



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

ECONOMICS REFERENCES COMMITTEE

Forestry managed investment schemes

(Public)

WEDNESDAY, 12 NOVEMBER 2014

MELBOURNE

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SENATE

ECONOMICS REFERENCES COMMITTEE

Wednesday, 12 November 2014

Members in attendance: Senators Dastyari, Heffernan, Ketter, O'Neill, Whish-Wilson, Xenophon.

Terms of Reference for the Inquiry:

To inquire into and report on:

The structure and development of forestry managed investment schemes (MIS), including:

- a. the motivation and drivers that established the framework for the schemes initially;
- b. the role of governments in administering and regulating forestry MIS;
- c. the current policy and regulatory framework of forestry MIS;
- d. the role of some in the financial services industry in promoting and selling forestry MIS;
- e. compensation arrangements for small investors in forestry MIS who have lost life savings and their homes in the face of the collapse of forestry MIS;
- f. the burden on farmers and other agricultural producers who have been left with the uncertainty of timber plantations linked to forestry MIS on their land;
- g. the options for reforming forestry MIS to protect investors and rural communities; and
- h. any other related matters.

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KELLY, Mr Bernard James, Private capacity

McDONALD, Mr John Denis, Private capacity

Committee met at 09:03.

CHAIR (Senator Dastyari): I declare open this first hearing of the Senate Economics References Committee's inquiry into the structure and development of forest managed investment schemes. The Senate referred this inquiry to the committee on 25 June 2014 for report by 31 March 2015. The committee will be accepting submissions until 15 December 2014. These are public proceedings. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. A request to have evidence heard in camera may also be made at any other time.

I would like to welcome everyone today who is either giving evidence or observing the proceedings. Today we are going to discuss some very personal and deeply emotional matters and I would ask that visitors assist the committee to keep the proceedings orderly by refraining from interrupting proceedings. I also urge witnesses to exercise care when recounting their experiences and not to unnecessarily name people for alleged wrongdoings unless the name of such persons are already on the public record for the misconduct. This precaution does not stop the witnesses providing names to the committee in private. Any person who believes they may have been subject to adverse comment should contact the committee.

Finally, but most importantly, I would like to take this opportunity to thank the witnesses who have taken the time to appear before the committee today. I acknowledge that some have travelled long distances and that we have people here from as far as Western Australia and Northern Queensland who have travelled just to be part of proceedings today.

Before the committee proceeds to questions, I invite the people at the table to make a very brief opening statement, but, before doing so, I also want to acknowledge that, while we have a full contingent of senators here, we also have Senator Xenophon the phone and Kelvin Thomson, the federal member for Wills, with us here today. I want to acknowledge their presence, even though they are not at the table.

Mrs Byrne, Mr Kelly, Mr McDonald and Ms Halpern, thank you so much for coming. Thank you for being prepared to come and tell us your story. Before we proceed, you could say a few words. Perhaps each of you would like to recount your story and your experience. A set of questions will be led by Senator O'Neill as well.

Ms Halpern: I am happy to start. I came to be in the Timbercorp scheme via my ex financial adviser and planner, Peter Holt, who repeatedly discouraged me from putting money into super, saying that Timbercorp and other agribusiness products that he was recommending would be a far superior way to build my security for retirement. From 2000 until 2008, he advised me to invest in numerous MIS schemes, including FEA, ITC, Rewards, Timbercorp and TFS—a total of seven projects—at a cost of nearly \$486,000. All of them except for TFS project have failed now. In 2009, when Timbercorp collapsed, my debts for Timbercorp comprised \$57,000. He also advised a whole lot of other things: margin lending and investment loans against my house. The point is that I went into these schemes because I trusted him. I had been with him for many years and I thought that he was looking after my future.

By the end of 2008, when everything collapsed, I was left in the region of \$650,000 in debt, with \$11,000 in my superannuation fund. I could not believe what had happened. I had no idea how it happened. I did not know I had all these loans until I started to get calls from creditors—companies telling me that I was behind in payments. Because Peter Holt managed everything, all documents went to his office. I had no idea what was going on, and I trusted him. I was terrified, totally panic-stricken, filled with dread. I did not know what to do. I was just completely overwhelmed and out of my depth. I have worked hard all my life and I was trying to do the right thing to secure a safe and comfortable retirement, and suddenly my world and everything that I have worked for collapsed completely around me.

I had to try to refinance the home that I had paid off to try and assist with the debt. In fact, I have refinanced it twice since 2009 and I am paying for it 4½ times over. My retirement, even if I do get to retire, looks grim. I experience periodic insomnia, anxiety, times of depression and total loss of any kind of hope for a secure future. I actually find it very hard to put into words the utter devastation over the six long years, and it continues to be.

If it is all right with the committee, I would like to say a few things about some members of our group who are not able to speak here today because they are too emotionally fragile, because they may have been advised for legal reasons not to speak, or because they have concerns about their public reputation. I want to tell you about the emails, the phone calls, the private conversations, that I and other members of the executive team of the group have had with our members.

Some in our group have already lost their homes and gone bankrupt and been left with absolutely nothing. There are also people who are poised now, if ANZ keep pursuing this, to lose their homes. We know of a retired couple who are now living in a caravan park. Another person, who lost her home and her life savings, has been living with a friend for the last three years because she is homeless. We keep hearing stories of hopelessness, despair, anxiety, depression, people feeling totally isolated, feelings of shame and worthlessness, loss of confidence, loss of self-respect and dignity, people turning to alcohol, to antidepressants, to sleeping pills. There are a lot of people who are reporting stress-related physical and mental health problems. We have members who, on top of what they are already going through, are fighting cancer, and people who are so stressed that they have been unable to work. We know of marriage breakdowns, loss of friends and family members. We have heard too many people tell us that they have thought of suicide as being the only way out of this nightmare. After my interview on *Lateline* in June, I got a call from a woman who said that she watched in horror, with feelings of panic rising, and she thought she was going to throw up, because she said that my story was exactly the same story that she had, and she had not known about our group previously. Another member told us that she went to her mailbox to find a letter telling her that she had lost everything and that she urinated all over herself at the mailbox, in front of her neighbours, because she was just so petrified about what this meant for her future.

We have been living in this nightmare now for six years, except we do not ever get to wake up and say, 'Oh, it was only a dream.' We live it day in, day out, week in, week out—on and on for six years. We are physically, emotionally and mentally exhausted. We are sick of the banks telling us that we are greedy high-end-of-town earners who were seeking tax breaks and now we are crying crocodile tears that it is not fair. We are people who have always paid our taxes. We are sick of people telling us that we have brought it on ourselves and, 'What responsibility do you take for your situation?' We went for advice because we were trying to take responsibility and we trusted our adviser. We have been betrayed by our adviser and his associates. We have been betrayed by the ANZ, who either knew that Timbercorp was corrupt and are therefore complicit, or, if they did not, then they are guilty of failing in their due diligence to their customers and shareholders.

We the victims are now being left accountable for everybody else's greed and failures, so we are here imploring that the ANZ will hear our stories—that we are not just outstanding loan balances in their book but we are people with real lives, with families, with responsibilities, with commitments, who had hopes and dreams that have been shattered into a million pieces. We are here bleeding, and the ANZ have the power to stop that blood loss. Surely, with \$7.3 billion profit, they can afford to take the right and just action and let us go, to end this nightmare for all of us. Thank you to the committee for hearing our stories.

Senator HEFFERNAN: Can I just ask a question? I want to say one thing first. Some people involved in this did have a tax problem. The government ended the tax problem. If you get a headache or something, you go to the doctor and he gives you a script to go to the chemist and you take the pill, because you believe the doctor. A lot of people were in that situation with their financial planner. My question is: are the ANZ bank in the room, and, if they are, would they have enough guts to stand up and say they are here observing this?

Can I just say I think it is a bloody disgrace that the bank would not show the respect to this meeting to at least send an observer here to hear these stories face to face. It is easy to send an email to someone telling them to go and get stuffed, but it is more difficult to do it face to face. It happens to me all the time.

CHAIR: Mr McDonald, do you want to say a few words?

Mr McDonald: Yes, I would like to start by thanking the Senate committee for having the inquiry, bringing it to Melbourne and allowing us to have our say today. My story is not dissimilar to Naomi's, but I actually predate Timbercorp, because I went to a financial adviser—the same company that Naomi already mentioned—to have my tax done, just as thousands of other people do, I guess—millions in Australia. They were actually very good at it, to give them credit. I would go in there, I would take a bit of advice, he would say what I should keep receipts for and what I should plan for, I would hand over the receipts and give him the figures, and magically—to me—the tax return would appear. He would hand it to me: 'X marks the spot; sign here.' I would sign there, and two or

three weeks later the tax return appeared. 'How easy was that?' I thought. They were very good, very efficient and very competent. I had no reason to have any doubts about them at all, and this continued for 20-odd years.

In that time, two things happened: (1) I built up a large amount of trust in the company doing the tax and the individual himself; and (2) I got into the habit, I guess, because I trusted him so much, of just, when the tax return was put in front of me, signing there. I did not even read it, to be honest. I glanced through it. I saw tables about depreciation and things. I had no idea how they worked, but I did not need to. I just had to sign the form, and the tax return would appear.

That trust developed over 20-odd years, and the habit of not reading documents properly before signing them built up over a similar period. It was a habit I would later come to regret, because some time later—I must have been in my late 40s or early 50s—my adviser called me in and said, 'You know, we should be planning for your retirement.' I had no great plans to retire, but hey. He said, 'You can't start these things too early,' and he had a great idea. He said, 'There are these things called managed investment schemes—notably one run by a company called Timbercorp.' He explained how it worked to me, and the explanation went something like this: you bought avocado and mango lots and you put money into a bank account, which he set up for me with Macquarie Bank. You paid money into these accounts, and over time you would reap the benefits of the sale of these products. He did warn me that in the first few years you would actually lose money, because the proceeds of the sales would not be enough to cover the annual fees. But not to worry, because over time—in fact, within three or four years—they would break even and after that, in every year up until 2026, when I would turn 70, the proceeds from the sales of the avocados and mangoes would be greater than the management fees. Furthermore, he took control of this bank account so that my tax return would automatically be paid into it, any GST rebates were paid into it and the management fees for the avocados and mangoes would come out of it. I did not have to do a thing.

That was fine until—we all know what happened—Timbercorp collapsed. Soon after that, I discovered that the forms I had signed, barely reading them—as I said, each time he would hand me the forms and say, 'Yes, you want to buy these mangoes; just sign there.' It was pages thick. Stupidly, I did not read it, or at least not properly. Every year there was something new: 'Sign here; sign here.' It was a done deal. When Timbercorp collapsed, my first thought was, 'Oh, I've lost a bit of money here,' but you know what? I could deal with it. I figured that with every investment you make there is a risk. I understand that there is a risk. So I had lost money, but it was mitigated a bit by the fact that other responsible entities had volunteered to take over the avocado and mango projects, and we were told that in time they would still produce some sort of dividend, which would be not a huge amount of money but a supplement to my retirement income over a period of 20-odd years.

A few weeks after that, though, I got correspondence telling me that I owed Timbercorp \$240,000. 'It must be a mistake,' I thought. 'How do I owe money when I've already put this money into it?'

Apparently the forms I was signing, I later learnt, were not just buy-in forms but were loan applications. I was borrowing money I did not know I was borrowing. It can be argued that I signed these forms and no-one held a gun to my head. Some will argue that there is a loan application and it has your signature on it, so it is a loan application. It is hard to argue against that, except for the fact that it all came down to trust over years—two decades even—of signing forms without having to read them and having total faith in the financial adviser. I had got into that bad habit. It is a habit I will never repeat, but it is too late now. I owed Timbercorp \$240,000 and they wanted their money back. That figure has now almost doubled.

As I am sure you all know we have lived through a court case and an appeal, both of which were unsuccessful. I have not yet had a writ from KordaMentha, but I am expecting one any day. Several other people I know have done so. Ms Halpern explained better than I ever could the effect on our wellbeing, and the stress and anxiety. I cannot say it any better than she did. Suffice to say it is very similar both for me and for other people in the group we have met. I was reminded not long ago in a meeting with my local MP that there are parallels here to be drawn between this debacle and the child sex abuse allegations of 20 and 30 years ago. As we know with those allegations only now are people starting to receive compensation for all the suffering and pain. In some cases people have died since then. It is too late. What I am hoping will happen here is that rather than suffer a human tragedy and look at it in years to come and say, 'Oh, we could have prevented that,' let's prevent it now. Let's get ANZ to come to the table and explain the situation and say that they have the power not only to compensate people for the pain and suffering but to prevent a possible human tragedy. In the past few months I have met people through the group that Naomi is a part of and I have looked into their eyes and I have seen the fear and the stress they are under, and I fear that if we do not do something soon there will be a human tragedy, and we will all be mortified by that.

