime or support proper redress. I would be immeasurably appreciative if you saw fit to prioritize assistance for careful consideration of fair treatment of victims of Peter Holt's involvement with Timbercorp. The following information is necessary to understand our request. Representatives of HNAB-AG will make themselves available to meet with you should that be required.

Information about HNAB-AG

HNAB-AG formed 6 years ago, some 2 years after most discovered having been subjected to white collar crime. We have approximately 140 members. The newest member to learn of us joined last month. There are at least 500 people who are victims of *multi-lender / multi-product white collar crime* through a suburban firm which, over the years, had various company names and entities associated with Peter Raymond Holt. He is a qualified accountant, former ATO-auditor and was a financial adviser. Several staff also had qualifications as accountants or financial advisers. Timbercorp is one example of related deception, negligence and fraud.

HNAB-AG has participated in, and been invited to provide information to, meetings with parliamentarians, various senate inquiries and the *Review of the Financial System External Dispute Resolution and Complaints Framework.* We are committed to support meaningful and fair change in the culture of the banking and finance sector. This includes reform as legislation currently disadvantages and re-victimizes many. Restitution and compensation for victims and safeguards for the public are necessary and also for accountability and to drive essential change.

Devastating and lethal impacts of white collar crime

The serious white collar crime we experienced spans the spectrum of impacts including financial hardship through to decimation of life-savings, loss of homes, retirement impossibility and bankruptcy. Non-economic repercussions of the utmost gravity effect marriages, children (including unborn and disabled), extended family, work, career, social life and health. The enormity of severe and even fatal stress-related trauma cannot be understated with physical health impacts (cardiac, autoimmune-system, gastro-intestinal etc. involving heart attacks, cancer, tumours, IBS etc.) and/or mental health (anxiety, depression, insomnia, PTSD and suicidal ideation, as well as actual attempts. We are also aware of completed suicides.

Deception, negligence and fraud, without swift and full redress, are no less lethal than any weapon in the hands of individuals and organizations without care for the consequences to innocent people. The carnage is just not as quick, visible or concentrated in one spot at one time.

Experience of ANZ regarding Timbercorp and KordaMentha

We are hopeful that ANZ's establishment of a *Fairness Advisor* is a genuine commitment to act with, as well as be seen to be supporting, proper and meaningful response and redress for matters which have thus far, not received the attention they deserve. Our experience of ANZ has largely been that response has been limited or disingenuous. I attach a few examples with senior executives in order to assist your appreciation of facts.

We sincerely hope the scope of your role, and the powers afforded to you by ANZ, assist you to perform this vital function.

We endeavoured to inform stakeholders at last year's AGM on 16 December 2016 about the handling of Timbercorp by liquidator KordaMentha in an attempt to provide context for the request we hoped to pose to ANZ. However, Mr Gonski, Chair of the Board, did not permit it.

Nor was a general question permitted about safeguards in terms of whether ANZ is consulting with victims of white collar crime in designing meaningful informed consent and learning from their experience and insights (as we proposed in 2015). Consumer advocates, industry and academics do not always understand aspects of multi-lender multi-product deception, or the range, and depth, of impacts on victims.

The company managing the microphones indicated ANZ wanted to know the question our representative, Kathleen Marsh (then an ANZ shareholder), wished to ask. After at least 10 minutes of behind the scenes discussion we were informed the bank refused to let the question be posed. It does not augur well for commitment to a change in culture, receptivity to concerns of fairness, or engagement to assist those whose lives have been devastated.

Relevant facts regarding waiver for Timbercorp victims of Peter Holt

Consequently, I write in the hope you will consider the facts to assist us with the request we sought to make in respect of Timbercorp. The following is directly

pertinent. It has been ignored, denied or misrepresented, repeatedly, by the liquidator, its hardship program and ANZ in terms of treatment of Mr Holt's victims:

1) Graham Hodges, Deputy CEO ANZ, stated in October 2016, at the new annual inquiry to review the four major banks established by Prime Minister Turnbull's government that in ANZ's view victims of Peter Holt's placement in Timbercorp debt should *not be pursued*.

2) Mr Hodges informed HNAB-AG, 2 years ago, in February 2015 that ANZ had encouraged liquidator KordaMentha to treat Holt victims individually as a special subgroup, *"as swiftly as possible", "very generously"* and *"incredibly compassionately."* This was openly electronically recorded. Mr Hodges reiterated ANZ's position at the *Senate Inquiry into Forestry MIS* in August 2015.

3) Survey data in 2015 and ongoing reports indicate the opposite treatment is occurring in almost all cases. Moreover, inconsistency in comparable, and even in markedly worse off, situations is occurring where people are forced into settlements with the threat of bankruptcy and / or the additional duress of inordinately protracted distress and other circumstances creating anguish being used to pressure and coerce.

4) Moreover, KordaMentha principal, Mark Korda agreed in a senate inquiry in August 2016 that *Holt victims were a subset of Timbercorp* as a result of fraud. He committed to treat these people *"with as much empathy"* as the liquidator could "*under the law.*" (A concise summary of his testimony which is not being honoured or is inaccurate and misleading is available on request.)

5) **Statutory obligations and discretionary powers permit a liquidator to waive debt in full** *under $100,000* and to make the case to seek court approval, or that of the creditors, for debt *over $100,000*. This power enables KordaMentha's so-called *hardship program* to exist.

6) Craig Shepard, the liquidator for Timbercorp Finance has the statutory power to decide debt of *any amount in the hardship program*. Establishing the hardship program gave Mr Shepard the power not to have to seek approval from creditors for amounts over $100,000. He boasts that no-one can tell him what to do regarding settling debt (deceptively placed or otherwise) including parliamentarians and the prime minister - and that he does not have to justify settlement demands. This is correct at law: he has the final say and does not have to consult with anyone about settlement amounts he demands or chooses to accept. However, he declines to exercise his *discretionary powers under statutory obligations* even despite ANZ's guidance and stated position. He ignores these issues, obfuscating by misrepresentation of his power in selectively focusing on his interpretation of duty to creditors (who are benefitting from considerably greater return than industry practice and further aided by exorbitant penalty interest). The problem is the liquidator's refusal to honour commitments made or exercise fairness, integrity or ethics.

7) Patently, full waiver would obviously be the maximum or *"as much empathy"* as *"possible under the law"* as committed to by Mr Korda to a senate

committee. Yet demands are made up to 84% - *of doubled, and even trebled, debt* due to exorbitant penalty interest from collapse in April 2009. (While some receive waiver there have been excruciating, protracted battles to achieve it.)

8) It is difficult to justify a demand of 1% less than 85% which is the amount the liquidator demands of someone settling who is NOT deemed to be in *hardship*. We are aware 2 cases were rejected from the program given the criteria for hardship. The person required to pay 84% remains in a precarious financial situation. A transparent audit, inquiry or royal commission to independently examine the liquidator and program is needed. There must be severe penalties imposed for power structures taking further advantage of people and utilizing the law to do so, devoid of ethical concern or integrity.

9) Separate to the hardship program issues, given Mark Korda's acknowledgement of Holt victims having been subjected to fraud, the clear position of the ANZ as the largest creditor, and the liquidator's commitment to maximum possible empathy - along with the legal power to grant full waiver under statutory obligations and discretion – *'hardship'* per se should be *entirely irrelevant* in cases of Holt victims.

10) We are informed that the view amongst liquidators is that industry practice would be to *waive Holt victims*. (And that it would be commercially viable to settle other people – i.e. non-Holt related - at 10-30c in the dollar.)

11) What should be simple, common-sense and straight-forward has been muddied by the liquidator's hardship program staff who deny or ignore facts *despite* evidence in open electronic recording and Hansard. Both Catriona Lowe, and her replacement Stephen Blyth, have stated they *do not advocate for Holt victims on these aspects, or treat them any differently*. An advocate has the role of *advocating* – this should include commitments to Holt victims made by KordaMentha which are being dishonoured.

12) While Catriona Lowe, eventually, resigned in May 2016 due to concerns over treatment of a "*significant minority*" damage had already occurred. From early in 2015, survey data and victims' reports of serious concern were provided to a senate inquiry chair. These were not investigated then but have been raised again recently with other parliamentarians. Stephen Blyth also states he is not treating individual Holt victims differently – despite ANZ's support for these people constituting a subgroup, and also Mr Korda's testimony. Of note is that Mr Blyth claims he has not seen any inconsistencies and cannot likely see a scenario where he would resign.

Accounts of experiences with KordaMentha and its hardship program are disturbing. It is concerning there is not a forum for shareholders to be adequately informed. It is disappointing Mr Gonski saw fit to prevent feedback and incited support from some shareholders to silence victims. Obviously, some shareholders are not concerned about how their profits are acquired. (On leaving the AGM, I was subjected to verbal hostility from a seated shareholder who shockingly, then pushed my face away aggressively, when I bent down to respond - before I could even apologize that Mr Gonski did not allow us to give context or clarity and to offer a hand-out.)

Fair and ethical action requested of ANZ

We respectfully seek your urgent consideration and assistance to help Timbercorp victims of Peter Holt, given ANZ's stated position and role as the largest remaining creditor (and as it cannot instruct KordaMentha or ensure the liquidator honours testimony or commitments) by meeting the bank's commitment to fair and ethical treatment through:

(i) immediately reimbursing KordaMentha's **Timbercorp Finance** settlement demands – and those Holt victims in progress or yet to occur – *or* inform KordaMentha ANZ will make a public announcement not to use it in future unless it exercises discretion, immediately stopping all action and return monies in full including proceeds victims were forced to relinquish

(ii) returning the proceeds held in **Timbercorp Securities** (of which Mr Korda is liquidator: both are under KordaMentha's control) which people were required to relinquish as part of **Timbercorp Finance** settlements

(iii) extending financial assistance to those forced into bankruptcy, to sell their home and take out loans which have incurred yet more interest

(iv) reimbursing financial loss in seeking legal advice and representation over the past many years for the deceptive debt given KordaMentha's stance

(v) providing assurance of financial assistance should KordaMentha enact its ability to pursue people on claiming to merely *"form the view"* a breach or error in information supplied has occurred. Alarmingly, the deed demands the victim relinquish all rights to a defence. (Advice from independent liquidators is the deed is *not standard*. It contains serious concerns even after amendments were agreed to, following involvement of Senator Xenophon who has not yet concluded his assistance.)

While the liquidator claims some debenture holders exist who refuse to let their representative meet with HNAB-AG, this would not prevent the ANZ, as the primary creditor, from giving back its share of settlement money from Holt victims. The exorbitant penalty interest charged has also made more money for creditors. (KordaMentha is responsible for a vast amount of money used in legal action and funding its hardship program staff - whose assessments Mr Shepard often rejects.)

It is fair and reasonable that ANZ pay **restitution** for what has been paid and lost as a result of fraudulent and misrepresented loans which it took over – and also **compensation** for the consequent indirect financial ramifications as well as almost 8 years of harrowing anguish with devastating personal and family impacts.

We also call on ANZ to support reforms for liquidator accountability and transparency and audit of hardship programs including meaningful penalties. We are confident that any fair assessment of these issues will underscore this necessity. We hope your role will enable ANZ to lead with integrity for all stakeholders and the national economy with special care for victims of gross failures in fairness and ethics.

It has been a long, drawn-out and painful many years for innocent victims. Please do not hesitate to let me know should further details would be helpful for you, to assist with a response at your earliest convenience, in our plea for swift resolution.

Yours faithfully,
Susan Henry
Chair, HNAB-AG
Enc. *Examples of Inadequate and Misleading Responses from ANZ*
hnabactiongroup@gmail.com Personal email: (deleted for submission)

Appendix G continued/- reply from Gerard Brown

6 February 2017

Susan Henry
Holt Norman Ashman Baker Action Group (HNAB-AG)
PO Box 5043, Moreland West LPO
MORELAND WEST VIC 3055
Email: hnabactiongroup@gmail.com

Dear Ms Henry

Thank you for your 31 January letter to Mr Colin Neave. I am responding on behalf of the bank.

