

RESTITUTION AND COMPENSATION

1. There is a need for retrospective redress including, and distinguishing, *restitution and compensation* for victims of financial negligence, deception and fraud i.e. serious white collar crime at the hands of banking and finance sector. This relates to accountability of individuals and organizations and also 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.
2. Successive governments have enabled the situation to develop to the devastating proportions for tens of thousands of Australians resulting in financial distress through to ruin, loss of homes and bankruptcy. The personal consequences are dire impacting all aspects of life and include high levels of suicidality and actual deaths from suicide and stress-related disease.
3. 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 even 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 and has intergenerational family and social impacts. Currently, the lack of awareness of issues and funding for research into these crimes is comparable to sexual abuse and family violence many decades ago.
4. Most victims are too traumatized and overwhelmed to take action in respect of the industry or to seek parliamentary help – or even to try to understand what happened. In a state of overwhelm, people 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.
5. **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.
6. **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*.
7. Over 8 years later, many 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.

8. 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.
9. The matter of people being effectively forced 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 most diabolical of circumstances.
10. We appreciate some may present 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, professionals.

Identification of Genuine Cases versus Fraudulent Claims

11. The following outlines 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 and level of risk aversion	
Lack of comprehensive and accurate statement of financial position provided regularly and on request	
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)	
Witnesses on documents who have not met the client or are staff of the firm	
Incomplete documents	
False information on documents	
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 fund 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 fund 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	

Table 1 continued/ -	
Lack of confirmation the client was adequately informed or understood commissions or conflicted remuneration was paid and / or evidence this influenced advice and 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 existing 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	
Inaccurate listing of financial information which is known to industry member	
No documentation of client declining safety measures (such as stop-loss order for margin loan)	
Leveraging which creates liabilities that are greater than assets	
Whistle-blower witness accounts with proof	
Substantiating evidence – particularly in scenarios of multiple victims	
Reports by more than 1 client prior to meeting / hearing others experiences given to other 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	
Whistle-blower 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 overwhelming detriment and disadvantage e.g. (under the <i>Trade Practices Act</i>) 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: <ul style="list-style-type: none"> - 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 	

Calculation of Restitution and Compensation - including Retrospective

12. 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.

13. However, 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. This 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.)
14. This includes structures and mechanisms to separate lenders/banks from those borrowers such as those offered "low-doc" loans via brokers, agents etc. These are recognized as a means to avoid responsibility by the industry so innocent victims will remain unable to obtain redress from predatory practices.
15. 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 Graeme Hancock, a lawyer, describes "*the low-doc loan debacle is systematic and widespread.*"
16. 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. Victims are often financially unsophisticated people so they are less able to make a fuss. Clients of Mr Holt's firm were placed in loans for investment, BT margin lending and agribusiness through low doc loans as well as incomplete loan applications and / or with inaccurate details.
17. Redress (including retrospectively) that is fair 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 on 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. It should include being forced out of the property market for that time and consequent increased difficulty getting back in.
18. **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).

19. Table 2 is predicated on the failures to date of the regulatory and legal system to protect a victim of gross white collar crime. It notes the categories for consideration in calculating restitution and compensation and covers major examples but 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 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	
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	
Lost money in rental accommodation having had to sell one's home	
Cost of buying a cheaper home e.g. 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 / avoid storage and fit 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 and disease or escalation of these	
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	
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 partner/s, staff or colleagues	
Reduced financial position / security (even none) due to advice actively, or indirectly, stopping preferred investing e.g. investment property 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 and action	
Trauma in pursuing payment of income protection claim / insurance	
Impact on health – physical and emotional / mental health	
Suicide: attempted and completed	

20. 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. Moreover, they 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 by economist Dr Andrea Sharam of Swinburne University shows people over age 45 (which include many victims of financial misconduct) have almost no hope of owning a home again if they do not have one to paying off by then.
21. 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, dependent children of deceased victims of white collar crime are victims too having intended inheritance impacted. Especially elderly parents who worked hard their entire lives can be 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. Victims have also had to use inheritance to pay misconduct-related debt. Impending inheritance, where a parent was ill but not yet dead, has also been factored into settlements by KordaMentha.
22. 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 serious concerns with all major banks and some liquidators.