Mr Kelly: I would like to start by thanking the Senate for the inquiry. It is so important for us to get our word out there. For the record I would like to thank the HNAB Action Group, which is a group through which I have

fortunately met some of the nicest people I have met in my life. It is for the wrong reasons, but we have come a long way.

My story is that I am just a simple family man who went out to invest, because we had a bit of equity in our home. We have four children. I am single now, through a divorce, mainly because of financial pressures and what it put us through. We were referred by relatives to Peter Holt, a financial adviser, to look at doing some sort of investment. Before I went there I went and spoke to my bank first, and then I rang up ASIC and the ACCC to confirm that Peter Holt had a reputation. They said they had nothing on record that would show he was not. He had never changed offices or phone numbers or anything like that. He presented us with several of these things they call our portfolio, or whatever it may be. When I have had these re-looked at later, I have found that they are double-gearred and triple-gearred, of which I had no idea, and they were doomed to fail from the word go.

I have five loans, which I did not even know existed. Most of the information on these loans was filled in by other people and signed by witnesses I have never met—I assume they work for the Holt group. Some of the information that I see on these forms is stuff that we were asked to present, as a family, on our financial position, in the early stages when he was setting up our portfolios, and that has been transferred over onto these. Some of the pages throughout this you will see are normal—just white pages—and then some are copied and duplicated, and there are even some that have had alterations on them through liquid paper and no signatures against those. Up until I started getting chased for the money, I had no idea I even had a loan. All we thought was we had what they call an invested interest in an agricultural business, and, from that, our portfolio would cover any management funds and any running costs towards it, and we would not have to pay anything towards that.

Since then, I have lost both projects. One was shut down by the RE; the other project I had debt collectors chasing me for, and I had to make a financial deal with them on how to pay that out, which is done. That was the Huntley project, and, on that project, I was told by the seniors there that we should never have been entered into these projects; we were not funded enough and we did not have the money behind us and we had no idea what we were into. I would probably have liked to have known that beforehand.

Senator WHISH-WILSON: Sorry, Mr Kelly—you said 'seniors'; what did you mean by that?

Mr Kelly: I spoke directly to the head people at—

Senator WHISH-WILSON: Seniors Australia?

Mr Kelly: No, at the Huntley Group.

Senator WHISH-WILSON: Oh; sorry—the seniors at Huntley?

Mr Kelly: Yes.

Senator WHISH-WILSON: Their own company sold you that?

Mr Kelly: Yes, one of the head guys—I do not know if I can say that name on the record, but if you want I will.

CHAIR: It is not necessary.

Mr Kelly: I suppose the situation I am in now is: I have been through a divorce; I have had a payment settlement out of that. I have managed to keep my home, and I still have quite a bit to pay off on that home. I have had a PEEK cage inserted into my back, and I cannot physically work again; I sit here half full of morphine, but still aware of what I am saying. I am on antidepressant medication at the moment, and I currently see a psychologist once a month, and I got so low that I was sitting out behind the airport one day and ended up ringing the men's helpline because I had decided that enough was enough and I did not want to be here—it was only the fact that my son rang me that day and came and got me. At some stage I was at a meeting of our group, and one of the ladies in our group said, 'We need to draw a line in the sand,' and I think at that stage I decided, 'Yes, it is true; we will step up and we will talk.' I had always felt like we would never be heard, because we are not a big powerful group of people, but I needed to do this to show my children that you do not give in without a fight. I have limited the information given to my parents because they are ageing and I do not want them to know too much.

At the moment I cannot really afford to fight any of the costs, with the writ and things like that. I have had to do what I have had to do.

I was hoping to be a self-funded retiree, and I assume now that, through this, I will end up on a pension at some stage. I hope these are accurate enough—I have printed off that I am probably going to cost the government around \$20,000 a year on a pension, whereas I never wanted to take a cent. I have always prided myself on working hard and supplying for my family and living as a good Australian.

What also worries me is that, if these laws get backed off again, our kids are going to suffer with this, and at some stage there is going to be no ongoing future for anyone. As the banks announce their bigger profits, the little people get crushed underneath. We have just given away everything. I have really been to the point of giving up and I still often consider it is an easy option, but I do not want to do that. The only option I have now, I believe, is to fight it legally with the support of the Senate inquiry, which is fantastic for us. I have this great lump of paper that Timbercorp have asked me to fill out and there is a hardship group of sheets that want to know every time I have scratched myself in the last 10 years. I am not willing to do that. I just do not know where this is going to end up. I am really disgusted that the ANZ Bank could not show their face here today. Thank you.

Senator HEFFERNAN: Could I just intervene. If you hear the bugle blowing, it is the cavalry coming. I have just got onto the bank and given them a heave-ho and they are on their way.

Mrs Byrne: Thank you very much for convening this inquiry I am very, very grateful along with the members that here today. I cannot speak for everybody, but my story and my husband's story do not differ from any of the other three stories that you have heard this morning. My husband went to see Peter Holt at the age of 18 years—he is now 49—to have his taxes done. Over this period of time, Peter groomed my husband and me into investing well beyond our means. We invested in Timbercorp. We had no idea of the deceit and the lies that Mr Holt was telling us. We signed what we thought were three loans for Timbercorp. We now find out that we have eight. Originally, our loan amount was for \$25,000. As it stands today, it is more than \$200,000.

Two weeks ago, we sold our home in anticipation of ANZ knocking on our door and wanting their money. We are just average wage earners. We do not have the capacity to borrow any more money to pay anything back. We worked hard for what we had and we do not have that anymore. We believe that we were deceived into signing the Timbercorp loans. As John said, papers were put in front of you and it was, 'Sign here, sign here.' We trusted Peter. We trusted this man with our future and he has financially violated us.

We wanted to invest to secure our future. We asked repeatedly, 'Why are we investing in a scheme like this and not in real estate?' We were told that this was a government backed scheme. We trusted this man. He is a professional. It is like when you send your children to school: you put your children's future in the hands of their teacher and the educators at that school. We put our trust and our future into this man's professional practice—some might not call it that and I certainly do not now. But he has decimated our financial future. Our children do not have a financial future. We sold our home two weeks ago. I have three children and I am very lucky we have a very close family. We told our children back in June about our issues before my husband and I appeared on 7.30. Unfortunately, this year my youngest son has also had to suffer through this as well as focus on his final year of schooling. Last week, he completed his VCE exams while we had our home on the market and while our house was to go to auction. I have contacted our local member and, unfortunately, we have heard nothing back. We contacted him two days before our house was due to be sold. Again, two days before our house was due to be sold, my husband received a writ from KordaMentha. As I have said, we are not huge wage earners. We do not have any more money to fight. What we want is a fair and reasonable outcome for everybody. Thank you very much for giving me the opportunity to speak here today.

CHAIR: I have just had a brief conversation amongst the committee. We have received correspondence from Gerard Brown, the Group General Manager of Corporate Affairs at the ANZ bank, who says he is going to be here in half an hour and they wanted the opportunity to make a statement. I think it is a courtesy that we as a committee will extend to them. But I do want to make a couple of observations. We have been in repeated contact with the ANZ about trying to get them to get someone here today. I have had several conversations—including speaking to the deputy CEO on several occasions. I think it is important that we provide that kind of courtesy to them.

So I welcome Mr Brown, Group General Manager, Corporate Affairs, ANZ, who is at the back of the room. Mr Brown, we will be giving you an opportunity to address the committee. We will have to hold a brief meeting before we do that, because it will be altering our agenda. We will not change the order events, as people have travelled across Australia to be here and to share their stories and to tell what has gone on. I think it is important and a good sign that the bank is prepared to come here and listen to these stories, but we are not going to alter our agenda to simply allow the bank to speak and then leave. So, Mr Brown, I would ask you to stay. I think we are finishing at around 1.30 today, and we will certainly be giving you an opportunity at the end of the day to make a statement. We would also like the opportunity to ask a few questions as well.

Senator HEFFERNAN: Chair, could I table a document for the committee? This is a recording, a transcript, of a meeting to do with a financial planner and a group of clients—which is Great Southern. I think we ought to get it into the system, so I would like to table it.

CHAIR: With the consent of the committee, we will table the document.

Senator O'NEILL: On behalf of all the people who are here listening to your story today and the people who are listening to the broadcast, can I first commend you on your courage and your eloquence in the way that you spoke of the, clearly, very personal and tragic experience that each of you have had and the civic duty that you are enacting now by being an advocate for the other people who are sitting behind you and who are no doubt very, very proud of the way you have represented the stories that you share in common. So thank you for your efforts.

As a fellow Australian listening to your story, to have heard the words 'anxiety' and 'suicide ideation' and to have heard, Mr Kelly, your particularly story about the power of seeking help—and you mentioned the men's helpline—I would like to say for all of us in this space that your stories are being heard. We can never predict the outcome, but we are certainly on this journey with you. There are agencies around the country that people who are feeling low—which seems to be a very reasonable response to the experience of stress that you are under—can seek help from. That would be the will of everybody here, and I want to encourage anybody listening or anybody feeling anxious to seek that assistance.

I would like to clarify a couple of things. Ms Halpern, you indicated an amount that you had in terms of debt and an amount of superannuation. Could you just restate that?

Ms Halpern: Yes. I was placed in seven MAS projects. I was also advised to take out an investment loan against the equity in my house and the margin loan that matched the investment loan of \$150,000. When everything collapsed at the end of 2008, the debt that I was left with was \$650,000. Because I had been advised by Peter Holt not to put money into a superannuation fund, other than the legal minimum requirement, all I had at that time was \$11,000 in that super fund.

Senator O'NEILL: A very significant amount of money. Ms Halpern, you have spoken quite eloquently about refinancing your house a number of times and ultimately the loss of your home. I noticed in each of the testimonies we have heard from you this morning you have spoken about the impact on your families and yourselves personally. Ms Halpern, what is the situation for you right now as a consequence of the challenges you have faced because of this situation with Timbercorp?

Ms Halpern: Currently I am in around \$500,000 worth of debt. Essentially, all the money that I am earning now goes to repaying debt as opposed to building up for my retirement. I have days when I feel like I have a normal life and I go about and do all the things I have to and then, out of nowhere, a wave of panic or dread can come over me when I realise how desperate my situation is. At 55 there is no way I can rebuild the kind of security that I imagined I was going to have upon retirement. Like everyone else here, I also signed blank forms because I trusted Peter Holt. I had been with him for 16 years. He said what he was doing here was safe. He said that my home would never, ever be at risk—that he would never put my home at risk. And it was the exact opposite.

Senator O'NEILL: Each one of you have spoken about the nature of the trust that you built up with a person and the whole idea about getting advice from a professional. There are concerns about watering down the laws with regard to financial advice. There is a concurrent inquiry into the standards of the people who give financial advice. But in this case you are talking about a person who was an accountant as well. So they did have a degree. So there is something about the ethics of this situation and clearly the language you have used around trust is very, very important for us to understand.

You said, Ms Halpern, that people say that you brought this on yourselves. Mr McDonald, I think your story about how trust turns into signing documents for your professional accountant who you think has a licence to practise and is operating above the law puts you in a situation where you find yourself today. Mr McDonald, I wonder if might tell us what your situation is right now, today, as a consequence of the journey you explained to us.

Mr McDonald: One thing that precedes that, which I never mentioned, is that I bought five Timbercorp products that I know of; yet I have discovered I now have 12 loans. How that is even possible, I do not know. Those 12 loans, as I mentioned, totalled \$240-odd thousand at the Timbercorp's collapse and are now almost double that. I actually will not lose my home, because I already have to a degree. We have sold our family home and have rented for a year or so in a much cheaper environment and have since bought another home—much cheaper than the one we sold. It is smaller—about a third of the size of the property.

So I have a roof over my head and I have steady employment at the moment—although, at age 58 and working for a company that has been downsizing recently, I do not know how long that will last. So there is a lot of insecurity there. If I have to pay back this loan, somehow I would have to borrow money to pay back a loan—which never sounds like a very smart financial plan, but I would have no choice. But whether at age 58 someone

would lend me money, I do not know. I could be in the situation where I have to sell another home—even the smaller one, the cheaper one, that I bought—unless a resolution can be achieved.

Senator O'NEILL: That is because you now owe \$480,000?

Mr McDonald: Something like that. There is a 15 per cent discount offer on the table, so that would knock—

Senator O'NEILL: How did you feel, Mr McDonald, when you got the 15 per cent discount offer?