We have sought to work closely with all stakeholders, including your group, to ensure those who invested in Timbercorp and are now suffering financial hardship have access to a robust and fair process. This has now seen over three hundred investors reach equitable settlements.

I also note that the parliamentary inquiry into Managed Investment Schemes recommended that your organisation work with Korda Mentha to help ensure outstanding matters are resolved as quickly as possible. I encourage you to support your members in making contact with Stephen Blyth, Timbercorp Independent Hardship Advocate timbercorpadvocate@gmail.com, as quickly as practicable to assist in achieving that outcome.

Yours sincerely,

[redacted]

Gerard Brown
Group General Manager Corporate Affairs

Cc Colin Neave

ANZ Centre Melbourne, Level 10, 833 Collins Street, Docklands VIC 3008
Phone: (61 3) 8654 3276
E mail: gerard.brown@anz.com
Australia and New Zealand Banking Group Limited ABN 11 005 357 522

Appendix H – HNAB-AG response to Gerard Brown's reply to our letter to Colin Neave, Fairness Officer

Holt Norman Ashman Baker Action Group (**HNAB-AG**)
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By email to: Gerard Brown, Group General Manager Corporate Affairs, ANZ

9 February 2017

Dear Mr Brown,

Re: Your reply to our letter to Colin Neave, Fairness Advisor, ANZ

I received your letter of 6/2/17 replying to my letter of 31/1/17 written on behalf of HNAB-AG to Colin Neave in his role as ANZ's first Fairness Officer. We phoned twice to try to ascertain whether the letter had been received as no receipt was acknowledged as requested. It is unclear if Mr Neave received, or read, it before your reply. You noted Mr Neave would be copied in but his email was not included. Clarification would be appreciated at your earliest opportunity that he received both communications and also this letter.

It does not augur well for ANZ's stated commitment to review bank and financial products to see if they are fair, boost customer service and improve customer outcomes, and assist in establishing the bank's remediation principles with a consistent set of standards to which it would adhere. While ANZ reported Mr Neave will work closely with the bank's consumer advocate and complaints people, unless he also consults and works with those impacted, perception is likely to be inadequate and limited without insights from those most affected.

Mr Neave's comments to Adele Ferguson and Sarah Danckert in Fairfax on 15 December 2016, regarding older products inspired our contact. He said, *"In many ways looking at the older products would be more important because some have been in place for many years and it could well be timely to look at them, there might have been issues 'put into the too hard basket' and that might be something that would be of very real interest."* The article referred to Timbercorp and hoped he would review its hardship program. It noted ANZ received 50,000 complaints a year varying in the level of seriousness.

With all due respect, it is inappropriate that you would be selected to reply given your involvement as part of our concerns from the outset of meeting with ANZ representatives. Moreover, comments you make, as well as those you do not address which were raised in our letter, underscore our experience that engagement by the ANZ with victims is not as the bank seeks to characterise.

It is disappointing that, again, serious issues we raised are not responded to and misrepresentation of facts is apparent. Side issues are presented as if they address the purpose of our letter or are somehow pertinent.

I respond to your comments to underscore and reinforce information provided to ANZ:

● The purpose of our letter pertained to Graham Hodges' stated position at the first annual bank review that Timbercorp victims of Peter Holt *"should not be pursued."* We outlined how ANZ could uphold this view regardless of liquidator, KordaMentha's refusal to accept the

bank's encouragement to exercise such discretion permitted under its statutory obligations. There was no reference to this in your reply.

● Data and reports have been provided which contradict your claim the hardship program is *"a robust and fair process"* (as does Ms Lowe's resignation as Timbercorp's advocate): indeed reports to us emphasize the need for a meaningful inquiry. It is emblematic of the necessity for a commission of inquiry or royal commission into the banks and finance sector.

● You draw conclusions which are not linked: settlement by 1 or 300 people is not evidence of the hardship program being fair or robust - or any other endorsement. It reflects some see it as the lesser of two evils when compared with litigation given the current failures of the regulatory and legal systems to protect victims of white collar crime. There is substantial evidence of concern including duress, protracted despair and deep anguish. Would you confirm the 300 plus you refer to are all Holt-victims and if not how many are?

● In the attachment to our letter we noted problems with the *Senate Inquiry into Forestry MIS's* recommendation that KordaMentha and HNAB-AG work together to resolve matters. Good will from the party holding power is essential. KordaMentha is disingenuous. While we initiated and continued with substantial efforts, we are entirely at the mercy of KordaMentha to genuinely engage. It is disturbing should any parliamentarian expect victims to have power to "*ensure*" a liquidator collaborates, as you infer. It is unfortunate if the senate committee's wording meant only to encourage KordaMentha. However, it is difficult to imagine senior bank executives would, in all good faith, anticipate such a possibility exists. This is particularly so with Craig Shepard whose manner ANZ noted in our discussion in January 2015 at which you were present. Confirming our reports over the past 2 years, on 7/2/17, KordaMentha wrote to people stating, *"We will not negotiate with you through action groups…"* which ignores the senate committee's recommendation. Mr Shepard spuriously adds there is a *"Borrower Assist program"* and *"Independent Hardship Advocate"* which take issues into consideration in resolving matters and he invites contact for *"a genuine discussion"* about their circumstances. Important facts do not add up to the liquidator's presentation.

● ANZ is aware HNAB-AG provides the contact details of the Timbercorp advocate to our members. Evidence shows KordaMentha and its hardship advocate are also aware it is provided in correspondence regularly distributed to the membership. ANZ has previously been made aware of significant efforts to communicate with the advocate. (However, given dismissal of data about Ms Lowe, we saw little value in updating ANZ about concerns regarding Mr Blyth prior to mentioning it in the most recent correspondence.) Concerns exist about Mr Blyth's conduct in arriving at settlements. There are also unresolved matters related to the deed which fall under his role: lack of closure and certainty, inaccurate and false statement of fact, demand the victim relinquish any right to a defence while the liquidator retains all on merely *forming a view* a breach has occurred (rather than taking normal legal action) etc. We encourage people to make their own decisions based on information available.

While concerns about the hardship program are serious, it was not the purpose of our letter given ANZ's inability to intervene and disinterest. Without doubt, all victims want the deceptive debt in which they were placed to be resolved as quickly as possible.

I would be grateful for a response from Mr Neave by the end of February in relation to the letter sent to him on 31 January 2017. I would also appreciate your reply.

Yours faithfully,
Susan Henry
Chair, HNAB-AG
c.c. Mr Shayne Elliott, CEO ANZ;
Mr Colin Neave, Fairness Officer, ANZ
Email: hnabactiongroup@gmail.com

Appendix I – Gerard Brown's reply to HNAB-AG's response to his reply for Colin Neave, Fairness Officer

14 February 2017

Susan Henry
Holt Norman Ashman Baker Action Group (HNAB-AG)
PO Box 5043, Moreland West LPO
MORELAND WEST VIC 3055
Email: hnabactiongroup@gmail.com

Dear Susan

I am responding to your letter to me of 9 February and your email to Shayne Elliott of 10 February. Colin Neave and Shayne have viewed those respective communications, your 31 January letter to Colin and my response.

In our meetings and correspondence over the last several years, the core matters you have most recently raised – specifically, a group settlement involving debt forgiveness and "restitution" - have been discussed a number of times and our view communicated. We continue to hold the view that your members suffering financial hardship are best advised to as quickly as practicable engage with the Timbercorp hardship scheme. I acknowledge that you are likely to remain dissatisfied by this position.

We keep in regular touch with the progress of the hardship scheme and believe it has helped hundreds of people achieve an equitable outcome. We hope that you continue to encourage your members suffering financial hardship to make use of the scheme and the Advocate to seek a speedy resolution to claims, as has been encouraged by the report of the Senate inquiry into Managed Investment Schemes.

Yours sincerely,

[redacted]

Gerard Brown
Group General Manager Corporate Affairs

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Appendix J – KordaMentha and Timbercorp (In Liq.)

Considerable material has been provided previously to the Senate Inquiry into Forest MIS. In brief, material spanning the past few years follows:

2 years ago: March 2015 - Timbercorp and KordaMentha / Liquidator Craig Shepard

DENIAL OF FACTS & DISREGARD OF MISCONDUCT

1. **Misleading claim (by omission and denial) of statutory duty**: the liquidator failed to respond to questions or inform victims about, or act on, his power to waive loans under $100,000 or to seek creditors' or the Court's permission to waive loans over $100,000 despite acknowledging a pattern of gross misconduct re Timbercorp's collaboration with Peter Holt – Mr Shepard claimed his hands are tied with statutory obligation to recover debt for creditors. It s not the whole truth. Creditors agree he can decide any debt size in the hardship program.

2. **False claim of *"…no instances where a creditor has attempted to intervene to reduce or waive a debt related to Holt advice"***: Graham Hodges, Deputy CEO, ANZ confirmed intervening (*'as the person was a shareholder'* – yet so were / are others).

3. **Disregard failure to meet criteria for acceptance of a loan application**: Timbercorp's loan application criteria required it be completed in full yet funds were issued without required details to assess serviceability, with evidence of white-out and lack of initials on changes (along with numerous other failures of due diligence: http://halttosafeguardyourfinances.com/images/TC_Fraud_and_Misconduct_and_role_of_ANZ2.pdf). The liquidator demands debt is paid regardless. He refuses to consider concerns about document doctoring, signature forgery etc. which placed people in loans they did not know about and / or did not know would be refinanced or trigger further loans or involved undisclosed and unauthorized POA.

4. **Acknowledgement of Peter Holt's misconduct yet avoidance of Timbercorp's collaboration**: Craig Shepard said that what Peter Holt has done is an *"unbelievable breach of trust"* – yet this fact is used to avoid Timbercorp's crucial enabling role and hides behind action that should be taken against Holt. (Creditors do the same.)

DURESS TO SETTLE & ACCEPT DEED OF SETTLEMENT WORDING

1. **Lack of real option - duress re Deed of Settlement**: given cost and difficulty to prove fraud (for which there is no definition in the Australian criminal code*) victims must fight the debt in court, pay 85% of a doubled-loan debt with penalty interest rates or engage with the (recent) Hardship Program. This means they settle under significant duress and protracted trauma. As one man said, *"In a blaze of deep despair and alcohol…"* he signed at 85% in June 2014 (before the option a Hardship Program existed) because he was *…deeply affected and wanted things to go away."*

2. **Misuse of feedback about settling through the Hardship Program**: Craig Shepard distorts people's participation in the Hardship Program as indicative of *"confidence"* in it or that they have settled because they *"recognize their responsibility."* People will be relieved and thankful to Catriona Lowe (the Independent Hardship Advocate) for her more empathic interaction and securing a better settlement than 85% (which others were intimidated to accept prior to the existence of a Hardship Program). It does not mean people are confident in the process or outcome - or do not believe they are owed restitution and compensation. Victims will identify with, and feel "grateful" to authorities / captors as a psychological defence against powerlessness.

   The primary reasons people report settling are all related to significant duress:

- being suicidal or in extreme distress to the point of psychological collapse
- severe life-threatening health concerns requiring reduction of stress
- anxiety about the well-being or safety of a spouse / partner
- panic about the massive penalty interest rates (loans more than doubled now)
- being close to retirement and trying to salvage matters
- terror at the possibility of losing one's home (or yet another having already been forced to sell and downsize to cover other fraudulent debt)
- unable to bear going into yet another year – or day - of misconduct related debt
- terror at not being able to defend oneself legally or psychologically
- being overwhelmed by the documentation (financial and legal)
- ruinous penalty interest rate and associated accumulation of debt
- threat of bankruptcy (for some not being able to work in their industry as a result)
- no confidence in the legal system even if they had money or energy for litigation.