Mr McDonald: Because we had done a bit of research on this, we discovered that in most cases companies like KordaMentha settle for whatever the total of the loan book is, which is often only like 20c to 30c in the dollar. We figured: if we got a deal like that, yes, maybe we could somehow manage to scrape that together. Once the debt got over \$300,000, whether it is \$300,000, \$400,000, \$500,000 or \$600,000, it was simply beyond our capacity to pay, so it was almost irrelevant. If, as we had been led to believe, it had been 20c to 30c in the dollar, we may have been able to do that but 15 per cent—I was going to say laughable but I certainly wasn't laughing. I do not know how to describe it, but it was clearly inadequate and contrary to everything we had learnt in our research about other companies in similar situations.

Senator O'NEILL: We talk a lot about financial literacy, and there are efforts now to try and help people more. Each one of you is very articulate. You probably understand a fair bit about finance but still, with regard to the general population, I often think that people believe that if you get into a situation, a compassionate response from a bank might be something like, 'You would pay 20c or 30c in the dollar.' There is clearly a very big gap between a 15 per cent concession and 'We'll ask you for 20c in the dollar returned, because of the situation.' I think that it is a space where many Australians would have no idea about how these processes work, because liquidation and going into insolvency is something that many people do not talk about, which is another reason why what you are doing today is so brave.

Mr Kelly and Mrs Byrne, both of you have mentioned your children. Congratulations to your son for completing school in what must have been a pretty tricky home environment—my son just finished last week too, so I understand the journey you have been on. Mr Kelly, your son obviously cared for you at that time of need. For the record: what is the situation you find yourselves in today? What is your reality today?

Mr Kelly: Financially?

Senator O'NEILL: Yes. Where are you living and how are you managing?

Mr Kelly: I am living in what was our family home. I had to pay out my ex-wife through divorce. I currently owe—it was originally around \$80,000—\$170,000. At the start, I was told by Holt not to worry and that there was going to be a class action: 'You won't have to pay anything through all this.' Not understanding the process, we just went into the class action and paid money for that. The interest has accumulated over that time and is accelerating at a massive rate. I currently cannot earn any money. I still owe a little on the house but I have put the mortgage on hold—what I pay back to the bank; they have been kind enough to put that on hold for me. I am hoping to get through to some sort of pension or something at some stage which I never really wanted to do.

The kids are really good to me. I don't know what else to say apart from that. I don't know where it is going or what is going to happen.

Mrs Byrne: We will move out of our home in January. Our settlement is at the end of January. We have had to refinance our home loan to also cover a Viridian line of credit that Mr Holt also put us into. Currently, both my husband and I work to pay back debt. We work full time to pay back debt. We don't have a lifestyle at all, if you would like to call it that.

We don't know what the future will hold. Our current debt with Timbercorp, as I said, is over \$200,000. My husband has asked me not to admit how much he owes because he is ashamed of how much it is. We have refinanced the Viridian line of credit with our bank. They were kind enough to refinance our home. That was over \$250,000. Originally our loans with Timbercorp were \$25,000. As I said, as of today they are over \$200,000. I do not know what the future holds for us.

Senator O'NEILL: Mrs Byrne, I want to say to you again how brave you are to come forward and give us so much personal information for the record so that we can actually get the stories of what is going on behind the scenes, because, as Ms Halpern said, you are not just a line on somebody's loan book; there is a really significant impact happening on the lives of real Australians living in and around our communities today. Please convey to your husband that to trust an accountant, to trust a financial adviser, is a natural thing that people want to do. They want to be able to take professional advice and believe that people are going to act in their best interest. There is no shame in the situation that he finds himself in. I think we would all want to convey to you that support to him.

Mrs Byrne: He is a very proud man.

Senator O'NEILL: Absolutely. It sounds like you are working very hard to try and do the right thing. Can I just close by inviting each one of you to make a recommendation, if you could, about a way in which the situation you have found yourselves in might be prevented. I am sure you have given it plenty of thought: 'If only this hadn't happened; if only that hadn't happened.' One of the things we clearly want to do is not only to resolve this issue but to prevent it from happening to other Australians who are at risk from people who would exploit them. That is my last question, Chair, if I could: to ask each one of you to say, if there were one thing that you could ask for in terms of a change to the structure or the processes to prevent this happening, what would it be? We might start with Ms Halpern.

Ms Halpern: Timbercorp paid Peter Holt in the region of \$7 million worth of commissions—flew him to the states on all-expenses-paid trips, as well as various other perks that he got. That is a very high incentive for someone to be looking for their own interests and not their clients' interests. So there needs to be a situation where people cannot receive those kinds of commissions for selling products that are not in people's best interests and a way for people to really understand the information that they are given. We are all intelligent people, but we are not financially sophisticated. I went to school in England and I failed O Level maths. That is why we went for advice. The issue around commissions, however it is done, whether it is commissions or bonuses—those kinds of things really need to be knocked on the head.

CHAIR: I am very conscious of time, and we are now trying to squeeze in some extra people as well. Do you mind, Senator O'Neill, if the witnesses take that question on notice and have a think and write us a letter with a considered response?

Senator O'NEILL: I think Ms Halpern has probably said something that each one of you would agree with, so, yes, Chair, I am very happy to proceed in that way. That means you can all actually write something down for us, because clearly you have expert knowledge about a system that is failing people. Thank you.

Senator WHISH-WILSON: I will be quick. Ms Halpern, did Mr Holt disclose his commissions to you?

Ms Halpern: What he would say to us was that he was not going to make money unless we made money. So, no, he did not. The bottom line is that he did not actually let us know all the commissions that he was getting from various sources.

Senator HEFFERNAN: Do you think you would know a professional spiv when you meet one now?

Ms Halpern: I think so!

Senator HEFFERNAN: They are around.

Senator WHISH-WILSON: Did he mention any risks at all or give you your documentation? I am just fascinated, looking at the rate of interest you guys were paying. It was at a significant premium to the standard rates at banks at the time, and your loans were non-recourse, so clearly they were higher risk. Did he point out any of these types of things to you at all?

Ms Halpern: He would minimise any kind of risk. It would just sort of be glossed over. The point is that we did not know the interest rates of those loans.

As has already been said, many of us did not know that we were being put into loans. We signed documents thinking that we were buying a product, but we did not realise we were entering into a loan for that. He had all the documents, so it was not until everything fell apart that we realised the interest rates that we were paying. It is only in the last few weeks, when I recalled all my loan documents—which I had never seen before—from Timbercorp that I also discovered that he had power of attorney. That is how he was able to put me into several loans over several years. It was witnessed by someone I had never met.

Senator WHISH-WILSON: Obviously that rates significantly higher than liable or other existing rates as a sign of danger and risk. There is a reason these rates are charged. Did you go through Timbercorp Finance or were you aware whether he was going through Timbercorp Finance?

Ms Halpern: Yes, it was through Timbercorp Finance.

Senator WHISH-WILSON: Did any of the other panel members go through different finance providers, or was it all through Timbercorp Finance?

Senator HEFFERNAN: Did you understand that Timbercorp Finance was like Great Southern—just a shell company with nothing there but the finance vehicle?

Ms Halpern: No, I had no idea.

Senator HEFFERNAN: And, of course, what has happened in the case of Great Southern is that Bendigo Bank suddenly thought, 'Oh my god, we're going to do our dough here; we'll take the book.' It was a complete bullshit operation.

Senator WHISH-WILSON: Were any of you aware of who Timbercorp was going to for their financing? Was it ANZ?

Mr McDonald: I had no idea. As Naomi said, I did not even know I was taking out loans, let alone who was financing them. I kind of laugh when I say it—

Senator HEFFERNAN: Why didn't you know you were taking out loans? Did you think money was growing from heaven?

Mr McDonald: I thought we were putting money into these products—actually buying the products.

Senator HEFFERNAN: But, if you were borrowing, they were leveraging it, which was where this all turned to custard. Where did you think that money came from if you had so much? How much did you put in?

Mr McDonald: It was not a huge amount.

Senator HEFFERNAN: What is that? Ten thousand? Fifty thousand?

Mr McDonald: It was over a period of time, so it is hard to put a figure on it, but it was probably \$30,000 maybe. But over a period of time it did not seem so bad.

Senator HEFFERNAN: What was the investment worth when you discovered what it was worth?

Mr McDonald: Zero.

Senator HEFFERNAN: But how much did you borrow that you did not know about?

Mr McDonald: At the time of the collapse, \$240,000.

Senator HEFFERNAN: Credit does not fall from heaven. Surely you thought, 'I wonder where that's coming from.'

Mr McDonald: Until that time when it collapsed, I did not realise I had any loans.

Senator WHISH-WILSON: You mentioned earlier that you did not look into this detail. You are open about the fact that you did not check and you trusted your financial planner. You did not scrutinise that.

Mr McDonald: Absolutely.

Senator WHISH-WILSON: So he was leveraging you into this product, and you were getting a tax deduction not only for the up-front amount but also for the interest payments?

Mr McDonald: The tax deduction—

Senator WHISH-WILSON: was not the key issue?

Mr McDonald: I could not even tell you, because the tax forms were that thick. Again, I did not read them. Any time you put money into something to earn income off it, there is a tax deduction. I understand that. And there were very small amounts of GST rebates. But, in the overall scheme of things, that was a very minor point. The major point to me was the fact that I did not know I was taking out any loans at all, let alone 12 of them to buy five products. It still baffles us how that was possible.

Senator WHISH-WILSON: I notice Justice Judd in his deliberations in the first Supreme Court case here in Victoria found that Timbercorp was not required to disclose the risks identified by growers and that there had been no misleading or deceptive conduct from Timbercorp. I am interested in whether you considered pursuing action against the accountant we have been discussing here today. Clearly he had a fiduciary duty to you. Have you considered action on those lines as well?

Mr McDonald: The way I understand it—you can probably explain it better than I can—his liability insurance expired very quickly after and there was none left. He informed select clients, we are told, 'There's a bit of trouble here; if you want to make a claim, make it now.' They did make it. We tried to deal with the Financial Services Ombudsman. By the time we got to that stage, the liability insurance had long since—

Senator WHISH-WILSON: Has he been investigated by ASIC or any other—

Mr McDonald: He has been suspended by ASIC.

Ms Halpern: He has had a three-year ban. That is it. It is nothing to him. He only had \$2 million worth of professional indemnity insurance. I myself and my business partner, who was put in exactly the same schemes, went to Morris Blackburn with our case. They investigated and said, yes, there is definitely a case here to run. They said they would take us on as no win no fee, but apparently no win no fee means you have to pay about

\$100,000 to \$200,000 worth of disbursements regardless of whether you win or lose, so we could not go ahead with that. By the time they got their case together, all his insurance had gone anyway, and then he declared bankruptcy, so there was no way to actually pursue him and see any recourse from the person who put us in the situation.

Senator HEFFERNAN: It is a bit like the chemist, the doctor and the prescription when you take the pill. Unfortunately, over the years I have dealt with a lot of people who have gone to court thinking they will win if they tell the truth. The courts are about the law, not the truth. If you want to go to court, you get a good lawyer, if you are guilty, to avoid the truth and not tell a lie. Courts are completely driven by the law and have nothing to do with the truth in real terms. That is a fact.

CHAIR: Senator Xenophon.

Senator XENOPHON: Perhaps you could take this on notice. I wanted to explore the relationship or interaction that the witnesses had with KordaMentha. Did they think it was satisfactory? Did they think KordaMentha was discharging their duties in pursuing directors of Timbercorp and their conduct?

CHAIR: Thank you for that. We might actually take that on notice. I do know that later on today, when we are talking to the different action groups, there will be a better opportunity to explore some of that with the more organised structures of the groups.

Senator O'NEILL: Can I get on the record one thing? We have had a lot of questions about the legal capacity and decision making that involves high levels of financial advice et cetera. My understanding is that there are people—lawyers and quite financially substantial people—who are not here who are not representing themselves in this public way, because they do not want their professional reputation to be impugned. These are people who know about the sorts of things we have had questions about. Is it a fact that there are professional lawyers amongst the people you are representing here today?

Ms Halpern: Yes there are.

Senator O'NEILL: Thank you.

CHAIR: I know it is not easy to come to a room of 200 people to share what have been very personal stories. On behalf of the committee I thank you for the trust you have shown us and for the bravery with which you have come forward. I thank you for taking the time and for being brave and strong. Thank you for participating in our inquiry.