3. **Wording of Deed of Settlement forces acceptance of entirely false statements**: this is equivalent to requiring a rape victim to say he or she engaged in consensual sex and, to end a legal ordeal, agrees to pay money to associated parties who were accomplices and / or failed to prosecute or consider the conduct of the rapist/s.

DISINGENUOUS ENGAGEMENT – DECEPTION AND LACK OF TRANSPARENCY

1. **Breach of agreement on 2 occasions between 13/1/15 and 16/3/15**: KordaMentha agreed not to contact our list while 'in discussions' given significant distress levels with people being harassed to enter the Hardship program, pay 85% of doubled-debt or threatened with legal action and writs. The breach - 4 weeks after the agreement - was rationalized to *"confirm (people's) legal status during the hardship moratorium."* It threw people into frantic panic and significant distress. Directing an apology via the HNAB-AG's email was ignored, resulting in a second breach. Pointlessly, and despite specific instruction that it was not for distribution, Andrew Ryan also copied in a personal email on the liquidator's e-blast (replying *"Noted with sincerity"* on complaint). It was even breached 3 times with one man.

2. **Evasion and deception in communication**: serious questions or concerns were ignored altogether or partially responded to omitting critical detail thus markedly distorting issues and facts. Information we had noted and clearly understood was redundantly re-stated. Word games were used to evade and deny compassion to victims of white collar crime whilst financially benefiting creditors and the liquidator.

3. **Lack of response to concerns about fake-debt bankruptcy and Holt's Trustee Andrew Wily**: much is made by KordaMentha that it removed Andrew Wily as the personal Bankruptcy Trustee for Peter Holt in late 2014. Yet HNAB-AG wrote to KordaMentha on 21 March 2012 requesting it not allow Holt to enter a Section 73 Composition to annul his bankruptcy petition given his alleged fake-debt sham bankruptcy involving Wily. We also alerted the liquidator to Holt's misconduct. We received no response. The action to raid Wily's office was not taken until 2.5 years later – after the *Senate Inquiry into Forestry MIS* was called and media attention into Timbercorp and Holt.

CONFLICT OF INTERESTS: The liquidator's duty is to all parties yet he has failed to factor in concerns about Timbercorp misconduct and fraudulent loans in debt recovery. His incentive is to make money for the creditors who are also predisposed financially against waiver for victims. Ethics about misconduct or compassion for victims take a back-seat.

***** HNAB-AG SUMMARY OF DEFINITIONS: FRAUD & UNCONSCIONABLE CONDUCT taken from Victoria Police; research by University of Melbourne with KPMG and USA.

CONCERNS RE CREDITORS RESPONSE TO TIMBERCORP MISCONDUCT

- **REPLY WRITTEN BY LIQUIDATOR NOT COMMITTEE OF INSPECTION**

Background: After meeting with Graham Hodges, Deputy CEO and Gerard Brown at ANZ on 8/1/15 they arranged a meeting with 3 victims of Timbercorp's collaboration with Peter Holt, and the liquidator Craig Shepard and Andrew Ryan at KordaMentha (held on 13/1/15). On behalf of the HNAB-AG the victims requested, and Craig Shepard agreed, to forward a submission to the creditors of Timbercorp. Craig Shepard identified these as ANZ, Perpetual, Trust Company and an 'unencumbered bucket" of creditors.

The submission was sent 23/1/15. A reply came 3 weeks later on 13/2/15 pasted onto Craig Shepard's email from the *"Committee of Inspection, Timbercorp Finance In Liquidation."*

The HNAB-AG sent a response on 25/2/15 raising serious concerns to the reply. A further reply from the COI was again pasted onto Craig Shepard's email, 2 weeks later on 11/3/15.

1. **Faceless creditors / COI and failure to respond**: The submission by HNAB-AG was understood to be sent to the creditors. An anonymous response from the *"Committee of Inspection, Timbercorp Finance Pty Ltd (In Liquidation)"* with no email, postal address, name of the head of the committee, members names or the creditor groups represented, was pasted into an email from Craig Shepard. This also occurred with its second reply (to our response to the failure to address our request to consider *recommending* a waiver on the grounds of compassion, if not misconduct; and to adequately address serious issues including KordaMentha's conduct).

2. **Failure to address concerns by COI in response of 13/2/15 to our submission and of 11/3/15 to our follow-up reply**: In both replies the Committee of Inspection:-
   (a) did not refer to its power to *recommend* to waive debt - or our request it do so
   (b) did not address the specific concerns we outlined regarding Timbercorp's failure to perform its fiduciary duty or exercise due diligence – no case was made for its implication Timbercorp's conduct was unrelated to Peter Holt's activities
   (c) repeatedly focused on Holt, entirely ignoring that he could not have done to us what he did without the complicity or collaboration with Timbercorp
   (d) made no genuine attempt to consider, engage or act on grave concerns
   (e) demonstrated a position of denial, avoidance, manipulation and dismissal
   (f) reinforced the sense that engagement with victims is disingenuous and has been a PR exercise (perhaps to make claims to media or concerned parliamentarians)
   (g) the second response was simply a 5 paragraph synopsis of their first reply's 8 paragraphs.

3. **Confusion about roles of more than one Timbercorp COI**: three committees of inspection exist to our knowledge - TIM the 'parent' committee and TSL as well as one for Timbercorp Finance In Liquidation. The latter reportedly received our submission. We don't know if Timbercorp Finance (VIC) has a separate COI.

4. **Confusion regarding various components of 'Timbercorp'** – the group includes Timbercorp Finance Pty Ltd, Timbercorp Securities Pty Ltd and Timbercorp Finance (Vic) Pty Ltd. Letterhead did not easily distinguish these. It is not clear how, or if, Timbercorp Finance (Vic) Pty Ltd relates to Timbercorp Finance - or to the loans.

5. **Concern about creditors' failure to adequately sample or question loan documents**: no response or information was provided about how many, if any, applications submitted by Peter Holt, and accepted by Timbercorp, were sampled in exercising due diligence by ANZ or other creditors. We are left to wonder what occurred if these were examined – and if they were not sampled, why not?

25-3-15

Appendix K – Mark Korda's inaccurate and misleading testimony to senate hearing (in brief)

Key Inaccurate and Misleading Statements made by Mark Korda to Senate Inquiry into Forestry MIS on 6 August 2015 - Notes at January 2016:

1) People are typically concluded within 2 weeks of providing information; those with a *"serious issue"* (as purportedly recognized as a result of *"mental health and suicide training"*) have their cases finished in 1-2 days as deemed required by the "independent hardship advocate" Catriona Lowe. [Hansard page 15]

(Incorrect. Typically it takes months – delays have been blamed on victims unfairly.)

2) The liquidator, Craig Shepard, accepts Catriona's advice that enough information has been provided and her proposal should be accepted so that the case can be closed to move on i.e. he does not reject her proposals. [Hansard page 15]

(Incorrect.)

3) Conclusions range from waiver to less than the principal with interest not being an issue in the hardship program. [Hansard page 15]

(Incorrect.)

4) The gag clause has been removed from the Deed of Settlement since Dec. 2014 if it "*causes grief*" - people are not required to sign confidentiality agreement for KordaMentha to sign the contract. (Only 1 case is known.) [Hansard page 15; page 17 and page 55: Chair and Mr Hodges – gag removal retrospective.]

(Incorrect.)

5) Homes will not be sold and people will not be bankrupted and such "myths" abound. [Hansard page 15]

(*Incorrect*: there is evidence Ms Lowe has advised people to sell their home and threatened that the liquidator will take people to court and bankrupt them).

6) The hardship program has been available since the end of litigation (April 2014) and was substantially enhanced with Catriona Lowe. [Hansard page 14]

(Incorrect. Ms Lowe commenced in December (approached Nov). No HP known of prior.)

7) KordaMentha is open to suggestions to improve the hardship process to ensure it takes the significant trauma and distress into consideration. [Hansard page 17]

(*Incorrect*: Mr Korda has not replied to our letter of 27 August 2015 in this regard).

8) There is no limit to the amount of people needed to be employed to finalize cases. [Hansard page 17]

(*Incorrect*: cases are taking many, many months, even over a year or two…: it is evident there is not enough staff and/or will to address matters reasonably including Deed).

9) Acknowledgement some people are victims of fraud and misconduct and commitment that KordaMentha will do its best to treat these people *"with as much empathy as we can within the law."* [Hansard page 19 (Holt victims' circumstances); page 21 (liquidator's power) and page 23]

(*Incorrect*: Only 15 people had been given waiver at August 2015 according to Mr Korda although it is within the liquidator's statutory power and would fulfil Mr Korda's commitment. (Plus, the largest creditor ANZ, says Holt victims **should not be pursued.)**

Appendix L – Most recent summary of KordaMentha sent to Senator Nick Xenophon in December 2016

Extract from material compiled by HNAB-AG and sent to Senator Xenophon in relation to his commitment to assist made in 2015:

6 December 2016

In summary, key points are:

1) **Craig is conveying only part of the truth**, omitting the rest - he does have obligations to creditors but he also has the legal discretion and power to decide, regardless of creditors, to waive debt in full, not just partially (and does not need further documents for "rigour" once he decides on a case).

2) **Craig's power to ignore creditors is demonstrated by not acting on ANZ's stance that Holt victims should not be pursued (October '16 bank review)** - and expressed early 2015 as encouraging we be treated differently, *as swiftly as possible, very generously and incredibly compassionately*.

3) Mark Korda gave **commitments** in senate testimony which are **not being honoured**. Both advocates have denied or reframed these even when explicit / very clear.

4) **Industry view among liquidators is Holt victims should have been given waiver**. Holt victims were recognized by Mark Korda to be a **subset of Timbercorp** and **victims of fraud**.

8 December 2016

The briefest summary is that Craig Shepard has the power legally to issue full waiver to any size debt (even above $100,000 given the creditors agreed to establishing a hardship program, and gave him control of it).

Demands for Holt victims of anything other than waiver or a nominal amount are unreasonable in light of commitments made to the senate inquiry by Mark Korda.

Even if the HP didn't exist, for Holt victims debts over $100,000 Craig could make case to the court or a meeting of the creditors (COI) to waive it. As the largest creditor, ANZs vote would carry over the debenture holders. Hence, he could conclude Holt cases NOW before we enter yet another year. He could also finalize the deed to reflect accuracy, clarity, certainty and protection as a matter of urgency. The hold-up is his will.

Key points which might help to progress matters:

1) **KM have acknowledged in a senate inquiry that Holt victims are a separate subset of TC and should be treated differently as victims of fraud** - and as such Mark Korda undertook (Hansard) to treat us with "as much empathy as (they) can under the law." Various significant commitments Mark

Korda made are not being honoured at all.

2) **A liquidator's statutory obligations and also discretion, permit waiver in full** of debt under $100,000 (regardless of creditors' view) if it is seen as reasonable for whatever reason - this is where ethics can apply. Debt OVER $100,000 can be waived in full also by seeking court approval or calling a creditors meeting for their agreement. As you are aware this has been confirmed to you by an independent liquidator.

Establishing the hardship program means creditors have agreed already to Craig's discretion.

So there is no good reason full waiver for Holt victims has not occurred - and it is the general industry view that industry practice would have done this (and applied 10c - 30c as a commercially viable settlement to other TC people).

Important - the hardship program could not exist at all if the liquidator didn't have this discretion to waive debt partially OR in full. The agreement of creditors to the HP existence means the scope already exists to waive any size debt of those in it if Craig sees fit.

3) **ANZ is the largest remaining creditor. Craig refers to "mum and dad debenture holders" as the other remaining creditors.** He has refused to let HNAB-AG meet with their representative on the Committee of Inspection. However, given the above it is not actually necessary.

ANZ has been recorded since Feb 2015 (almost 2 years ago) as having encouraged KM to treat individual Holt victims differently *"as swiftly as possible" "very generously"* and *"incredibly compassionately."* It has been the absolute exact opposite - stories would shock and appal. In October 2016 Graham Hodges said at the bank 'grilling' Holt people should not be pursued.

4) **Craig uses his legal obligations when it suits**, inferring his hands are tied when in fact, he has the ultimate power. Creditors have made mega bucks with the exorbitant interest (now trebled - the huge profit was noted in August 15 inquiry) so debenture holders are not at all in the sort of financial nightmare TC victims are placed in.

When it suits, Craig dismisses creditors as having any role in his decisions - he makes it clear that no-one can tell him what to do which is true. He could have waived Holt victims in full or seek nominal settlements - instead these have been up to 84% (1% less than those considered NOT to be in hardship...!) with caveats on homes, forced selling of homes, bankruptcy threats etc. etc. Significant inconsistency exists.

5) **The advocates have added to the problem** - they have assisted KM by ignoring or denying or misrepresenting facts to parliamentarians and others - including when there is proof.

A responsible "advocate" would pursue the facts and consult with an independent liquidator if given conflicting info from victims and the liquidator in question and act in that. Confidence in Catriona Lowe appeared to lead to the senate inquiry last year not taking up critically important info and minimising or dismissing

victims' complaints. She may be generally excellent but she let down Holt victims severely and Stephen Blyth has followed suit. (We can provide more detail.)

6) **The other groups of people placed in TC debt all said at the 1st senate hearing that Holt victims should be waived** - so it is also entirely false for Craig to claim if he waived Holt victims other groups would be up in arms. This position was restated after the ANZ AGM in 2014 by their reps to Graham Hodges and other ANZ staff.

Craig is skilled at appearing reasonable, making half-true comments and manipulating info and people. The lack of transparency ensures this is hidden from view. He detracts and distracts. He did this also by focusing on individual cases last December rather than allow the issues to be discussed which these illustrated.

7) **The high court decision in November means defences can now include the circumstances related to an individual's placement in loans**. We are not interested in legal action as a group - the limitations of the law are a key part of the problem. The benefit of this info is that it highlights that circumstances are relevant and some are / will opt to take this course if KM continue to be unreasonable.

8) **There is also a conflict of interest with KM being the liquidators for TC Finance <u>and also</u> for TC Securities** - KM has not gone after the proceeds owed to the victims through TC Securities or addressed our interests in the same aggressive manner it seems has occurred for creditors of TC Finance. Indeed any proceeds through TCS have had to be relinquished to TC Finance in settlements (in all but 1 case I'm aware of).

9) **SUMMARY** - this info demonstrates that KM is disingenuous in their purported commitments. They have denied and misrepresented the liquidator's legal power to have ended this for Holt people years ago - certainly by December 2014 after the 1st senate inquiry.

People had lodged info about Holt's conduct long before then. KM did not act on it when they could have in view of the ethics involved.

Craig could settle cases now, before the end of the year at full waiver or a nominal demand (eg. $1000) if he chose to. Instead inordinate anguish and suffering continues to be inflicted. 7-8 years of hell have been inflicted.

He could also address the Deed to ensure it provides accuracy, clarity, certainty and protection - and supply the letter to cover this in those who have signed as he agreed to do.

The humane course of action would be to apply basic common sense immediately. It has all been unnecessarily complex and obstructive in the extreme.

Appendix M – BT margin lending: misrepresentation deflection, spin and separation of responsibility

[redacted], **General Manager – Platforms and Investments**, replied to the letter from HNAB-AG with survey results mailed on 11 March 2016 to **Brad Cooper, CEO and Ms Lynn Ralph, Independent Non-Executive Director and Chairman**.

[redacted] reply of 4 May 2016 is typical of the response to victims in disclaiming responsibility. He made it clear BT would not meet with representatives of HNAB-AG. He suggested we contact FOS despite having outlined in our material why FOS was not an option (and also given the Statute of Limitations).

The suggestion individual members make contact with BT's Customer Relations with further information requests is part of the meaningless response which is typical. Inordinate problems have been experienced obtaining copies of files.

Product Complaints Manager, [redacted], to whom he refers, shortly after proclaimed a case closed and that she had responded to complaints noted in the process when she sent the last of the copies of an individual file. This was before there was time to lodge an official complaint (which was not proceeded with given distress at being thwarted and ignored by the sector).

BT demonstrates the dramatic consequences of failures in consumer protection. The reply from [redacted] ignores client were not sophisticated investors. BT and Mr Holt took advantage of this fact.

Survey results sent to BT with the letter from HNAB-AG on 11/3/16:

SURVEY RESULTS

The HNAB-AG survey arose out of the commitment to draw BT's attention to the extraordinary concerns experienced by so many and with such devastating consequences. Before discussing the findings certain limitations of the survey require recognition.

The limitations of the survey are:

(i) Most people struggled with distress in order to participate in the survey. Some people are too traumatized to be able to answer questions. They felt overwhelmed or suffer anxiety or panic attacks, have difficulty concentrating, feel agitated, powerless, hopeless, enraged or some form of symptoms of significant depression to the point they could not entertain starting the survey or continuing it.

(ii) It is apparent that at times questions have been misread in people's distress and anxiety. Other occasions demonstrate the lack of understanding of margin lending. The design of the survey took 4 people several months to develop yet many questions still missed including adequate responses to choose from - particularly for people who did not know that they had been placed in a margin loan. This had not been anticipated. A question had been included as to whether unknown loans had emerged but related response options were not always included. (As noted earlier, we did not think to ask about FSGs.)

(iii) There are hundreds of clients affected by Peter Holt's firm. It is anticipated that the data obtained is likely to be representative. 82 people participated formally in the survey (30 individuals and 26 couples / 52 people) with 3 more confirming their experience was typical of the majority. 56 sets of data were provided in the survey. Participants were given 6 months to obtain their information and complete the survey. Several reminders were issued via email.

(iv) As a result of the above, the quantity of people having a given experience is under-represented as 26 people are not separately indicated having answered the survey as a couple. Consequently, data is understated.

(v) The survey was designed so that all questions had to be responded to but unfortunately when first posted online the settings were not correct. Before this was discovered 2 people discontinued after question 8 and another 3 skipped after the first 40 when questions about amount of money begin. It is anticipated people became distressed, confused and/or lacked the information.

(vi) A question asked, or responses offered, may not have been clear enough in its design. For example Q22 - "*Did you and your partner or spouse attend meetings together with Holt, to hear the information about BTs margin loans?"*

The question was to elicit how frequently couples or business partners always attended meetings together at Holt's office about BT margin loans and how often only 1 of the pair was present and how many attended always as an individual. It should also have sought to ascertain whether an independent person accompanied the client to help him or her, or a couple, understand the discussion.

While 30 people had individual margin loans some may have attended meetings together (e.g. with business partners).

Key Survey Data

It is apparent from the data that had BT taken simple measures based on due diligence, Peter Holt and his staff could not have deceived their clients. People had the right to trust what they were told, shown and advised by Holt's office and that the firm had the expertise to manage their margin loan. Arranging and managing margin loans was beyond the level of skill, understanding or financial literacy of clients.

Whether someone's level of expertise ranges from none to reasonably sophisticated, in seeking the services of an accountant or adviser, much like a car mechanic or builder or neurosurgeon, there is a point at which trust in advice, which appears reasonable, is necessary where the 'professional' has relevant qualifications, is well-connected in the industry to seemingly reputable institutions, is supported by many staff and no information to question or avenue to check it is provided or readily available.

78% of cases had one BT margin loan in joint or individual names (not in SMSF). 8% had 2 of them. 1 case had 4 and 1 case had 10. 4 cases had only a SMSF margin loan. [Code for survey question: BTQ96]

Impact on margin loan portfolios

1) **43% of people were left with a zero value of shares or were liquidated by BT during the GFC (22 cases) with 12% (6 cases) unsure**. [BTQ44]

2) **45% were left owing money to BT and another 24% are unsure if they did**. Of the 31% who did not, some were liquidated.[BTQ45]

3) **Only 14% (7 cases) have a margin loan with BT today and of these, no-one has Holt managing their BT portfolio**.[BTQ74-75]

4) **49% of cases had their share portfolio and margin loan/s survive the GFC with margin calls being paid and/or shares being sold down**. 51% did not survive it. Of those surviving, 29% had to sell their remaining portfolio after the end of 2009 because they were unable to service the loan and manage the risk. [BTQ76-77]

5) **18% of people (9 cases) decided to borrow money to pay margin calls during the GFC.** Only 8% (4 cases) were not margin called. 74% did not decide to borrow money for margin calls. [BTQ58]

6) **At the time of the survey 17% (9 cases) had discovered margin loans they did not know about. 2 more people discovered this sometime after completing the survey**. 6 cases are unsure which reflects the lack of understanding people had and still have. [BTQ21]

7) **Only 1 person believes their margin loan portfolio would not have survived the GFC regardless of how it was managed**. 47% believe it would have if managed properly. 16% have been advised it would have survived. 35% do not know enough, or not sought advice, to be sure. (Note - Had a Stop Loss order been explained to people it seems this would have been elected by people – hence this would have saved unacceptable financial risk if not their portfolio.)[BTQ66]

8) **63% indicated the value of assets people would not have lost had they exited the margin loan prior to GFC concerns in January 2008 is in the range of $28,000 - $744,099. Crucially homes would not have been lost**. 37% are unsure how much asset they would still have, had they exited the margin loan prior to initial GFC concerns in January 2008. [BTQ67]

9) **Only 20% are sure they are not in debt today due to their margin loan / share portfolio.** 41% are still in debt and another 4% are bankrupt and another 35% only not in debt because they sold their home and / or used savings. [BTQ68]

10) **Paying margin loans used or depleted available cash during the GFC causing financial distress in 86% of cases**.[BTQ69]

11) **43% were left with zero value ($0.00) in their portfolio (even if not liquidated by BT) during the GFC with 47% left owing money to BT**. 4% are unsure. [BTQ70-71]

12) **During the GFC, 55% of people had dependent children or family members – 57% now have dependents**. Some of these are / were seriously ill children, some are / were disabled and death has occurred

since. People or spouses and other family members also had serious diseases, or became terminally ill. Holt was aware of those circumstances prior to the GFC and of others about to embark on creating a family or winding down work toward retirement. These added concern to invest safely. [BTQ79-80]

13) **The emotional impact on people and their families when they came to understand what had happened with their BT margin loan portfolio was catastrophic for the majority**:

Extreme for 73% of people
Significant for 23%
Moderate for 4%.

No-one selected the options of 'minor' or 'none' regarding distress. [BTQ81]

14) **7 years later, 92% have not recovered from the emotional distress** with 4% unsure. Only 4% feel they have recovered emotionally. [BTQ82]

15) **Only 29% feel their capacity to work was not compromised by the impact of BT debt**. Ability to work has been compromised partially or completely because of the stress of BT-related debt and / or losing their home for 57% of people with 8% unsure. 6% were not impacted by BT debt. The question may not distinguish those financially robust enough to cope with the loss. [BTQ83]

16) **72% of people who were in BT are aged 46 – 65 today; 20% are 20-45 and 8% are over 65**. The vast majority (80%) are middle-aged or elderly.[BTQ84]

17) **Only 4% describe their financial status as *"moderately comfortable"* today**. Only 24% are *"able to make ends meet"* – the rest are bankrupt or decimated with most struggling to make ends meet. [BTQ85]

18) **Only 6% (3 cases) report no impact on retirement**. Retirement is now impossible for 33%, unlikely for 20%, significantly diminished for 27% and moderately impacted for 14%. [BTQ86]

Data re BT's responsibility

1) **82% of respondents believe BT has a responsibility ethically to provide redress (restitution and compensation). 11% (6 cases) were unsure**. While many people still struggle to understand what occurred, how it occurred or why it occurred the fact that 7% (4 cases) answered they do not think BT has a responsibility. This may reflect that people are so distressed they did not fully read or understand the question.