BRYANT, Mr Michael John, Member, Agriculture Growers Action Group

PETERSON, Mr Andrew John, Deputy Chairman, Agriculture Growers Action Group

[10:05]

CHAIR: I thank Mr Andrew Peterson and Mr Michael Bryant for coming in and presenting to us today. Mr Peterson and Mr Bryant, I know there will be a lot of questions. I certainly have a lot of my own. Before we get to that point are there any brief opening remarks or statements either of you would like to make?

Mr Peterson: I would like to table these documents for the committee today.

CHAIR: With the consent of the committee we will accept the documents. We will go through them and check that people are not being wrongly accused before we make them public documents. Thank you.

Do you have any opening remarks? You have obviously heard a fair bit from some of the victims this morning. They were quite emotional and moving stories. Perhaps you would like to say a few words about your backgrounds and the roles you have played and the many times you tried to blow the whistle during your time in Timbercorp.

Mr Peterson: I was the general manager of distribution at Timbercorp from September 2004 to December 2009. Obviously, Timbercorp went into administration on 23 April 2009. I am also a heavy investor in all the Timbercorp MIS projects, like the people here today. Michael Bryant worked with me as the head of research.

Mr Bryant: My career has been in banking finance and funds management. My experience in the managed investment scheme sector started in 2000 and in the agri-investments in 2003, and continued in some form to today. I have worked for four of the major participants in the sector.

Senator HEFFERNAN: Who are the major participants?

Mr Bryant: Sylvatech, Great Southern, Timbercorp and ITC-Elders Forestry.

CHAIR: Let's go back to the start. We have a bit of time but I want to make sure that we get all this. Other senators may want to jump in as we go through this. Explain to us how and why we have got to the situation we are in, and what was going on inside Timbercorp, particularly in those final halcyon days.

Mr Bryant: With respect to managed investments, I still firmly believe in the model. The corporate structures that became known as Great Southern and Timbercorp—we are particularly focused on Timbercorp here today—grew out of individuals who established business entities to offer the products to the market. It is about the manner in which the products were offered to the market. As we heard from previous speakers who are victims—as am I and Andrew—this is about the manner in which those products were sold.

The corporate structures were built on revenue streams that relied wholly on investor income at the front end. No other revenue would come to that entity until they got a proportion of harvest proceeds at the back end. Both those arrangements are commercially acceptable but it is the amount of money that went to getting these products into the market, which was not covered by anything other than investors' money. Hence you had people who invested in trees. The model that was offered by Timbercorp and Great Southern was a single, up-front payment model.

So if you paid \$3,000 for a wood lot, a timber lot or whatever you wanted to call it, and the money went into the company. There was no portion of that put aside for future maintenance of the plantation in the case of timber lots. When the music stopped there was no money left to continue the plantations to the end.

Senator WHISH-WILSON: Mr Bryant, you said that your concern was in the way they were sold, but you just indicated a structural flaw in the model itself.

Mr Bryant: Not in the model itself.

Senator WHISH-WILSON: Essentially, it is a Ponzi scheme. If you do not have the money to see these things to fruition then that is a fundamentally flawed business model. Could you just expand on that a little bit more—or am I misreading what you are saying?

Mr Bryant: It is not a flaw in the managed investment scheme model; it is a flaw in the corporate model behind it.

Mr Bryant: It is not a flaw in the managed investment scheme model, it is a flaw in the corporate model behind it. And, yes, as the corporate—by only having that form of revenue, where they had to rely on investors' money going into the project, the structure of the promoters was basically akin to a Ponzi scheme.

Senator HEFFERNAN: Having chaired the original inquiry, it took 20 minutes to work out it was a con job. The promoters could not lose in that they charged a management fee. A lot of the investors did not realise that the

only equity that they had was the production. So in the case of mangoes in the Territory, the promoters did not care if the mangoes rotted or were sold for half their market value because it had nothing to do with their profit. Their profit was the management fee. In a typical tree lot, through you, Mr Chairman, could you give us the breakdown of what happened to the money? So whatever it was, \$3,000 or \$10,000 for the tree lot, tell us what became of the money. Obviously, the next lot of dope, financial planners, relied on the next lot of money for the Ponzi effect, but if I put 10,000 in, what happened to my 10 grand? Obviously you are all aware that a lot of these trees were never planted or they were planted in country that would not grow a weed crop let alone a tree crop. Give us an idea what a—

Mr Bryant: You would not put a plantation in Junee, you are right.

Senator HEFFERNAN: That is right.

Mr Bryant: Using your \$10,000 example, immediately a minimum of 10 per cent went to the financial adviser, so that was gone. The corporate model? In the case of Timbercorp a couple of floors in the Bourke Street building had to be paid for; there were 80-odd staff at its peak whose salaries had to be paid. A number of those staff members were on performance bonuses, which would take their six-figure base salaries even higher. I suppose maybe the government understood where all this money was going because they did amend the tax ruling requirements that the promoter actually had to demonstrate that 70 percent of the capital raised was going into the ground—either initially, or over the course of the project. I think Senator Heffernan is well aware of that amendment. Post that amendment being done, there were probably only a couple schemes that were actually offered to the market.

CHAIR: I just want to get you back to telling the story about what happened, and then we can get back to the specifics about the scheme structure in a moment. Timbercorp: Mr Peterson, we heard some stories this morning from some victims of effectively poor financial conduct and, potentially, financial crime. What per cent commission were people like Peter Holt getting paid to sell Timbercorp products?

Mr Peterson: Beyond 10 per cent.

CHAIR: So if they arranged a marginal loan of \$100,000 for someone, out of that entire amount they would immediately walk away with 10 per cent of that?

Mr Peterson: Key advisers who sold Timbercorp who were big players at Timbercorp got in excess of 10 per cent.

CHAIR: Mr Peterson, how much was Timbercorp paying out a year in terms of these kinds of fees?

Mr Peterson: Generally it was between eight per cent to 10 per cent to the ordinary adviser. Some of the bigger hitters would demand more to sell it—fact.

CHAIR: And how many dollars would that end up being in a year—we are talking about the final years of Timbercorp?

Mr Peterson: Timbercorp in 2007 sold \$144 million of product, so the standard would be 10 per cent. There would be subgroups getting two per cent or 2.5 per cent extra, on top of trips et cetera—take your pick.

CHAIR: So you are saying in the final year, when they raised 145—

Mr Peterson: In the final year they raised \$119 million—30 June 2008, 119; 30 June—

CHAIR: And more than \$10 million was being paid in fees?

Mr Peterson: Without a doubt; absolutely.

CHAIR: And that money has been paid; they have walked away with that money?

Mr Peterson: Correct.

CHAIR: That is unbelievable.

Mr Bryant: Senator, that was the first payment that was made.

CHAIR: So they got paid first?

Mr Bryant: The first payment that was made was the commission to the advisers. You have to remember that with a timber plantation the trees actually do not get planted on 30 June, but the advisers were getting their commission on 1 July. The trees were planted anywhere up to 12 months after—and that is allowable and it is reasonable in an agricultural venture that you do not turn around and plant the trees the next day.

CHAIR: Hindsight is a beautiful thing. When did the two of you start having serious concerns about the financial viability of Timbercorp?

Senator WHISH-WILSON: Chair, could we boil down on this before with we go on to that, because this is very important. Can you give any perspectives on those high commissions versus other asset classes?

Mr Peterson: No.

Senator WHISH-WILSON: It seems to me—and I have worked in the finance industry—it is a very high commission.

Mr Peterson: Correct.

Senator WHISH-WILSON: Doesn't that signal a desperation for money or a risk? We obviously try to incentivise financial planners and accountants to sell these things.

Mr Bryant: I was a financial planner during the nineties. In the early nineties, if you put money into, say, an AMP or a BT or a Perpetual share fund or property fund, they were paying about six per cent. By the end of the nineties they were down to about four per cent commission.

Senator WHISH-WILSON: That is high by today's standards.

Mr Bryant: It is high by today's standards; we are talking—

Senator WHISH-WILSON: Still, compared to 10 or 12 per cent.

Mr Bryant: I had a group of advisers from one dealer group that were saying that they were embarrassed by the commissions. I had to point out to them that not one of them had selected the option that we offered them—that they only got four per cent up-front and a trail commission.

Senator WHISH-WILSON: They were embarrassed by the commissions and they told you that?

Mr Bryant: Yes. When I pointed out to them that not one of them had accepted the trail commission scenario, they shut up.

Senator WHISH-WILSON: 10 per cent commission—it just screams risk.

Mr Peterson: Absolutely.

Mr Bryant: Well, it was not just 10 per cent; there was the soft dollar on top of that.

CHAIR: Explain the soft dollar; give us examples. What are we talking about here?

Mr Peterson: The soft dollar included events—which is now basically outlawed in this industry—races, grand finals, expensive dinners—take your pick. It is now outlawed.

CHAIR: And was there a blank cheque inside Timbercorp to pay for these things?

Mr Peterson: If there was a sale and it was going to come into the company, you had room to move.

Senator WHISH-WILSON: We understand that, for financing arrangements, if you needed them on top of that, the interest rates were quite significantly above—

Mr Peterson: The financing arrangement at Timbercorp was so loose it was not funny. Half the people from Holt Norman, with all due respect, should never have qualified for a loan. If you were going for an individual loan at Timbercorp Finance, all you had to put in was your individual pay slip and your assets and liabilities. There was no request for a rates notice, no request for an ITR, a tax return. If you are going to ANZ Bank to ask for \$100,000, they will ask for a rates notice if you own a property, your ITR, everything. Timbercorp Finance was approving it very quickly.

CHAIR: Let's cut to the chase with this. I want to talk about their financial consultants but I do not want to miss the big picture here. How was Timbercorp Finance getting the money that it was lending out?

Mr Peterson: ANZ was providing Timbercorp Finance with the money to lend out, and Timbercorp would obviously clip the ticket. The rates they would lend out would be from, say, nine to 10.75—around that rate—over two to eight years. The Timbercorp loan book, as with Sol's presentation, with the value-add day 2008—

CHAIR: That is in the tabled documents?

Mr Peterson: No, that is not in there, I am sorry, but I am happy to add that.

CHAIR: Can you table that document and can we make it public?

Mr Peterson: Yes, you can.

Senator O'NEILL: It is tabled now; off you go.

Mr Peterson: I will read to you how Timbercorp makes their money. This is at the value-add day, 2008: 'Annuity style income includes annual rent, management fees, percentage share of crop, interest on grower loans'—surprise, surprise—'other.' The Timbercorp loan book, at its height, its heyday, was half a billion dollars. If Timbercorp were, say, making three per cent on money they borrowed from ANZ, you work out what it is

worth to Timbercorp annually. The loan book, as with Great Southern, was a very, very important revenue driver of the business.

Senator WHISH-WILSON: Is Timbercorp Finance still in business?

Mr Peterson: No. KordaMentha controls Timbercorp's—

Senator WHISH-WILSON: Right. I just notice it has been on the letters that have been sent out—

Mr Peterson: KordaMentha is now controlling—

Senator HEFFERNAN: Timbercorp did not securitise the loan book and flick it, like Great Southern?

Mr Peterson: Correct.

Mr Bryant: They did do some securitisation.

Mr Peterson: With ANZ.

CHAIR: Let's get to that point. Explain this to me. ANZ was funding Timbercorp Finance, Timbercorp Finance was then lending the money out to—

Mr Peterson: Grower borrowers.

CHAIR: To grower borrowers, which is a funny term—growers which are effectively investors, or victims, really. To what extent was there a link between ANZ lending the money through to Timbercorp Finance and Timbercorp Finance then lending it out? I have a press release here from the ANZ Bank effectively saying all of Timbercorp's lenders had a positive view of the group until late 2008 and that there was no discernible risk that Timbercorp would fail. Did have a concern that Timbercorp was going to fail?

Mr Peterson: Absolutely. I am a big investor in Timbercorp's projects and I will read out what I have, so people can understand how I can make these comments. I was in the 2005 mangoes, 2006 mangoes, 2007 almonds, 2008 almonds, 2008 olives; and my wife was in 2005 mangoes, 2006 almonds and 2007 olives—a big investor. In January 2007, I was acutely aware, as was Michael, that Timbercorp's 2004 and 2005 table grapes were in serious trouble—miles behind forecasts—the 2004 olive projects in trouble, 2004 citrus project in trouble, 2005 mango project in trouble, 2006 mango project in trouble and early Timberlot projects in trouble.

We had only been given snippets of information. In the documents I have tendered there is a report from grower management dated 14 May 2007. You will notice on the bottom line of that report, it says, 'This information was seen as strictly confidential and was not distributed freely.' Michael and I never saw it, as the head of retail and as the head of research. I was aware in January-February 2007 that those projects were performing badly—most importantly, I was in those projects, from a selfish perspective, and I had big loans. I asked the questions and I was told, 'Yields are down but things are on track.' If I had been told the full effect of where those projects were going, I would have resigned from Timbercorp that day and got out.

Senator HEFFERNAN: Hang on, I am a cocky, right. Those years were bloody dry. They were drought years. Surely, if you were there you would say: 'Shit, it's dry. These trees are not going to grow.' You did not have to wait until 2007 to figure that out.

Mr Peterson: First of all, they were early projects. So 2004 and 2005 table grapes and 2005 and 2006 mangoes were in the ground for 1½ to two years.

Senator HEFFERNAN: But they were crap years.

Mr Peterson: They were, but Timbercorp made it clear to all and sundry that they had enough water for the projects. If Timbercorp is telling you this, from the CEO downwards, you are going to believe the CEO of a top 20 listed company.

Senator HEFFERNAN: I do not.

CHAIR: I think Mr Peterson regrets taking that advice.

Senator WHISH-WILSON: Even if Senator Heffernan is right, those risks were not disclosed to investors.

Mr Bryant: There was an optimal level of water that was nominated as being required for the trees to be maintained with a reasonable level of growth. We were advised that that level of water was being applied to the crops.

Mr Peterson: Correct.

Senator HEFFERNAN: But your presumption there was that these trees were all to be irrigated?

Mr Bryant: We are talking about the horticultural projects; they were all irrigated.

Senator HEFFERNAN: I am talking about the other.

Mr Bryant: The trees? Yes.

Mr Peterson: Different project.

CHAIR: In 2007, you started having your obvious concerns about the projects on the ground. Then there was obviously the decision by the government—

Mr Peterson: in February 2007.

CHAIR: Yes. For people like yourselves who were that involved in Timbercorp and that involved in management, surely that was when you realised this whole thing was about to fall over?

Mr Peterson: Absolutely. I can remember that night vividly. I spoke to Sol after the government made their decision.

CHAIR: Who is Sol?

Mr Peterson: Sol Rabinowicz, the CEO, or at that stage the deputy CEO. I said, 'If the government is going to hold down this line, and because the horticulture projects were key to Timbercorp's revenue model, which they made clear to the whole market, we are absolutely in serious trouble.' I was basically beside myself and I telephoned Michael, and he was as well. Sol said, 'We're going to try to appeal this.' I said, 'That is irrelevant. Without annuity income, we are trouble.'

Timbercorp put a spin on it and said, 'Everything will be fine.' I draw your attention to Sol's report of 14 March 2007 in your booklet. If ANZ Bank were not scared about how this was going to affect Timbercorp's business then either Michael and I are the smartest guys in the world or they have their head in the sand. Sol makes the following comment—he highlights the uncertainty about the government's announcement and he makes specific reference to ANZ and our grower loan pool and our financiers. If Timbercorp has this—

CHAIR: These are internal Timbercorp emails? Do you want to read them out?

Mr Peterson: Certainly. This is 14 March 2007 to the Timbercorp board—obviously I did not see this. 'Following the government announcement on 6 February 2007, we have spent considerable time analysing the financial impact this announcement will have on the Timbercorp group. In particular, we have been focusing on the impact this announcement has on the short-term cash position—surprise, surprise—'and the longer term strategic direction of the group.' If financiers are not scared of this—this is from Sol to the board—then I do not know what financiers are looking at. If Michael and I are seeing this as a problem, and we are seeing project problems here, and if ANZ or whomever are not aware of these project problems, either Timbercorp is not disclosing it to them or they are not aware of what the company is doing. These projects are in real trouble and are not meeting forecast projections. If that information is released to all of the financial planners in Australia, guess what they are not going to do next year—support Timbercorp's projects. Guess what that affects—Timbercorp's annuity income.

CHAIR: After this happened in 2007, was the ANZ bank still putting money into Timbercorp?

Mr Peterson: Absolutely.

CHAIR: Why?

Mr Peterson: Well—

Senator WHISH-WILSON: Weren't Timbercorp seeking an even bigger syndicated loan from ANZ around that time?

Mr Peterson: That is correct.

Senator WHISH-WILSON: Three hundred million dollars?

CHAIR: Could you explain that? It does not make sense to me.

Mr Peterson: What was alarming at that time was this: in January 2007, the Timbercorp default loan book, or loans in arrears, as they called it—I will just get the exact figures for you. On 14 February 2007, Timbercorp's loans in arrears—these are growers who are not paying their loans—were \$24.5 million. That is sizeable. If any bank has lent to you and you are one month late on a home loan, the bank wants to ring your neck. This is a \$24.5 million loan in arrears on the Timbercorp loan book. On 12 July—that is, five months later—it is \$49 million. Is that not a problem?

CHAIR: In five months, it doubled?

Mr Peterson: That is right. Is that not a problem?

Senator HEFFERNAN: Could I just have something explained to me? These are non-recourse loans that finish up in an investor's mortgage book, as it were. Can you explain to me: if the ANZ lent the money to the

company Timbercorp Finance, then where was the mortgage arrangement that secured that the bank will get the house?

Mr Bryant: He wants me to answer it because I am the guy who used to be a bank manager. It comes back to what became standard loan documentation. If you read through any financier's loan agreement forms, there is the ability for them—to put it in basic language—to sell up your firstborn and your lastborn and anything else they want in order to recover the money.

Senator HEFFERNAN: If ANZ lent the money, did they lend it to Timbercorp Finance who then lent it to the investor?

Mr Bryant: This is my problem with the ANZ stance at the moment. The people who were actually fronting the borrowers were not ANZ trained staff, so they cannot expect the level of advice and explanation of what the people were signing.

Senator HEFFERNAN: Did the ANZ deposit the capital into Timbercorp Finance who then booked it out to the investor?

CHAIR: Yes.

Mr Peterson: I can answer that question for you. In particular, there is an email in your pack dated 16 February 2007—an email from John Murray, the CFO, to Sol Rabinowicz, who was then deputy CEO. On page 1 at point 6, which is headed 'ANZ', it says: 'Timbercorp has requested an increase in their existing grower loan facility from ANZ from \$20 million to \$26 million.' Does that answer the question?

Senator HEFFERNAN: Banks make their money out of lending money, not borrowing it. So they lent it to Timbercorp Finance. What was the security for the bank on that transaction?

Senator O'NEILL: Or were they just good friends?

Mr Bryant: Possibly they were good friends! The standard procedure is that, when the bank provides a loan, there is some form of formal agreement. With a corporate entity, it is not like a mortgage over a house with a mum and dad. There would be covenants in place, conditions and all those sorts of things, but it would not be specific to just what Timbercorp Finance was doing; it would have—

Senator HEFFERNAN: Do you have the details of what the arrangement was?

Mr Bryant: No.

Senator HEFFERNAN: Shouldn't we have that?

Mr Peterson: I also draw your attention to an email on 13 April 2007. It is an email from Sam Beaton to John Murray and Sol Rabinowicz: 'ANZ Credit has approved—

Senator O'NEILL: Could you just explain who Sam Beaton is?

Mr Peterson: Sam Beaton was in corporate finance. John Murray was the corporate finance CFO. I will just read this out to you so we understand exactly what ANZ's involvement here is. This is 13 April 2007—an email from Sam Beaton to John Murray and Sol Rabinowicz: 'ANZ Credit has approved Timbercorp grower loan facility from \$28 million to \$45 million.' This is in April 2007, post the government's announcement on 6 February. As I have said before, unless Michael and I are the smartest two in the room, clearly there would be issues on Timbercorp going forward with the government's announcement on annuity income—for example, horticulture projects—how the projects were performing and the grower loans in default.

CHAIR: You are making a pretty serious accusation, Mr Peterson. I just want to be clear here, and this is the fundamental question. There is an argument that a bank will make which says: 'We lend money. Just as I lend you money for your house, I lend money to a firm called Timbercorp Finance, and what happens in Timbercorp Finance is really a matter for Timbercorp Finance. If Timbercorp Finance was paying dodgy commission structures or getting some crooks to sell their product, that's really a matter for those crooks and Timbercorp Finance. We were just doing what banks do, and that is lending money to an institution.' To what extent was there oversight or proof of oversight from the ANZ bank into that final step, and to what extent was there knowledge of who the people were that were actually borrowing the money?

Mr Bryant: To the best of my knowledge there was nothing, just as there was really no oversight by the finance department at Timbercorp, which ran Timbercorp Finance, on how the representatives out in the field, the financial planners, were writing the loans.

Senator WHISH-WILSON: This is fascinating. I am wondering about something, given what you have said in your internal communications about the huge risks here to your business model with annuity fees. ANZ, I think, made a comment around April that they would do an audit in November, later that year; they would let it

go. But I am fascinated by whether they were actually lending more money to keep the music going because they realised that the imminent risk to them was actually that this could be a serious meltdown if they did not provide the finance. Rather than an oversight, maybe they knew exactly what was going on and they decided to—

Mr Bryant: Andrew showed me an email last week—which I assume is in your pack; is it?

Mr Peterson: It is.

CHAIR: Do you want to explain this email?

Mr Peterson: I will explain this email to you all. It really sums up, to be honest, what you just asked me, Senator. There is an email dated 8 October 2008, which is from John Murray to Sol Rabinowicz, headed 'ANZ discussion'. It says under point 1 that the comment by ANZ to John Murray was, 'Some stakeholders will need to get burnt.' That was 8 October 2008.

CHAIR: Could you say that again.

Mr Peterson: The comment by John Murray, after having a discussion with ANZ, was that ANZ's comment, according to John Murray, was, 'Some stakeholders will need to get burnt.' I can tell you now who those stakeholders were: they were shareholders and—surprise, surprise—grower-investors.

CHAIR: So you are saying they are the same people we heard from this morning who got burnt.

Mr Peterson: That is correct. To make a comment like that—no bank is stupid—they would have been looking at Timbercorp for quite a while. You do not just drop a comment like that out of the blue. I can assure you that to make that comment they would have seen how the projects were going, the default loan book, what Timbercorp was doing going forward, the annuity income, no agri-MIS—

CHAIR: Had they seen the default loan book.

Mr Peterson: Of course.

Mr Bryant: Securitisation.

Mr Peterson: Or the securitisation—absolutely.

CHAIR: Explain the securitisation.

Senator WHISH-WILSON: Asset sales were the other part of the business model. Presumably, as more risk is being incorporated into the asset values, they have less chance of selling more assets as well, which compounds it even further.

Senator O'NEILL: When was the email about securitisation?

Mr Bryant: 7 August 2007.

Senator O'NEILL: For people listening who do not understand, exactly what does that mean?

Mr Bryant: To put it in lay language, basically a parcel of loans is bundled up—in this case \$35 million in loans—and offered to the market to buy or finance. There is nothing wrong with that. This email from the CFO to the deputy CEO stated on 7 August 2007 that the sale would consist of \$35 million in loans, which would precipitate approximately \$32 million in cash. So obviously the ANZ were discounting the \$35 million face value because of some concern over the quality of the lending. When somebody buys that parcel of loans in the securitisation process, they do a due diligence of the loans. Any due diligence process should give them a clear picture of who the borrowers of the original loans were.

CHAIR: I just want to understand this. Sorry, you guys understand this better. So you are saying they purchased \$35 million of loans and they were prepared to pay \$32 million for it, which effectively shows they had to have gone through it to make the determination. They actually saw who the loans were to.

Mr Peterson: Correct.

CHAIR: Wow!

Senator HEFFERNAN: I have got a thick head, right? ANZ lends Timbercorp Finance the money. Is there documentation that says Timbercorp Finance owes ANZ money, or is it just some sort of facility?

Mr Peterson: A facility.

Mr Bryant: A facility.

Senator HEFFERNAN: So they do not actually lend them the money—

Unidentified speaker: A broker.

Senator HEFFERNAN: they just have access to the money at ANZ for their client?

Mr Bryant: They would effectively go into a negative position—like an overdraft, if you like.

Senator HEFFERNAN: So did the average Timbercorp client understand they were borrowing it from the bank and not from Timbercorp Finance?

Mr Peterson: No.

Senator WHISH-WILSON: And did they understand the house was on the line?

Mr Peterson: No.

Mr Bryant: No.

Senator WHISH-WILSON: Did they understand that a non-recourse loan is high risk because they do not believe the asset is worth what its face value is supposed to be?

Mr Peterson: They were not told that.

Mr Bryant: When they took the loan—in all the presentations that I saw done by business development managers and the senior executive, if you walked away from that, as somebody who was new to the process, you would have believed that the only thing that was at risk was the investment asset that you thought you were investing in.