It is unknown how many believe it was entirely Peter Holt's responsibility or successive governments' failure to provide adequate regulatory requirement or their own.

Being mindful of the distinction between "ethical" responsibility versus legal responsibility has not been made according to some reports. It is possible some may be unsure how BT's responsibility relates to Holt's conduct. However, we know of no-one who has expressed a belief that BT does not have responsibility. This possibility has been sought since.

It is also possible that among the 7 cases which still have a margin loan with BT, people need to believe BT has no responsibility in order to continue to invest in this manner – this is called 'Stockholm Syndrome' in psychological trauma literature. [BTQ2]

2) **No-one is aware of having had a margin loan application refused by BT** prior to GFC. 1 person is unsure. [BTQ5]

3) **Assessment of suitability for a margin loan by BT was expected**. 59% were led to believe BT would require information to assess suitability. 21% were unsure if told by Holt's office this would occur and 20% were not informed it would occur (but expected it would). [BTQ6]

4) **Only 1 person reports being contacted by BT on entering a margin loan with information about the nature of it, possible risks and ways to mitigate risk**. No-one has come forward to elaborate. 86% were not, 11% don't recall and 2% (1 person) selected *'Not Applicable'* which is possible it is someone attempting to sabotage data. It is possible the question has been misunderstood responding on the basis of BT having *initiated* the provision of the information or whether the person sought it out. [BTQ7]

5) **20% of people contacted BT during 2008 or 2009**. 4% are unsure if they did. 76% did not contact BT (this relates to being overwhelmed, not understanding enough to know what to ask, despair and powerlessness etc. and trying to manage the aftermath – or beforehand, as well as after, relying on Holt to manage their portfolios and not considering contacting BT as they did not know what to ask or do). Those who contacted BT did because they had been liquidated, were concerned about margin calls and haemorrhaging money, wanted proof of what to pay, to confirm LVR limits or that they had been margin called when Holt denied they had, or as they were advised to do so by Holt or because they did not understand what was happening and to sell remaining shares.[BTQ57]

6) **8% (4 cases) were informed they had been liquidated only to be told later that BT had resurrected their portfolios**. 16% do not recall.[BTQ72]

7) **22% of cases discovered BT had not closed their account after having been instructed to do so**.[BTQ73]

8) **25% report advice since that the amount of the BT margin loan was inappropriate for their financial circumstances**. 22% report the advise was not inappropriate for their circumstances i.e. it was appropriate. 18% are unsure. 35% have not sought advice since. [BTQ78]

9) **Only 31% have asked BT for a full and complete copy of their file (including statements, correspondence and all related documentation) with most reporting what was sent was not**

complete. This reflects how people feel about trying to obtain it, it making any difference and / or being up to engaging with or understanding the material. No-one reports confidence in having received a full and complete copy with the vast majority sure it is not. 9 cases received documents from BT within 6 weeks with 4 cases still waiting after 8 weeks (this includes still waiting many months later and radically inaccurate information provided). [BTQ87-88-90]

10) **The communication transcript BT provided to some was not accurate** for anyone although 9 cases are unsure. 3 report it is inaccurate. 11 cases did not receive it.[BTQ89]

Peter Holt and his firm's responsibility

1) **71% of advice about BT margin loans was primarily provided by Peter Holt**. Bill Norman was involved in 16% and Craig Baker 13%. [BTQ3]

2) **A management fee on portfolios was charged in 76% of cases** with 14% unsure. 10% report not being charged this. It was typically $137.00 per month but ranged between $45-$200.[BTQ46]

3) **A percentage on the whole portfolio was also charged as well as a management fees for 31% of people with 73% being unsure**. It ranged between 2.5% - 10%. [BTQ47]

4) **5% of people were placed in margin loans without their knowledge**. 11% were unsure as to whether or not they knew about margin loans. 9% agreed to 1 or some loans but not to all that were discovered.

   Note: 2 people discovered a margin loan after completing the survey on obtaining information sought from BT about their files. [BTQ4]

5) **No-one both filled in the application form and signed it - and 11% did not know about the application or sign it**. 70% did not complete the BT application themselves but signed on with 19% being unsure. Typically people signed the document presented understanding Holt had assessed their suitability and provided information to BT to confirm. People did not see the usual sort of loan form from a bank. [BTQ8]

6) **Zero people report Holt's office disclosed margin lending as a high risk investment and with encouragement to read the PDS or find someone independent to explain it before entering**. 94% were not informed of this and 6% are unsure whether or not they were. [BTQ9]

7) **Only 2 people were encouraged to read the SOA or find someone independent to explain it before entering a margin loan**. 87% were not told this. 9% are unsure.[BTQ10]

8) **Only 1 person reports being given a PDS and SOA prior to Holt having them sign the application**. 6% were given either the PDS or the SOA but not both. 46% were given neither. 37% are unsure.

Typically people understood that given his expertise, Holt's role was to explain these documents which they did not understand. [BTQ11]

9) **Advice to place a "Stop Loss" order (i.e. to automatically exit trade – requiring no human management – to limit the amount of loss at a point the client wishes to cut losses if the market drops to that amount to stop breaching LVRs and being exposed to margin calls) was not given by Holt's office to anyone and was not acted on when it was requested**. In no case did Holt raise this as an option or explain its value in safeguarding risk. 5 people raised it with Holt who dismissed it as unnecessary. 2 people asked for it to be set anyway but Holt's office did not do so. 2 people could not recall whether they were told about the option or not. [BTQ12]

10) **Belief in understanding the nature of a margin loan at the time of entry was overwhelmingly perceived by 80% of cases**. 67% of cases believed they understood but discovered they did not as the GFC unfolded or some time later. Another 13% believed their partner understood (i.e. 80% thought they were advised). 4% (2 people) are unsure whether they understood or not. 17% did understand margin loans. Neither Holt nor BT ensured people knew. Indeed, Holt provided false information. BT provided none. [BTQ15]

11) **Prior to the GFC only 20% of people knew what a margin call was**. (Note - this is separate to what people were told about Holt's strategy of ensuring no risk could ever occur.) Neither Holt nor BT ensured people knew what a margin call was, or ways to mitigate risk. [BTQ16]

12) **81% of people were told shares would be safe because of Holt's low borrowing ratio against shares such that it could not get into a negative situation**. 11% (only 6 people) were not told this with 7% unsure. [BTQ17]

13) **69% of people were told Holt designed a buffer much higher than the banks required to protect their portfolio in all eventualities** (the buffer reported is typically 20-30%). 22% were not told this and 9% are unsure. It seems that depending on your degree of financial literacy, information was withheld or you were misinformed. This was also unrelated to what actually occurred that a client asked for or to which he or she agreed. [BTQ18]

14) **In 74% of cases, Holt provided graphs and spreadsheets to demonstrate his strategy was safe and sound based on history and his expertise**. 9% were unsure if he did this regarding margin loans. In 17% of cases he did not use this strategy. [BTQ19]

15) **When discussing a margin loan with Holt only 1 person reports being aware of the credit limit to which he/she was exposed**. 5 people thought they did but were misinformed. 80% were not aware and 9% are unsure. [BTQ20]

16) **BT statements were not received by 17% of people, with another 15% unsure if they received these**. Holt did not explain how to read these or that people should know how to. People believed Holt was being paid to manage their shares having expertise that they did not. 68% did receive statements.[BTQ13-14]

17) **Only 11% (6 people) report that the advice Holt gave them about shares and margin lending was correct**. 74% people report it was not true and 15% are unsure. [BTQ23]

18) **83% of people were told their BT margin loan portfolio would be managed by professional staff and, no matter what happened in the market, they were not at risk because of how Holt set up the margin loan**. 9% are unsure if told this and 7% were not told this. Holt told 20% of respondents the shares would be selected by external brokers, 61% were not told this and 19% do not recall. [BTQ24-25]

19) **85% were told shares would be safe and conservative blue chip and 44% report they were not**. 28% are unsure with only 28% reporting they were blue chip shares.[BTQ26-27]

20) **9% report Holt advised to buy 'options' i.e. the right to buy or sell a product at a stipulated price in a specific timeframe to safeguard their portfolio**. 63% were not told this and 28% do not recall. [BTQ28]

21) **93% did not know they could be at risk of a margin call – Holt explicitly told 24% they would not be and 69% were never informed of margin calls** but only of fluctuations from which there was no real risk. 7% were unsure if margin calls were mentioned. [BTQ29]

22) **36% of people were required to sign a Third Party authority (effectively a POA) for Holt to access their Macquarie Cash Management Account to manage their shares / BT margin loan portfolio**. It was presented as a necessary requirement. Only 21% were not required to do so. 43% are unsure. [BTQ30]

23) **Holt told 51% of people that dividends from investments deposited in their Macquarie Cash Management Account would be used to pay back the margin loan and other loans/fees**. 15% are unsure and 34% were not told. 59% of people were told by Holt that dividends would be used to pay other loans too (MIS and related fees; home loan). 30% were not told this and 11% do not recall. [BTQ31-33]

24) **Holt used dividends from shares to pay margin calls in 30% of cases with another 28% unsure**. 36% report it did not occur and 6% said it was not applicable. [BTQ32-33]

25) **In 51% of cases Holt used money in the Macquarie Cash Management Account for margin calls, other loan repayments or fees which he knew was to be used for other purposes**. 19% are unsure. Only 30% did not experience this. [BTQ34]

26) **Holt told 45% of people dividends in Macquarie would be used to purchase more shares**. 21% do not recall and 34% were not told. [BTQ35]

27) **Only 2 cases knew Holt would use dividends in Macquarie to pay margin calls with most not expecting the event would not ever occur**. It is unclear when these 2 people were informed – it may have

been after margin calls commenced rather than on considering entering BT. [BTQ36]

28) **Once the market went into decline Holt told only 8% (4 cases) that dividends from Macquarie would be used to pay margin calls**. 11% are unsure if he told them and 81% were not told. [BTQ37]

29) **51% are unsure what Holt said the margin lending ratio would be.** [BTQ38]

30) **51% were told their BT margin loan would not be allowed to exceed the lending ratio margin (of approx. 50%) and only 2 cases did not experience this**. 26% were not told this and 23% do not recall. 75% experienced this with 20% unsure if they did. Only 4% (2 cases) did not experience this.[BTQ39-40]

31) **12% of people cannot work out how much their margin loan was at its peak**. It is reported to range from $25,000 - $1,559,751.72. It is possible this is inaccurate (over or understated) given the lack of understanding many people have. [BTQ41]

32) **45% of people do not know how much money was used to pay margin calls with 4% unsure**. 51% reported this in the range of $7,000 - $150,000. However, since completing the survey one person discovered $340,000 of margin calls (which BT recorded as $34,000). 2 cases report no margin call was made. It is possible the amounts listed are inaccurate (over or understated) given the lack of understanding many people have. [BTQ42]

33) **69% are unsure how much money Holt used without authorization to pay margin calls**. Only 8% could specify an amount. 24% said it was not applicable to them. [BTQ43]

34) **On discussing taking a margin loan 86% of people were not told BT could liquidate their share portfolio**. 3 cases (6%) were told it could occur and 8% do not recall. [BTQ48]

35) **Once the market was in decline Holt still did not tell 86% of people that not only would their portfolio value decline but could be liquidated by BT to pay back the margin loan**. 1 case does not recall. Only 6 were informed. It is not clear at what point these people were told (i.e. imminent liquidation or earlier).[BTQ49]

36) **8 cases instructed Holt about the management of their portfolio** with the remaining 84% believing he had the expertise and was managing it on their behalf given their lack of understanding. [BTQ50]

37) **Only 1 person reported Holt initiated contact to discuss the management of their share portfolio and change his plan to alleviate the person's concerns about risk**. As some clients are known to be family and friends, it is possible this sole pro-active intervention was related to his personal connection. It is also possible this is a 'rogue' response given we are aware he did not intervene with other friends and family who he had set up with BT.