Senator HEFFERNAN: So the securitised loan book that was put on the market, was that securitised by Timbercorp Finance or by 'Mum and Dad Pty Ltd' and their houses?

Mr Bryant: Timbercorp Finance.

Senator HEFFERNAN: Hang on; there is something going wrong here.

Mr Peterson: That is correct.

Senator HEFFERNAN: How does the house get involved if the securitisation document is Timbercorp Finance? Even though they are a shelf company, which of course as is this Great Southern—the same thing.

Mr Peterson: That is again highlighted by that 8 October 2008 email from John Murray to Sol headed 'ANZ discussion: Some stakeholders will need to get burnt'. It is a clear reference that there are two stakeholders. The grower borrowers are No. 1 and the shareholders are No. 2 and the grower borrowers are on the hook. So once Timbercorp was going into administration and assets were sold, there was only one thing left to collect—that is, the loan book. The growers had lost their assets, they had lost their revenue. They were on the hook for that debt when they previously thought it was attached to their timber lot, their almond lot, their olive lot, their avocado lot—gone. They have got a debt left, and none of them would have been aware of that, of how that would play out. But certainly that email of 8 October 2008 clearly shows that, unless you all have a different interpretation.

CHAIR: There are the documents that we have—there are quite a few documents, obviously—but there is a whole backlog of documents between ANZ and Timbercorp that we do not have access to.

Mr Peterson: That is correct.

Senator HEFFERNAN: So in black debtor finance theory, there are two options. The guys at the ANZ who arranged these deals, who probably have gone to God or somewhere by now, could have put Timbercorp Finance into a default situation and tried to retrieve something that was not there, and so they thought: 'No, that's not going to do us any good. We'd better go and have a crack at these mums and dads.' And the mums and dads had no protection because they had signed—'Just sign here and we'll fix the rest up for you'.

Senator WHISH-WILSON: But the fact the bank was insisting on that means that they did not necessarily have confidence in the assets that these investors were investing in in the first place, which is trees and the land—

CHAIR: Do you want to comment on that, Mr Peterson?

Senator O'NEILL: Can you explain, in your own words, what we have just been hearing from the senators, but from inside the company?

Mr Peterson: I can tell you that, from where Michael and I sat, when the returns/projects were not delivering, we had worries on two grounds: (1) the growers were going to be upset, obviously; and, (2), once the market finds out you are not meeting your forecast—in any product, whether it be asset management or take your pick—they turn off you. Without being able to sell annuity products in horticulture, Timbercorp was in real trouble. What they were very good at doing was not disclosing the full information to the clients. In all the horticulture projects, you looked at a cash load to see whether you would go into it to see whether you would basically be able to meet your ongoing payments. What they did not do on an annual basis was give you an adjusted cash flow for your previous investment because if the growers saw that they would have been up in arms, saying: 'Hang on a minute! These yields are down, these costs are up; I'm never going to get into a positive cash flow position here. I'm stuffed'. On horticulture projects you had an October invoice for the first three years that would come and whack you pretty quickly with management fees. They were the other loans the Holt Norman people were referring to.

If the projects were not on track and you had used a cash flow to get there to build your investment model, you were in real trouble. Timbercorp did not give out adjusted cash flows on an annual basis to take into account these results for clients already in projects. So when the clients started seeing these results and emailing us asking what is going on, they realised they could not afford to keep on paying the project, that they had been misled in their view, and the default line book increases but, worse for Timbercorp, growers were saying: 'We don't want to investment in anymore projects. It affects future sales. It affects future annuity sales.' Guess what? That was reflected in 2008 when only \$119 million of product was sold, but by that stage the wheels were off—projects were not delivering, there was pressure from the financiers, the government was saying, 'No more MIS.' What happens? It was clear what was happening in February 2008—you were in real trouble. Michael and I were obviously were worried and thought, 'The company is telling us everything is fine,' but we were looking at worse things—these projects were not delivering, growers were in default and annuity income was in trouble. What was going to keep the company afloat?

Senator WHISH-WILSON: Asset sales?

Mr Peterson: Correct. They tried that. They looked at asset management. That got shelved. It was real trouble. This did not happen overnight in October 2008, I can assure you.

CHAIR: Why didn't it go into liquidation then?

Senator WHISH-WILSON: This is the interesting question.

Mr Peterson: I can tell you about a situation.

Mr Bryant: Ask the ANZ. They were their bankers. They were looking at all this.

Mr Peterson: I can tell you about a situation which Michael spoke to me about, having explained things to John Murray. In August 2008, Michael had asked John Murray whether Timbercorp was insolvent and John Murray nearly blew his head off. Michael came to me and said, 'I asked John Murray whether we are insolvent.' I said: 'You did what? You must be kidding.' So I marched down from where we were and said to Sol: 'Are we insolvent? If we are, we have just \$119 million in the 2008 sale season of which I put in \$130,000, selfishly. We are going to bill these people in October for October invoices. You must be kidding me! I am out of here.'

Senator WHISH-WILSON: That is these people me?

Mr Peterson: Yes, and myself, selfishly, and the people behind me. I said: 'If that is the case, we have just taken \$119 million from these people. We are about to bill them in October. They have projects going forward. Our previous investors are stuffed.' He goes, 'We're not.' I said, 'This is A view floating around.'

Senator O'NEILL: What did he say in response to your accusation?

Mr Peterson: He said, 'We're not.'

Senator O'NEILL: We are not insolvent?

Mr Peterson: Correct.

Senator O'NEILL: He said that to you on what date?

Mr Peterson: I cannot remember the exact date.

Senator O'NEILL: August?

Mr Peterson: August 2008. I went marching down there when Michael had told me this. As head of sales, and the GM and this man worked closely with me with the research house, we had obligations to tell research houses what the company was doing. We had obligations to tell the financial planning dealer groups what we were doing as a business not only for our personal reputation but for the company's reputation. If you mislead a dealer group on product information, they will never deal with you ever again and you are in a lot of trouble. We were both almost panic stricken—would that be fair to say, Mick? Sol put me at ease and said, 'Andrew, that is not the case.' Then we marched on merrily, but then obviously in October 2008—and I did not see that email then by the way—things became a bit more heated because there were problems and then the sales team, which I ran, was terminated in December which clearly showed—

CHAIR: Let's be very clear here. You are saying that you had major concerns that the company was trading insolvent. You raised those concerns with the senior management and you were given assurances that you were not trading insolvent—is that correct?

Mr Peterson: That is correct.

CHAIR: Knowing what you know now, having seen information that you were able to take before leaving Timbercorp—which now has parliamentary privilege—and having access to that information now, in hindsight is it your opinion that Timbercorp was trading insolvent?

Mr Bryant: I never changed by opinion. That is why I resigned and left.

Mr Peterson: My answer is yes. Michael resigned in November 2008, much to my disgust. He told me why he was resigning.

Senator WHISH-WILSON: Did you tell management why you were resigning?

Mr Peterson: He told me.

Senator WHISH-WILSON: Anyone else?

Mr Peterson: I was his boss, so I went straight down to Sol and said: 'Michael is resigning. We can't afford for him to go. I need him. This is why he is resigning.'

Senator WHISH-WILSON: This is the same time ANZ was conducting their big audit on you guys?

Mr Bryant: Apparently they were.

Mr Peterson: We did not know about.

CHAIR: On that point—and let us get to the point—in hindsight, with the access to the document and information and loan book that you now have but that you did not have at the time, you now are of the view that you were trading insolvent. Mr Bryant, you never changed your view that you were being lied to; that you were trading insolvent: you resigned at that point in time because you lost faith in the management telling you the truth. Would the ANZ, with the information that they would have had available—access to the loan book—have known, or should they have known, the information that you knew about the trading insolvent?

Mr Bryant: I believe they would have had more information than what I had access to—because that was one of my biggest problems with Timbercorp: that they didn't manage the information; they just distributed it internally. And I made my decision to leave, on what I believe is less information than what they would have had. And I made that decision using the part of my brain that was a corporate finance manager with the National Australia Bank for a number of years. So if their people had not come up with the same conclusion—I cannot speak for them.

Mr Peterson: Look, with what I know now, they were in serious trouble. And if I had known what I know now, I would have walked out in July 2008.

Senator HEFFERNAN: I think you should have walked out a lot before that.

Mr Peterson: That is a very good point.

Senator HEFFERNAN: Can I just ask a question: you were the finance manager—

Mr Peterson: I was general manager of sales/distribution.

Senator HEFFERNAN: So you are the spruiker.

Mr Peterson: One of.

Senator HEFFERNAN: The chief spruiker.

Mr Peterson: Yes.

Senator HEFFERNAN: So the people that you were spruiking to—and you were physically involved in this—

Mr Peterson: That is right.

Senator HEFFERNAN: Did they realise, do you think, that their only asset was the production of the tree, or the bush? Or did they think they owned the tree?

Mr Peterson: A lot of them thought they owned the lots.

Senator HEFFERNAN: Is not that your fault though, that that was the case?

Mr Peterson: The PDFs made it pretty clear that they owned the lots. The lots were—

Senator HEFFERNAN: No, hang on. I am saying, you are the spruiker, and all these people are out there being spruiked to; unfortunately all they had, the only asset they had, was the production. Now—and this is why it only took me 20 minutes to work out: I have dealt with a lot of spruikers—I thought at the time, and said at the time, if I was Coles and Woolies, I would buy Timbercorp's mangoes—because it is of no interest to the promoters—that is, the people you work for—if the mangoes were sold for half their value, or a quarter of their value. That did not matter to them. It mattered to the investors. And Coles and Woolies could have been 'Down, down, down' at the supermarket. It did not happen, fortunately. But I think there is a serious liability on yourself for having people not understand that they did not own the land, or the tree or whatever. Would you own up to that?

Mr Peterson: That is a good point; to be honest, absolutely. I am happy to say that. Look, as a big investor myself, I am happy to say that. The way Timbercorp and Great Southern marketed these products, it was really quickly done between April and June every year, and it was all glossy, and you are exactly right—

Senator HEFFERNAN: But if you are the boss cocky, why didn't you say, 'Hang on a minute, we had better tell this mob the truth'?

Mr Peterson: I can assure you, the amount of times that Michael and I would be saying, 'We want to put out full reports on yields, and project performance', and we were told to use the information that we were given. So unless we were going to knock them out and go behind their backs, we could not get it.

Senator HEFFERNAN: No; I appreciate your position with Timbercorp. But forget about the production. The basic thing is, 'Oh, it is 28 June. I am going to get a tax deduction'—that is, for some people.

Mr Peterson: That is timber lots. That is not horticulture.

Senator HEFFERNAN: Yes; for some people. But are you involved in timber lots?

Mr Peterson: Yes, but the eucalypts were sold to 30 June. The horticulture had to be sold to 15 June.

Senator HEFFERNAN: Yes, yes; and so, there is a bit of a rush: 'sign here'—that sort of thing.

Mr Peterson: Absolutely.

Senator HEFFERNAN: There was a bit of a rush. But wouldn't idle curiosity, from yourself and from the investor, say: 'Yes, but if this all turns to custard, what is at risk?'

Mr Peterson: Yes.

Senator HEFFERNAN: And what did you tell them?

Mr Peterson: Their lots were protected, and that is all they would lose.

Senator HEFFERNAN: You did not tell them the house was at risk.

Mr Peterson: To be honest with you, we did not know the house was at risk. Because, at all the properties that were sold by all the agri companies—not just Timbercorp—basically your line was against your investment only. And that was published—

Senator HEFFERNAN: But their investment is just the production.

Mr Peterson: I understand that. But in all the marketing material that was going out, that is how it was all publicised for all the companies, including—

Senator HEFFERNAN: It took me 20 minutes to work this out when I sat in the first hearing. I am sorry for interrupting, Mr Peterson.

Mr Peterson: Your question is valid. It is very easy to say that after the event. With all the marketing of all the agricompanies—I include Macquarie, Great Southern, Timbercorp, all of them—it was all about get your product in. In Timbercorp's one defence I will say that the annuity's sole income for all the horticulture project was not based on a tax deduction, because your ongoing costs would end up killing you if you did not go cashflow positive. That is one misconception about the agri. In saying that, the most disappointing thing about Timbercorp is that it did not disclose to the growers, including senior management—the two of us—exactly what would be the costs on horticulture, produce and timber lots if yields were not met and what was happening behind the scenes.

Senator HEFFERNAN: But what was important was the price of the yield. Every time those mangoes came on the market it collapsed the market.

Mr Peterson: Yes, price was a problem too. What we were wanting to get out to our growers was the full facts for their investment on the previous year so that they would know how to protect themselves going forward, and that was not coming out.

Senator WHISH-WILSON: I want to get back to the credit review that ANZ supposedly did, to use your words, Mr Bryant, in November 2008. I am interested in a comment from Mr Lightfoot, which has come through previous evidence: 'I still took the view that Timbercorp's high quality assets, which were still generating fees, suggested that ANZ should continue to support the customer, although I accepted that it was very difficult to assess the probability of the necessary asset sales to third-parties proceeding to execution in the current market.' Clearly they recognised risk with asset sales, which was a fundamental part of your business model, yet they had just given you a whole lot more money. Six months later, Timbercorp was in liquidation and 'hopelessly insolvent', which was the term KordaMentha used. Six months before that, ANZ recognised the risk by their own

statements yet still gave you the money. Mr Peterson, would you suggest that that supports your view that they still thought that income yields from the horticulture side were enough to cover the income?

Mr Peterson: I do not know how they could think that, but if that was what they were thinking—

Senator HEFFERNAN: Because they never left the bloody office. They have never been on a bloody farm!

Senator WHISH-WILSON: That is a really good point that I would like to ask a question on before I go back to the chair. I have heard from Great Southern investors that they tried to access their wood lots. They actually tried to view them and were blocked.

Mr Peterson: That is right.

Senator WHISH-WILSON: I know that when the units became tradable there was a real issue around whether the plantation timber, in this case, was at the yield level, was planted in the right soil and had the characteristics that they expected. Are there instances of simple fraud here with what was promised on the agricultural risk side of the equation?

Mr Bryant: Speaking about eucalypt, the model for the eucalypts was based very much on the area that the trees were planted in having to meet certain criteria. If they could find someone to give them a report that said that the soil quality was right and the quality at certain depths was right and the mean average rainfall was right or within the boundaries of what their model suggested that were needed to achieve the yields then that is not fraud. However, as Senator Heffernan is well aware, God does not always send down 650 millimetres of rainfall every year, which is what the trees needed as a minimum.

Senator HEFFERNAN: We just planted 4,000 trees this spring at home; about 2,000 are going to survive, because of the season.

CHAIR: Senator Whish-Wilson, do you mind if I go to Senator O'Neill?

Senator WHISH-WILSON: No, but at some stage I would like to come back to agricultural risk. I would like to go into a lot more detail on that and on market risks.

Senator O'NEILL: Mr Peterson and Mr Bryant, you both indicated in your opening remarks that you had invested in this product and that you were part of the sales and financial management structure within the business. What is your personal situation as a result of your investments in Timbercorp?

Mr Peterson: I have loans in excess of \$850,000 owing.

Mr Bryant: I invested in Great Southern, actually. I continued to pay my loan until 30 June last year, so it did come down and it is only at \$45,000 now.

Senator O'NEILL: So you find yourself in a manageable position. Perhaps, Mr Peterson, not quite so manageable for you?

Mr Peterson: A difficult position. Obviously, we were hoping that with the Holt, Norman action group that we would get a reasonable result that was fair to all parties involved. But, yes, it is difficult position. Obviously, from where I am sitting I feel like an absolute fool because I believed what they were telling me as the head of the business, as the head of the distribution team. But what is most disappointing from all of this is that if Timbercorp had been more honest about how the projects were performing, then certainly I and the people behind me would not have invested so heavily in the projects. And with Michael in particular, when we had to speak to the research houses—and that is a separate discussion altogether about how they were reviewing our projects—I am sure that if they knew all of the facts, they would not have reviewed the projects.

Mr Bryant: The research houses that Andrew refers to—we have not touched on them at this stage—provided the advisers with a Teflon raincoat.

Senator O'NEILL: Can you just unpack a little bit of that for me? You are right at the front of this business?

Mr Peterson: Yes.

Senator O'NEILL: The people who are sitting behind you are literally behind you in the information flow.

Mr Peterson: Yes.

Senator O'NEILL: You are at the front line of information flow about how this business is operating. You are aware of the relationship between Timbercorp Finance and the growers out in the field. You are aware of the people who are investing. You are aware of the book that is coming on. You are aware of the relationship with ANZ. You are in a particularly unique position to give us an understanding of what went wrong and who you believe was responsible for that. You have just mentioned the financial houses—

Mr Peterson: The research houses.

Senator O'NEILL: the research houses that were a critical part of giving a rating to people who were going to sell these products out in the marketplace. Could you explain what was going on with Timbercorp and any connections through and to the bank and the market more generally from the research houses?

Mr Bryant: The research houses had no connection with the bank, of course. The process for getting research was that the particular body would be engaged by Timbercorp. Per project, you are looking at a \$35,000 fee.

Mr Peterson: Per report.

Senator O'NEILL: Per report—is that a normal fee for a report?

Mr Bryant: Yes.

Senator O'NEILL: It is?

Mr Bryant: For groups that actually charge the promoter to research the products, yes.

Senator HEFFERNAN: There is something important here. In those reports—and we would like those reports tabled if they are available from these people who were getting the 35 grand—

Mr Bryant: Yes.

Senator HEFFERNAN: did they go to such things as the pH?

Mr Bryant: Of the soil?

Senator HEFFERNAN: Yes. Did they go out and have a look, take a soil sample and bring back a lab result?

Mr Bryant: No.

Senator HEFFERNAN: That is crap.

Senator O'NEILL: So the research houses relied on financial information about whether these were good things to invest in or not?

Mr Bryant: They relied on the forestry and, in the case of horticulture, the horticultural information as well. But basically they were furnished with all of the information that they requested by Timbercorp. They did not undertake an independent analysis.

Senator O'NEILL: Can you just explain how critical those reports—you said it was a Teflon coating—were in terms of the information for people like the adviser Mr Holt, who was giving this advice to people?

Mr Bryant: In the example of Mr Holt, or any adviser, insurers would not have given them indemnity insurance unless they had something like the research report to back up their decision to recommend it to their clients.

Senator O'NEILL: So they were a critical part in this whole scheme?

Mr Peterson: Absolutely.

Senator WHISH-WILSON: Sorry, who provided the indemnity insurance, just as a matter interest generally? Any particular providers?

Senator HEFFERNAN: By the way, congratulations to both of you for having the guts to be here today. Are you telling us that the sort of cover for the continuing investment was these reports?

Mr Peterson: Those reports were necessary for dealer groups or planners, like ANZ's RI, M3, Century et cetera—

Senator HEFFERNAN: So we may be able to get a copy of these reports?

Mr Bryant: Not may; you will.

Mr Peterson: You will. Those reports—

Senator HEFFERNAN: So in those reports, was there an agronomist involved?

Mr Bryant: No.

Senator HEFFERNAN: Well, that is crap.

Mr Peterson: Just to explain to you how the reports work—to answer your question, Senator—

CHAIR: That seems to be a common theme to everything we are hearing today.

Mr Peterson: I will just explain to you how those reports worked. To get—

Mr Bryant: Crap would make the trees grow better!

Senator O'NEILL: That is what I was just about to say, Mr Bryant!

Senator HEFFERNAN: Say again?

Mr Bryant: It would make the trees grow better.

Senator HEFFERNAN: Crap?

Mr Peterson: Just so you understand how the research reports worked, if you were a dealer group, whether you were owned by ANZ, NAB, CBA or Westpac, or whatever dealer you belonged to, for the research committees to put your product on the APL, the approved product list, they needed a research report from AAG, Adviser Edge or Lonsec. Without those reports, they would not put the Timbercorp, Great Southern or Macquarie Forestry projects on their approved product list. Michael was employed by me to deal with the research houses to get the necessary reports. They charged us a lot of money to do it and we would get, what, eight reports a year; is that right?

Mr Bryant: It depended on how many products we had.

Senator WHISH-WILSON: And can we draw the conclusion that, if they did not give you the report you wanted, you would not have given them the business anymore and they would have lost significant revenue?

Mr Bryant: I can tell you about another company who—

Mr Peterson: The answer is yes.

Mr Bryant: would not go to Lonsec for certain projects because they knew that Lonsec would not give them the rating they wanted. That did not happen at Timbercorp!

Senator WHISH-WILSON: You are free to say it under parliamentary privilege.

Senator O'NEILL: Mr Bryant, was this common practice in the industry or was this something particular to Timbercorp that you are aware of?

Mr Bryant: No, it was common practice.

Senator O'NEILL: So the research houses—you are saying here, under parliamentary privilege—are extremely dangerous elements of the financial system in this country?

Mr Bryant: The research houses that were used, yes. You have to remember that other research houses like Mercer and Morningstar refused to rate these sorts of projects.

Senator O'NEILL: So there is quite a variation in the integrity, you might say, of different research houses?

Mr Bryant: Two of the research houses are pretty much shells of businesses now, and most of their operators have been let go.

CHAIR: I just want to put this in layman's language, because obviously some senators here have a much deeper understanding of this than I do. What you are saying is that part of the system failures that allowed this situation to arise that has brought us here today was a culture and environment where, effectively, people were able to buy substandard reports, predetermining what the outcomes were going to be. Or is that language too strong?

Mr Bryant: That language is too strong, I think, Senator. You have to remember that the research houses, whilst they did not check the pH or get an agronomist's report and those sorts of things, they did write the reports based on information provided by the promoter—in the case of Timbercorp products, Timbercorp. They did get out of their offices and go and kick the dirt and have a look, and they did have some very fine young minds working with them who had masters in agri et cetera and understood a little bit about what they were looking at. That can be a defence for them and it can be a negative for them as well.

Senator HEFFERNAN: Obviously—if you are going to try and sow trees in a claypan. It is like sowing them into concrete; it is not going to work.

Mr Bryant: Again, as I said to you, there were certain projects Great Southern did not get Lonsec to do, like their trees, because they knew that Lonsec would not give them an investment-grade rating.

Senator HEFFERNAN: It is a well-known trick of the trade: if you do not agree with the science you have got, go and buy some other science.

Mr Bryant: Correct.

Senator O'NEILL: My question is framed around the reality that you guys had access to information at the highest level, because I want to address this claim that is often made: 'Well, they should've been better informed; they should've known.' You were actually within the business at senior management level, with a broad and pretty deep understanding of the business as well as of the product, yet both of you were taken in this scheme and have suffered the financial consequences. I think, for all the people who were way behind you, it is very important to

realise that it is not just about having knowledge—that part of the picture here is that, even with the fullness of knowledge that you had, you were caught in this.

Mr Peterson: You have that in-depth knowledge of what was going on. We had snippets. If we had seen half those emails that are in your booklet there today, then we would have been able to make concise decisions a lot quicker. This was the problem.

Senator O'NEILL: Right. I have three questions that arise out of that. In your view, who had access to the knowledge that you are talking about; at what time should this whole scheme have been interrupted; and who should have known what was going on?

Mr Peterson: We should have all been—

Senator O'NEILL: Mr Bryant is laughing, so I am very keen to hear his response after you, Mr Peterson.

Mr Peterson: We should have been told at Michael's and my level at the start of 2007 exactly where every project stood, not just for the current performance and projected performance issues but with all the earlier projects and what was being done. Selling these projects was easy if it all stacked up, but if it did not stack up because of prior information not being released then we were all caught out. The problem we had was that we were not given that information.

Senator O'NEILL: Was it formerly the practice in 2005 or 2006 to be given that information? Was there something different in 2007? Or was this business as usual?

Mr Peterson: I joined in 2004. Michael joined in September 2006. We had nothing really to do with all the earlier year projects, and we did not know a lot about them. Information was not freely available. We thought they were just chugging along. It became alarming when we saw growers starting to complain heavily about projects—and one project in particular, which has been well documented in the *Age* on Saturday. A barrister in Sydney got out of his olive projects. He was getting out after two to three years of the olive project. If it is such a good project why is Timbercorp letting him get out? What did he know?

Senator O'NEILL: Exactly.

Mr Peterson: What did he know?

Senator O'NEILL: Keep going. Tell us that.

Mr Peterson: I do not know what he knew because Timbercorp settled with him, and that rang massive alarm bells for the two of us. That settled in July 2007. We thought, 'Hang on, if Timbercorp projects are so good, why is this guy getting out of the 2002 and 2003 olives?' He had only had them for three years. What does he know that is not in a PDF or that has not been released to the market? What is going on? That was all kept hush, hush. We did not know what the settlement was until, obviously, this information now, or how it occurred or why it occurred.