    94% of people were not contacted by Holt to discuss managing, what should have been apparent to him was, extraordinarily increasing risk

and loss of their money. 4% (2 people) do not recall if he contacted them (such was the level of chaos and distress and the consequences on lives since). [BTQ51]

38) **12% (6 people) report Holt initiated contact to discuss management of their portfolio but dismissed their concerns and gave reassurances based on his expertise**. 2 do not recall (see above) and 84% were not contacted. [BTQ52]

39) **71% contacted Holt or raised in a meeting being worried about their portfolio and expressed a desire to sell their shares**. 1 does not recall. 27% did not and it has been reported at an HNAB-AG meeting that this was due to believing Holt was in control and given his explanations about what was occurring. Holt sold shares as instructed by the client in only 3 cases. In 59% of cases Holt reassured clients that shares should not be sold. 35% did not raise the matter. [BTQ53-54]

40) **In only 4 cases (8%) did Holt actually respond to emails or return phone calls about share portfolios**. 61% of people did not get a response (at critical times as the GFC began to expose concerns). 18% do not recall. 14% did not make contact. [BTQ55]

41) **Only 6% (3 cases) report always being contacted by Holt's office or BT when they were in margin call during the GFC**. The responses did not provide distinction between BT or Holt. 35% were contacted sometimes. 20% were after the fact. 18% never were. 16% are unsure if they were always contacted or sometimes. 6% report this question is not applicable to them suggesting they were not in margin call.

    Note - without diarized personal notes and the 'Client Notes' from BT and all their statements and relevant documents (and providing they could understand these) people would have difficulty knowing whether they had been in margin call, how often or if they had in fact been informed beforehand or afterwards. [BTQ56]

42) **Holt advised 35% of people to borrow money to pay margin calls during the GFC including 18% of people who, it should have been apparent to him, had to sell their home to cover BT debt and also another 14% related to other debt, as well as BT, in which he placed them**. 18% do not recall whether he advised them to borrow money. He did not suggest it to 41% (with no capacity to borrow and/or no contact). The rest (3 cases) were not margin called. Of those advised to borrow money, 27% did, 55% did not, 8% do not recall. The rest not margin called. [BTQ59-60-61]

43) **Other assets (e.g. investment property, car, etc.) had to be sold to pay the investment loan and/or margin calls related solely to BT in 12% of cases** with another 14% were required to do so because of other debt Holt had placed them in. [BTQ62]

44) **65% were advised to provide money from other sources to pay a margin call/s** with 1 case unsure and 27% not advised to do this. The remaining (3 cases) were not margin called. [BTQ63]

45) **Holt used money in Macquarie (or other) accounts to pay margin calls without people's knowledge, this occurred in 18% of cases**.

33% are unsure if he did this. Only 43% believe he did not do this and the rest were not margin called. [BTQ64]

46) **No-one is able to ascertain how much of their money in other account/s Holt used without their knowledge**. One case selected 'Yes' which indicated they knew the amount but recorded they had *"no idea and were denied access to our Macquarie account for a while"* – it is clear that like most, given the complexity to work out even where documents are available, it is beyond their ability.[BTQ65]

47) **Holt's office arranged an investment loan to buy share portfolios separate to the BT margin loan in 49% of cases**. Another 6% are unsure if he did this. 45% said he did not do this. [BTQ91]

48) **Investment loans to buy shares were arranged by Holt's office through all the major banks (as well as others) including** with the CBA and through SMSF sharing equal highest numbers. One couple arranged the loan themselves (with NAB). [BTQ92]

49) **In about half the cases, a "mobile lender" from a bank met with or spoke directly with people about an investment loan Holt recommended with the other cases dealing solely with Holt's office. 2 cases were unsure if they spoke with a representative of the bank**. The most commonly mentioned name was [redacted] from CBA (possibly as he was used as an example in the survey so the name was triggered). Interestingly, in one case the CBA would not let him borrow against his home but Holt arranged other options. It is not clear if this was through another CBA rep.

Many could not recall the bank representative's name. [redacted], [redacted] and [redacted] were each mentioned once and [redacted] - twice. [BTQ93]

50) **In 8% of cases the (investment loan) bank's representative sought confirmation about the person's circumstances from them, gave them all the information necessary and accepted information given by Holt about their level of income on the basis of the client being told future income was not relevant**. This did not occur in 39% of cases and was not applicable in 35% with 18% being unsure. [BTQ94].

51) **Only 1 person believes Holt genuinely tried to help related to the GFC.** 1 case is unsure. 96% believing he did not try to assist them. It is likely the person confident Holt tried to assist, is a friend or relative (although many of these were not treated any differently) so it is possible this is a 'rogue' answer. (Note - many did not realize he was not helping them at the time until much later.) [BTQ95]

52) **25% of cases are unsure how much money Holt used to set up their share portfolio**. Those who knew, or think they knew, report in the range from $30,000 - $750,000 being used to set up their margin loan share portfolio. (One response '180' is likely to be an error or refer to 180K.) [BTQ97]

53) **In 43% of cases, 100% of the money to set up the share portfolio was borrowed from another source e.g. investment**

loan (not in SMSF) but it may be higher as 14% are unsure. 22% report 50% of the money was borrowed with only 1 case each reporting 25%, and 75%, of it being borrowed. [BTQ98]

54) **Of those who had to sell their home to pay for BT loans the percentage of that money ranged from 25–100% in 11 cases**. [BTQ99]

55) **Of those who had to sell other assets for BT the money used ranged between 50–100%.** [BTQ100]

56) **Most people reported that margin loans were not in Self Managed Super Funds. Almost all cases with BT margin loans in SMSF had 1 loan. 1 case had 3 and 1 reports 10.** 76% did not have a SMSF margin loan.[BTQ101] ***Please see Appendix No.1***

57) **Holt used in the range of $118,000 - $220,000 from SMSF to purchase share portfolios**. [BTQ102]

58) **Holt advised almost half of people with SMSF margin loans to borrow other money to purchase shares in SMSF**. One case is unsure. [BTQ103]

59) **Of those whose SMSF was set up prior to 1999, Holt did not advise anyone about the grandfather clause and the related tax rulings**. 5 cases are unsure. [BTQ104]

60) **Most people were not sure of what the margin loan lending ratio on their SMSF margin loan was with 2 reporting it was 50 and 1 that it was 60**. [BTQ105]

61) **Half of those report their margin loan exceeded this ratio on their SMSF margin Loan** and the other half are unsure. No-one reported that it did not exceed this ratio. [BTQ106]

62) **Those with SMSF margin loan report that at its peak it was in the range of $85** (this may be an error or mean $85,000) **through to $575,857**. Most cannot calculate it. [BTQ107]

63) **41% of people reported that the options to select an answer did not adequately cover their situation**. The survey was worked on over a couple of months by 4 people with varying degrees of limited understanding of margin lending and not anticipating the consequences of certain scenarios hence this was expected but not for nearly as many. It was also trialled on a few people which did not reveal these remaining limitations. Occasionally the electronic survey would not allow entry of figures. (Some details about the limitations have been noted and it is also likely that at times people have misread or misunderstood given their distress.) The list of comments is included in the Appendix. [BTQ108]

64) **Comments reported reflecting the experience of Peter Holt's office and / or BT**:

i. Assurance homes would never be at risk
ii. Assurance buffer zone Holt created was higher than required
iii. Everything was under control with their expertise
iv. Holt generally unavailable

v. Told BT only allowed clients into margin loans through their authorized representatives (suggesting careful selection and assessment)
vi. Holt / staff incompetent, negligent, deceptive and unable to manage margin loans
vii. BT abdicated responsibility entirely and was negligent at best
viii. BT errors indicate serious concern regarding procedures and competency or possible deliberate misinformation
ix. Sense of being low on or at bottom of Holt's priority list
x. Holt claimed people would not lose even 1 cent or have to contribute out of direct income
xi. Holt said he only made money when a client made money (indicating his commissions were paid on harvest / rising value)
xii. Holt claimed investments were conservative, safe and secure
xiii. Holt dismissed desire to sell shares as GFC began claiming this was the worst action to take and that people were protected and margin calls would not occur (if aware of the possibility).
xiv. People felt abandoned to try to work out what to do over investments they had no understanding of hence having Holt 'manage'.
xv. Neither Holt nor BT could be trusted. Holt actively took advantage and BT made no effort to ensure people were not being deceived.
xvi. Lies, mismanagement abound.
xvii. Holt claimed he was preparing legal action against BT for their failure to act as agreed with his office.
xviii. Holt groomed people for many years doing their tax before suggesting investments which ultimately were inappropriate and created financial ruin as well as destroyed relationships and families.
xix. Holt response to questions reinforced we did not understand and he took advantage of this.
xx. Documents were not signed by clients and transfer of shares was not consented to either which is illegal.
xxi. I agreed to a high risk portfolio after Holt said I would not make money otherwise.
xxii. No information about risks was provided and was dismissed when inquired with explanations, graphs etc.
xxiii. The monthly service fee ($137) was for nothing.
xxiv. BT never contacted us to confirm serviceability of the loan.
xxv. BT never contacted us to ensure we knew of a loan.
xxvi. BT did not implement its safeguards and was far from helpful after the GFC hit.
xxvii. No stop was put on loans assured would occur and no calls by BT or banks to ensure we knew where loans or margin calls may end up.
xxviii. Don't really understand BT statements.

[BTQ109]

65) **A list of BT client codes and / or client names** who participated in the survey plus 3 whose experience was typical and who were unable to fill it in but wish to be part of the group complaint, is provided in the **Appendix.** [BTQ110]

11 March 2016

Appendix M cont'd/ - Letter to BT margin lending

Holt Norman Ashman Baker Action Group (HNAB-AG)
PO Box 5043, Moreland West LPO
MORELAND WEST VIC 3055
www.halttosafeguardyourfinances.com
Email: hnabactiongroup@gmail.com

Mr Brad Cooper, Chief Executive BT Financial Group
Level 14, Tower Two, International Towers
200 Barangaroo Avenue
Sydney NSW 2000

11 March 2016

Dear Mr Cooper,

Re: Restitution and compensation; safeguarding BT Clients

With respect, I make a plea that you carefully consider the human cost of white collar crime and imagine how you would like your loved ones – your partner, children, parents, relatives and closest friends – to be treated if they were amongst the people on whose behalf I write. Your authority and power can honour your humanity and rectify life-altering injustice and trauma.

I am among at least 85 people who were placed in BT margin loans through authorized representative, Peter Holt, and his firm. We have been subjected to gross white collar crime related to deception and fraud across various forestry and horticultural Managed Investment Schemes and margin lending. At this stage it is not clear whether certain staff from BT actively collaborated with Mr Holt or if BT is at fault through lack of due diligence, abdication of responsibility and negligence. We believe this should be investigated and will assist BT to do so.

Our aims are to:

1) seek proper restitution and compensation for consequences, both financial and personal, affecting every aspect of people's lives, in addition to

2) assist the public and BT to be protected via:

(i) helping current and future BT clients by way of offering suggestions to implement simple, inexpensive measures to safeguard billions of dollars of ordinary Australian investors and related liability and

(ii) using our experience to assist BT in revising procedures in the training of staff, at all levels, to appreciate the human costs of misconduct and white collar crime to highlight mechanisms necessary to avert, and raise alarm to address, this at BT and within the industry at large.

Along with comments in the main supporting document, attached is a suggested draft of a simple checklist which could be provided to prospective clients (and adjusted to identify existing clients at risk). Had such a document been presented to clients, now HNAB-AG members, they would not be in the dire circumstances most are today and will be for the rest of their lives without intervention.

Data from a survey underscores BT's key responsibility relates to:

1) failure to assess or ensure appointed authorized representatives are properly trained, competent and resourced to assess a prospective client's suitability, advise on, and / or manage a margin loan share portfolio.

2) failure to ensure prospective clients were adequately informed in order to be able to properly consent and accept inherent risks and /or limit these.

3) failure to implement simple measures to confirm with prospective clients to ensure they knew of the existence of a margin loan (10 people had no knowledge whatsoever of being placed in at least one margin loan).

4) failure to require margin loan documents be signed, once fully informed, in the presence of BT staff other than the authorized representative (accountant / adviser) who recommended, advised on, arranged (including related investment loans) and then managed the margin loan - for which the incentive of enormous commissions and trailing fees, as well as other fees (to 'manage' the portfolio and receive a percentage of its value) were obtained. This motivated Peter Holt to engage in deception and fraud.

5) failure to ensure clients were directly provided (i.e. not relying on the accountant / adviser to do so) with copies of any loan application, loan approval, relevant letters, statements, margin call notifications and payments or other material which would help a client to know he or she had a margin loan and / or be aware of related commitments and requirements as well as understand risk or be warned of danger signs regarding unscrupulous representatives and / or concerns with BT staff.

6) failure to consider or avert the devastating and far-reaching consequences of white collar crime - well beyond cataclysmic financial impacts (e.g. loss of homes and / or life-savings, placement in insurmountable debt or bankruptcy, impossibility of retirement etc.). This resulted in obliteration of life as it was including relationship and family breakdowns, childhoods scarred and deeply impacted, plans devastated, work and careers affected, with severe emotional, mental and physical health ramifications which extend to high suicidality levels and actual attempts.

7) failure to appreciate that for those badly impacted, the trauma and energy to survive the aftermath means that trying to understand what happened with BT or MIS is overwhelming impossible. People had to focus on immediate impacts of misconduct-related investments and legalities and day-to-day practicalities e.g. sell homes, find somewhere to live and even relocate from a community, look after dependents and re-arrange schools, find more work, cope with separation/divorce or struggle in a marriage or with a partner who is also traumatized, or alone in isolation as well as cope with employment or business and their own shock and trauma.

   People learn quickly the regulatory and legal systems are woefully inadequate in protecting consumers. Most victims have little, if any, emotional and financial resources against the might of the industry given limitations of the law (which is not the same as justice).

   Moral and ethical responsibility appears overridden by legal responsibility. People feel powerless and hopeless. Only when enough adjusting has been done can some of us begin to investigate, understand and take action.

   The ***Statute of Limitations*** is part of the problem as few of us had any real understanding of margin lending until later in 2015, some 7 years later. BT's failure to provide adequate and correct information prior, and on request since, also thwarted grasp of the issues. However, this only applies to civil litigation, not criminal cases which we believe is relevant.

Information related to an online survey of clients placed in BT margin loans by Peter Holt is also attached. Data was obtained in the second half of 2015 and into January 2016. The delay related to the difficult challenge for most of us to obtain, and understand, the documents required for some of the 110 questions.

Moreover, the primary financial focus for most, including the HNAB-AG executive committee, has been Timbercorp and extensive concerns with respect to the liquidator,

KordaMentha, and its so-called Hardship Program which arose out of our efforts with media and lobbying parliamentarians. This led to a senate inquiry in 2014. Advocating for, and supporting, victims along with pursing action regarding misleading and inaccurate testimony provided by Mark Korda, at a further senate hearing in August 2015, continues to require time.

Further to this, not having a complete copy of our BT files has thwarted many, in addition to not understanding, or being able to check information, such as margin calls or what money was used for these by Peter Holt without our knowledge.

Information about HNAB-AG, the survey, its results and comments people made are included for your consideration. The ruin of one couple well preceded the GFC.

The committee welcome a meeting with you in the spirit of respecting the trauma BT has been party to, and treating people with dignity, through a swift resolution to provide restitution and compensation for the compounding impacts.

This would promote BT as an organization committed to integrity and concern for the unfathomable depths of moral and ethical injury inflicted on so many. People had the right to expect they could trust reputable institutions, as well as, for most, a long-time accountant or adviser. BT accepted Mr Holt as one of its authorized representatives. In doing so, BT had a responsibility to ensure Peter Holt and his firm was fulfilling this role competently and ethically, in addition to its procedures in accepting margin loan applications and monitoring for concerns.

We also invite you to meet with HNAB-AG members in the larger group should it be helpful to hear directly from victims who participated in the survey.

[redacted] has been helpful in obtaining my own records in recent months. I will forward a summary to you (I still await documents related to a margin loan about which I was unaware). My experience is typical. Attempts to safeguard my own affairs (in the margin loan I knew about) illustrate the grave obstacles people encountered and the dangers which must be addressed for all Australians.

I would be immeasurably grateful for your response within 30 days. Your advice at your earliest convenience as to when it would suit to meet, should you require further information, or to discuss how we can assist in the training of BT to safeguard against white collar crime, would be much appreciated.

Yours faithfully,

Susan Henry
Chair, HNAB-AG

c.c. Lynn Ralph, Independent, Non-Executive Director and Chairman
[redacted], Complaints Department

encl. Suggested Draft – Checklist re BT Margin Lending for Prospective Clients
- Results of HNAB-AG Survey regarding responsibility for negligence, deception and management of BT Margin Loans

Appendix M cont'd/ - Reply from BT margin lending

BT Super Investment Insurance Advice

4 May 2016

Susan Henry
Holt Norman Ashman Baker Action Group
PO BOX 5043, Moreland West LPO
MORELAND WEST VIC 3055

Dear Ms Henry

Holt Normal Ashman Baker Action Group (HNAB-AG)

Thank you for your correspondence to the Chief Executive of the BT Financial Group, Mr Brad Cooper, dated 11 March 2016 and received by us on 21 March 2016. As General Manager for BT's Platforms and Investments, I have been asked to respond to you. Thank you for your patience as we have considered the material you provided to us.

It is clear you and your HNAB-AG co-founders have undertaken extensive work to assist former clients of Peter Holt and his colleagues associated with various accounting practices (the **HNAB advisers**). We are very sorry HNAB-AG members have suffered investment losses and we have no doubt you are providing important support. We also appreciate the extent to which you have pursued other avenues before approaching us, including engaging with the HNAB advisers, the administrators and liquidators of their accounting practices, regulators and other consumer advocates.

We now turn to the allegations and claims you have made on behalf of the HNAB-AG members.

HNAB-AG's allegations and our position

You have made some serious allegations against BT which we are concerned may be based on a misunderstanding about the relationship between BT and the HNAB advisers, and a belief that they were operating as authorised representatives of BT. As we will explain, this was not in fact the case. BT Securities Limited is the lender under BT margin lending facilities. As a margin lender, our role is to assess, approve and administer margin loans for our customers in accordance with the margin loan account terms and conditions. We believe we did this appropriately for the HNAB-AG members and have not identified any circumstances which might support any allegations to the contrary, and certainly not any allegation that BT engaged in criminal conduct, which is most strenuously denied.

Consequently, for the reasons we outline in this letter, we do not agree BT has a legal obligation or an ethical responsibility to compensate HNAB-AG members for their investment losses. And while we appreciate your offer to meet with us to provide any further information, in view of the very comprehensive material you have provided to us, we do not have any further questions.

Our investigation and further relevant information

Following receipt of your correspondence we have undertaken a careful review of your material, and our own records, prior to responding to you. You will appreciate that for privacy reasons we must necessarily keep this information general. However, we are happy to follow up any particular requests which individual customers may make to us.

Having completed that review, it is our view that BT does not have a legal obligation or ethical responsibility to compensate HNAB-AG members for their investment losses. We say this because:

- **HNAB-AG members received financial advice from the HNAB advisers which included recommendations to apply for BT margin loans;**
- **the HNAB advisers were not authorised representatives of Westpac or BT and did not operate under Westpac or BT's Australian Financial Services Licences (AFSLs);**
- **Westpac and BT were not party or privy to any adviser relationship or investment advice provided by the HNAB advisers; and**
- **BT administered the margin loans of various HNAB-AG members in accordance with their written authority and direction and the relevant terms and conditions.**

To address these important matters further:

1. A margin loan is a loan facility which our customers may use to assist them to purchase securities of their choice from BT's approved securities list (**ASL**) which is the list of securities BT accepts as security for our margin loans. As we disclose in our risk disclosure statement, BT's margin lending business does not provide any financial advice to customers and the listing of securities on our ASL is not to be taken as a recommendation about those securities.

2. Financial advisers can help clients devise appropriate investment strategies and guide them in investment choice. Applicants for BT margin loans are not required to engage a financial adviser but if they do, their contractual relationship with their adviser is separate from their contractual relationship with BT for their margin loan. BT's margin lending business is not licenced to provide financial advice and it would not be appropriate for us to query investment choices within a margin loan facility, or otherwise to interfere with our customers' relationships with their financial advisers. We note that the financial advisor-client relationship is governed by the *Corporations Act* and regulated by the Australian Securities and Investments Commission (**ASIC**).

3. We have found no evidence that any HNAB adviser was operating as an authorised representative under either the Westpac or BT AFSLs at the time they may have been advising HNAB-AG members. Our records and research indicate that the HNAB advisers operated through other AFSL holders that are not affiliated with Westpac, including Wealthsure, Count Financial Group and Foster Streader Black Limited.

4. BT margin lending customers are able to authorise a third party (including their financial adviser) to act as their authorised representative to operate their margin loan facility on their behalf. The management of advised investments is usually (but not always) part of the service which financial advisers offer their clients.

5. We require applicants for a BT margin loan to specifically acknowledge that they have read and accept the risk disclosure statement we make to them as part of the application process. This risk disclosure statement sets out various risks associated with a BT margin loan which we believe applicants should understand prior to proceeding with their application. The risks we disclose include that a lending ratio which we apply to a security is not based on an assessment of its suitability for the customer's portfolio, and also that we do not provide any advice to margin lending customers include how they should invest the money they borrow from us under a margin loan.

6. Our role and responsibilities as margin lender to the HNAB-AG members is documented in their facility agreements with us. These responsibilities include allowing them to borrow from us against securities on our ASL subject to the borrowing limit determined by the market value of the securities and the lending ratio we assign to the security. We believe we have conducted the margin loans in the name of the HNAB-AG members appropriately and in accordance with the facility terms at all times.

7. Our existing disclosure documents do warn our customers of the inherent risks and costs associated with margin lending, and our processes include multiple verifications for our customers to confirm they have read this material. It is unclear to us, as a practical matter, how the checklist you propose would better address the situation you appear to describe, where either our customers' authorised representatives do not provide them with our documents, or our customers are prepared to sign multiple verifications which are not true. We refer to:

   - BT's margin loan application documents, by which we require all loan applicants to acknowledge, by their signature, that BT does not provide them with financial advice, and that they have read and accepted our risk disclosure statements; and
   - BT's margin lending brochure, product disclosure statement and financial services guide which we issue with every BT margin loan offer, and which are also available online at http://www.bt.com.au/investment/products/bt-margin-loan/. We require all our customers, when they accept one of our margin loan offers, to verify, by their signature, that they have read and understood our product disclosure statement.

8. We respectfully take the view that our independently-advised customers would not necessarily welcome any intrusions by the Westpac Group into their trusted adviser relationships, and that there could be licencing implications associated with such actions. Fortunately there are a number of independent resources to assist consumers to conduct their own due diligence on their financial advisers and investment products. These resources are the result of a high-profile and growing body of work being undertaken by the financial services industry, consumer advocates, regulators and the wider community. We consider this work essential for building and maintaining trust in the banking and financial system. We are particularly supportive of ASIC's online resources for financial services, which includes consumer information about investment products, and

publicly searchable registers of AFSL holders and their authorised representatives. See: http://asic.gov.au/regulatory-resources/financial-services/.

Individual customer requests

In light of the matters outlined above, we have not been able to identify any basis upon which BT may be considered responsible, legally or morally, for HNAB-AG members' investment losses. We think it is only fair to let you know that we are not considering making an offer to compensate or provide restitution for the investment losses you and other members of HNAB-AG may have suffered as a consequence of relying on the advice of the HNAB advisers.

We remain willing to assist our customers to compile records of their BT loans and investments, and in this regard, I am pleased that you have been happy with the assistance our Product Complaints Manager, Samantha Scott, has provided to you. I want to encourage you and other HNAB-AG members to get in touch with Samantha and other members of BT's Customer Relations team with any further information requests.

This is our final position with respect to HNAB-AG's compensation request. If our individual margin lending customers are not satisfied with assistance we provide to them, or wish to lodge an external dispute about their BT margin loans, they may contact the Financial Ombudsman Service, at no cost to them, by calling 1800 367 287 or emailing info@fos.org.au.

Yours faithfully

[redacted]

John Shuttleworth
General Manager – Platforms and Investments
BT Financial Group

Appendix N: Funding of restitution and compensation helped if multinational tax dodgers held accountable

https://theconversation.com/multinational-tax-dodgers-are-the-real-leaners-73672

Multinational tax dodgers are the real leaners

February 28, 2017 12.34pm AEDT

Author

1. **Michael West**
Adjunct Associate Professor, School of Social and Political Sciences, University of Sydney

Partners

It's quite a feat to sell beer to a nation of drinkers like Australia and not record a taxable income. Bala Sivakumar/flickr, CC BY-SA

Nowhere is the impotence of politicians and regulators more costly than in their failure to stand up to multinational corporations dodging tax.

The Tax Office now publishes an annual list of Australia's 1,900 largest companies, which shows their revenue, profit and tax expense. Only 600 of the entities on this list actually pay income tax at the statutory rate of 30% (bear in mind, these include trusts such as Sydney Airport whose members incur the tax liability).

More than 600 of the entities on the list pay no tax at all. That's zero tax on A$330 billion worth of income: these are Australia's real leaners, not our lifters.

The list is a good thing; transparency is a good thing. Yet there are serious deficiencies with this ATO data. The key cause of these deficiencies is the failure of companies to lodge proper financial statements.

To demonstrate this, we selected a couple of companies from the list at random and analysed their financial statements. These entities, the local offshoot of Wall Street banking giant Goldman Sachs and the nation's biggest brewer SABMiller, show an income tax rate of 0% over the past two years.

Goldman Sachs Holdings ANZ Pty Ltd generated A$634 million in annual total income. This holding company displays the usual signs of a tax-dodging multinational including:

- ownership through Hong Kong
- a subsidiary in the Cayman islands
- the creation of a new holding company at the top of the group followed by a mega-million-dollar return of capital
- related party transactions and balances with next to no disclosure of their financial effects
- misleading financial statements and disclosures provided to the corporate regulator, the Australian Securities and Investments Commission (ASIC).

For its part, SABMiller in Australia is six times the size of Goldman Sachs. It rakes in A$3.5 billion in total income via its surefire business model of selling beer to Australians, one of the world's pre-eminent beer-drinking populations.

When we called SABMiller to ask if the company felt it was pulling its societal weight, we received this response:

In F2015, our total tax contribution in Australia exceeded A$1.4 billion. This included both our own taxes and those we collected on behalf of the Australian government, such as excise and customs duty, goods and services tax and employment-related taxes.

Points to SABMiller for actually responding. Goldmans didn't return calls. However, lumping in taxes collected for governments – beer excise, GST, payroll tax and so forth – is obfuscation when the subject of the story is corporate income tax.

How do they do it?

One of the tools of trade of the multinational tax avoider is keeping a low profile and keeping stakeholders, including the Tax Office, in the dark while maintaining the pretence that everything is kosher.

The financial statements of the holding companies of both Goldman Sachs and SABMiller in Australia are frankly useless. While claiming to follow the accounting standards, they conceal the true state of the financial affairs of the group.

Dozens of companies that formerly lodged proper "general purpose" financial statements quietly switched to the inadequate "special purpose" accounting regime in recent years. These "special purpose" accounts are a favoured device of the Big Four accounting firms.

With these financial statements, Goldman Sachs and SABMiller, and their auditor PwC, take the implausible view that a holding company that controls billions of dollars in assets is unaccountable to the public for the activities of the group, including its subsidiaries.

Both holding companies – and bear in mind eBay and a host of other multinationals do the same – have deliberately chosen not to file audited consolidated financial statements with ASIC.

The decision not to consolidate means there is no audit or assurance of accounting balances, which the Tax Office might otherwise rely upon in its enforcement activities.

In filing special purpose accounts, the directors of these holding companies are claiming that nobody other than their masters in the US and the UK are entitled to access audited financial information.

It is a hollow claim, but one ordained by the Big Four accounting firms, EY, Deloitte, KPMG and PwC. PWC, the auditor of SABMiller Australia, opines:

Our [2016 audit] report is intended solely for the members of SABMIller Australia Pty Ltd and should not be distributed to or used by parties other than SABMIller Australia Pty Ltd and the members.
If this is so, why does Australian law require that the financial report and audit report be made available for public consumption on ASIC's database? Can PwC not be relied upon to conduct a statutory audit?

"It's all legal," is the catchcry. Yet Australia's company law supposedly put a stop to non-consolidation by holding companies in the early 1990s following the corporate crash of Adelaide Steamships.

Nonetheless, the accounting firms have brought back the non-consolidation ruse for their billion-dollar multinational tax-avoiding clients. So it is now up to the government to change the law to make it clear: no loopholes, so Australian holding companies of multinationals with billions in assets or income must prepare and lodge audited consolidated financial statements.

Section 297 of the Corporations Act requires that financial statements give a true and fair view. SABMiller Australia reported income of A$0.0001 billion in its statutory accounts for 2015 but A$3.5 billion to the Tax Office. The difference is largely attributable to non-consolidation of subsidiaries in the financial statements lodged with ASIC.

ASIC could rule on this today and enforce the present laws by insisting on proper financial reporting. Or if amendments were required, legislation would be a simple process. All it requires is political courage in the face of powerful vested interests striving to conceal their true financial state of affairs.

This column, co-published by The Conversation with michaelwest.com.au, is part of the Democracy Futures series, a joint global initiative with the Sydney Democracy Network. The project aims to stimulate fresh thinking about the many challenges facing democracies in the 21st century

Appendix O: Authentic engagement with victims necessary to best prioritize government response

From: Frydenberg, Josh (MP)
Sent: 01 March, 2017 4:45 PM
To: deleted for confidentiality
Subject: Correspondence

Dear X and Y (deleted by HNAB-AG for confidentiality)

Thank you for reading my newsletter and writing to me about financial services reforms. It is a serious problem that the Government is determined to address.

The Government does not support a Royal Commission into the banking and financial services sector, mainly because a Royal Commission will not benefit consumers or the Australian economy in the long term and it would cost Australian taxpayers millions of dollars and will take many years to complete. It would also undermine confidence in our banking system, harm investment and risk our AAA credit rating, and do nothing to assist consumers in any practical way.

The Government is delivering on the most ambitious financial system reform agenda in modern history. This reform agenda will strengthen the financial regulator ASIC, and will ensure consumers get a fairer deal. The Government's commitment to a strong and stable financial sector started with the commissioning of the Financial System Inquiry (Murray Inquiry) – a broad root and branch inquiry of Australia's financial system.

In response to the Murray Inquiry, the Government committed to unprecedented improvements to consumer protections, banking stability, governance and ASIC powers. So far, the Turnbull Government has enacted critical, consumer protection reforms that lift the professional, education, and ethical standards of financial advisers, limit the incentives paid to advisers for the sale of life insurance products and has introduced reforms that will ensure that retail client monies are protected where financial firms become insolvent.

In April 2016, after completing a Capability Review of ASIC, the Government announced a $121 million funding package for ASIC to bolster its enforcement capabilities and to accelerate reform measures recommended by the Murray Inquiry.

The Government has also commissioned a number of critical reviews, including a review of the financial system's External Dispute Resolution (EDR) Framework (Ramsay Review). The Government has committed to establishing a one-stop-shop dispute resolution scheme that will provide consumers with independent and timely access to justice, and access to compensation where appropriate. The Ramsay Review released its interim report in December 2016, and will produce its two final reports to Government in March and June 2017;

Another review was conducted into the small business lending practices of the major banks (Carnell Review). The Government released the Carnell Report and the Government response on 3 February 2017. It makes 15 recommendations, four of which are for Government, and the remaining 11 directed to the banking industry itself. In total, the Inquiry considered 23 of the most egregious cases that were presented to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the 'Impairment of Customer Loans'. Of the cases considered, 1/3 were a result of poor business decisions, another 1/3 were a result of both poor business decisions and poor bank practices, and the final 1/3 were representative of poor bank practices and possible unconscionable conduct on the part of the banks involved.

In respect of the recommendations for the banking industry, the Government expects the industry to give the highest priority to careful consideration of the 11 recommendations that focus on changes to the way banks deal with their small business customers and to provide a considered response to the report, and a proposed plan of action to address the issues of concerns raised.

In respect of the recommendations for Government, the Carnell Report provides further support for the establishment of a one-stop-shop EDR scheme, whilst the Government has extended and strengthened the Ramsay Review terms of reference to allow the expert panel to make recommendations, rather than observations, on the merits and potential design of a last resort compensation scheme, and to consider the merits and issues involved in providing access to redress for past disputes. The report on the extended issues will be delivered to Government by the end of June 2017.

A further review of the specific allegations made against CommInsure and of the broader life insurance sector has been completed, and ASIC released its report on the sector on 12 October 2016 and will produce its findings on the CommInsure matter in the first quarter of 2017 (ASIC Reviews).

The Government has now commissioned the ASIC Enforcement Review Taskforce, which is currently reviewing ASIC's enforcement and penalties power, and will report to Government in the second half of this year, and has announced the Open Government Partnership National Action Plan, which includes a commitment to review and consult on a new whistle-blower protection regime in the tax fraud area, and significant enhancements to the current corporate whistle-blower protection regime.

If a Royal Commission goes ahead, all of these important initiatives will be delayed indefinitely. This Government is focused on implementing the reforms needed to strengthen our financial system, rather than risking delay to those reforms by holding a Royal Commission.

Once again, thank you for writing to me about this matter. Please do not hesitate to contact me further on this matter or with regard to other issues that are important to you.

Yours sincerely

Josh

Josh Frydenberg
Federal Member for Kooyong | Minister for the Environment and Energy
Electorate Office | 695 Burke Road, Camberwell VIC 3124 | t: 03 9882 3677
Parliament House Office | M1:17, Parliament House, Canberra ACT 2600 | t: 02 6277 7920
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COPIED IN FULL WITHOUT EDITS

From: deleted for confidentiality
Sent: Monday, 13 February 2017 12:18 PM
To: Frydenberg, Josh (MP)
Subject: Re: Message from Josh (23 December 2016)

Thank you Josh for your very informative communiqué. You certainly have been busy. Antarctica must have been awesome.
As for your foe in Victoria, it seems very short-sighted to close Hazelwood. Why not influence Vic Govt. to build new juvenile centre in Moe.

As to our current situation with Timbercorp, Korda Mentha, ANZ Bank and primarily Peter Holt. We are still in the quagmire of trying to negotiate with these people and seeking respite and/or some redress for the financial loss and anxiety we (and many many others) have incurred as a result of serious white collar crime. We are aware of some instances where there have been devastating consequences beyond the financial impact.

We are aware that a submission is being put forward tomorrow in the House of Reps. for a Commission of Inquiry into the Australian Banking Sector. If this occurs it will mean banks, product issuers, liquidators (Korda Mentha and its purported hardship program) and Peter Holt can be probed and issues relating to redress and penalties tabled.

We (and many many others) would be extremely grateful if you can help victims of serious white collar crime and protect the public and national economy by supporting this submissions.

Yours sincerely,
X and Y (deleted for confidentiality)