There were grumblings from other growers in the company who did not like the project's performances, which started to increase substantially around late 2006. Again, they were obviously doing their own research. What did they know? The fact that Timbercorp settled with this barrister in Sydney basically sent Michael and I into a spin. We were thinking, 'He must have enough to get these guys to settle after 2½ years of these olive projects.' Mind you, Harry Hindsight is a wonderful thing. If those who are here today had all been told in 2000 to give back all our projects, get our proceeds and settle our loans, we would have done it straight away. Great. I would have taken my project back and paid out the loan. We were not all told that.

Senator O'NEILL: Who should have been able to tell you that at that point, Mr Peterson?

Mr Peterson: We should have been told by the senior management, which I was obviously part of, but I did not know the settlement amount or why it had been settled. That was all kept relatively hush, hush. If we had known what was going on then and why that grower had been released from his project, amongst others, as well, by the way, then I would have made the decision: 'Right, that's it. We're out of here. This is not working.' The problem is, though, you can also ask: 'How did you not know?' If they do not tell us this information, we cannot just find a disc in the office.

Senator Heffernan interjecting—

Mr Peterson: Exactly. That is right.

Senator O'NEILL: Can I continue the questions here, please. Mr Peterson, who was in the hush, hush circle that you have been talking about? Who would have known?

Mr Peterson: Sol and John Murray would have known, clearly. Also, Robert Hance would have known. They were the three power hitters at the company at the time.

Senator O'NEILL: Who outside the company would have known or could have known?

Mr Peterson: Legal would have known.

Senator O'NEILL: Legal is an independent company?

Mr Peterson: No, inside the company. Only internal would have known.

Senator O'NEILL: It is completely internal knowledge then?

Mr Peterson: Internal knowledge.

Senator HEFFERNAN: Can I ask a really dumb question. I would like to know who, out of all this, were the winners. I would also like to know—

Senator O'Neill interjecting—

Senator HEFFERNAN: Hang on, this is going to be pertinent. Are the people who knew now living in retirement on the Gold Coast, looking at the waves coming in? Where are they? They are certainly not in jail. Where are they?

Mr Peterson: I can tell you that they are certainly not in a financial position like me and the people behind me. I can assure you of that.

Senator HEFFERNAN: Do we know where they are?

Mr Peterson: Yes, we do.

Senator HEFFERNAN: Are they going to turn up here?

Mr Peterson: Absolutely not.

Senator O'NEILL: How many people are we talking about?

Mr Peterson: You would know about that incident in Sydney.

Senator O'NEILL: Yes.

Mr Peterson: There would be at least five to six.

Senator O'NEILL: Why do you believe the barrister was able to figure this out? It does restore your faith in the legal system.

Mr Peterson: To be honest with you, I know him by name, but I obviously won't say who he is by name. I have to take my hat off to him for what he obviously knew and what he did to them, because when the matter happened it was quickly shut down internally. You would ask, 'Why did Timbercorp pay him out?' and you would never get a straight answer.

Senator O'NEILL: Are you aware of the size of his investment?

Mr Peterson: I know exactly what his investment was, and I know exactly what he got paid out.

Senator O'NEILL: Would you be able to put that on the record?

Mr Peterson: Yes, I can.

Senator O'NEILL: Thank you, Mr Peterson—and without the name so as to preserve the anonymity of the individual.

Mr Peterson: I can tell you that it was the 2002 and 2003 olive projects, and his initial investments totalled—this is the initial investment, not his October invoices; this is what he put in initially, with his amount of lots—\$965,550, and he got paid out \$2.4 million approximately. However, he would have had October—but still, if we had all been offered this for our investments, I would have taken it in a heartbeat! That is all based on the amount of lots he invested, by the way.

Senator WHISH-WILSON: In relation to that, when was the political decision made and announced?

Mr Peterson: When that was—

Senator WHISH-WILSON: It was in 2007, but—

Mr Peterson: It was 6 February.

Senator WHISH-WILSON: When did this occur?

Mr Peterson: This settlement was 31 July 2007.

Senator O'NEILL: After that period—

CHAIR: Senator O'Neill, uninterrupted, can finish her question.

Mr Peterson: Can I say one thing, though, in answer to the senator: remember, he had started making complaints in 2006, and the products were only three and four years old.

Senator HEFFERNAN: This character also got a \$900,000 tax deduction up-front.

Mr Peterson: In fairness to that character, he would have had October invoices and loans. I do not know the exact loan amount that he had outstanding but he would have at least got his money back and then some. But, in fairness to that person, what is pertinent here is that, in the 2002 and 2003 olive project, he started making noises in 2006. So if he is picking things up quite early, what did he know that we did not know or other people knew? Timbercorp, by their own admission, in that grower management report which you have in your pack, which is from Kylie Mistorius on 14 May 2007, his projects are specifically referred to as not performing. So he is out four months later.

Senator O'NEILL: Thank you very much, Mr Peterson. Mr Bryant, in response to your disdainful laugh in response to my question, who should have known, who do you believe knew, and was there anyone outside the company who should have known or could have known?

Mr Bryant: 'Could have known' is only based on what the people who did know would have told them. Andrew says five or six people would know. My belief is that there were probably only two people that knew the full story. Many others of the senior management might have known parts of the story but not enough to bring together a conclusion that the company was in a bad situation.

CHAIR: One final question.

Senator O'NEILL: My last question goes to comments you made in your opening remark around the 10 per cent commission. And, Mr Bryant, you made comments about not selecting a trailing commission but seeking an up-front commission of 10 per cent or eight. But you said there were key players, Mr Peterson, who refused to sell the product at 10 per cent—

Mr Peterson: Who wanted more commission.

Senator O'NEILL: They wanted more commission, and you went up to 12.5 per cent for them.

Mr Peterson: That is right.

Senator O'NEILL: How did they get to be in a position where they were doing that, and was Mr Holt one of those people?

Mr Peterson: Mr Holt certainly received more than 10 per cent commission. Due to other agri-players' position in the market, Timbercorp wanted to, obviously, sell that product, and in those days there was a lot of commission flying around—obviously, way too much; clearly way too much. Those advisers who wrote a lot of business would say, 'We want this, otherwise we will support Great Southern, Macquarie, FEA, rewards, ITC—it was almost like a bidding war, to an extent, with some advisers but not all. It was a very small amount of advisers, not a lot, but the ones that wrote a lot and had the gumption—

Senator O'NEILL: What is 'a lot', Mr Peterson? What are we talking about—a number?

Mr Peterson: There might have been, say, a handful—say, five to six—that would demand a bit more, but they would write a lot of business.

Senator O'NEILL: What do you mean by 'a lot of business'?

Mr Peterson: Oh, sorry; a lot of business—anywhere over, say, \$2 million to \$3 million a year. So you do 10 per cent—

CHAIR: I suppose, \$2,000.

Mr Peterson: That is right.

CHAIR: We might have Senator Whish-Wilson, uninterrupted, for a few minutes now.

Senator WHISH-WILSON: Can I get your quick reflections on how important the GFC was in the music coming to an end on this? Actually, I cannot ask you to reflect on an opinion, but was it significant? I would like to ask you: 'Would we be having this inquiry now if the GFC had not happened?' but of course you cannot answer that.

Mr Bryant: I can present a framework which would suggest that it still would have happened.

Senator HEFFERNAN: Of course it would have still happened.

Mr Bryant: At the end of the day, if you go back to what I said initially about the revenue streams of the corporate entity involved, they had to continue to get increasing sales. They were getting decreasing sales before the GFC happened. They had to achieve the yields on the crops to get the revenue streams that they had budgeted

on getting and they needed the recipients of loans to keep paying the loans. Those three things were not happening. The yields were not happening; they were not getting increasing sales—they were getting decreasing sales; and they were getting an increasing number of people defaulting on their loans. So it would have still happened.

Senator WHISH-WILSON: Okay. That is my feeling but—

Mr Bryant: In fact, it probably would have still happened at the same time.

Senator WHISH-WILSON: I have heard that excuse being used by people, including big financial institutions, saying that that was what finished it off. But that does not make sense to me.

Mr Bryant: If it walks like a duck and quacks like a duck, it is still a duck.

Senator WHISH-WILSON: The provision of information is critical to any efficient market or exchange of goods and services. What we heard here today from the first witnesses, victims of this collapse, was that they perhaps felt that they did not look at the documents or they had trust in their financial planners and therefore they were not aware of the risks. But I think it is becoming clear from what you are saying now that, even if they were a very astute, very financially literate person and you read the ratings reports and you were watching and monitoring everything—I am not sure that it might have helped if you had a cousin who was an agronomist—they would not have picked this up. Even you did not pick this up, because you did not have access to the information internally. My big question is, once again coming back to ANZ, do you think they were sold a pup on this or do you think they knew about it and saw that it was in their interests to keep the machine going because they could see a huge house of cards about to collapse here?

Mr Peterson: Your latter point: they knew it was a house of cards and it was about to collapse. They would have been seeing information that my clients were not seeing. As I said at the start, unless my clients were geniuses, which we aren't—they would have seen what was going on. They saw the loan book, the loans in arrears, increasing and they saw the performance of projects decreasing in terms of meeting their forecasts. Unless they are not looking at things properly or they are easily misled, they would know what is going on. I keep referring back to the 8 October email. When we looked at it, it sent shockwaves when I spoke initially to some people who I know about it. 'Some stakeholders will get burnt'—8 October 2008. That is not an overnight comment—maybe by some bank in a Third World country that is looking at ripping off people easily there, but not here, not in Australia, not with all the smart people looking over these accounts and looking at what Timbercorp was doing. It was a top 20 listed company; it was not some little mickey mouse company. Sol, in his audit report just after 6 February states, 'We've got issues.' And Sol was a smart guy. If Sol was saying that ANZ did not know this, there is some sort of problem here. There is a real problem. ANZ cannot say that. Sol's statement of 2008 clearly states: 'Our revenue includes annual rent, management fees from horticulture, a percentage of share crop, interest on our grower loans. Those four points relate to where we are going as an MIS business going forward.' There is no MIS at 30 June 2009. Even though Timbercorp won that decision against the government, there were no projects at 30 June 2009 going in. So where was the income coming from to feed this beast?

CHAIR: It was coming from a Ponzi scheme. It was coming from people investing money, not knowing that the whole thing was about to fall over.

Mr Peterson: The senator is correct.

Senator WHISH-WILSON: I agree. I am interested in when Timbercorp went into receivership—

Mr Peterson: 23 April 2009.

Senator WHISH-WILSON: Correct. Was it in June that they made the decision to go into liquidation? Could you tell us what the dates were there?

Mr Peterson: Well, minus when they came in on 23 April—

Senator WHISH-WILSON: Was it May?

Mr Peterson: They were put into administration straightaway. They looked at whether there could be status in the products and then there was a meeting at Etihad Stadium. It was decided that the parties were all hopelessly insolvent—which were Mark Korda's words—and basically that was it. Projects were then undertaken to be sold.

Senator WHISH-WILSON: So there was no discussion about trading out of receivership or the various levels of—

Mr Peterson: Not with me there wasn't, and not that I was included in. There might have been, but clearly that was not KordaMentha's intentions.

Senator HEFFERNAN: These guys always just want to cash out, get their fee and get going. They don't give a rat's.

CHAIR: Mr Bryant may want to say a few things.

Mr Bryant: I do not know that the likes of KordaMentha ever really have any interest in trying to trade anything out.

Senator HEFFERNAN: Get your fee and get to buggery.

Mr Bryant: In all due respect to the professional gentlemen of Collins Street and Burke Street who have been running the sale of some of these schemes, our friends on the Tiwi Islands who had plantations planted there under schemes, they have done a deal with Mitsui so that, over the next five years, for the trees on the island Mitsui will pay them up to \$250 million. Why can't our friends in Burke Street and Collins Street also come to some arrangement to trade the things out?

Senator WHISH-WILSON: Yes, recapitalising. That is a whole other segment the committee might have to look at.

Mr Bryant: Not only can the Rioli family play football but they can obviously do business better than our friends in Collins Street and Burke Street.

Senator HEFFERNAN: Who were the winners out of all of this? Who won?

Mr Peterson: The banks are getting most of their money back, KordaMentha the fees they have charged and those who bought Timbercorp assets cheaply made a fortune. I know there would be people behind me who would be very angry at how water rights were sold cheaply and then sold six months later for a 300 per cent profit.

Senator HEFFERNAN: Can you give us the details because, as you may or may not be aware, I am probably more than anyone in parliament into water.

Mr Peterson: Yes.

Senator HEFFERNAN: Can you give us the details of those water sales? Were they sold under some sort of forced sale?

CHAIR: 'Fire sale', I think is the term.

Senator HEFFERNAN: Yes.

Mr Peterson: Boundary Bend picked them up for roughly \$12.7 million and sold them—

Senator HEFFERNAN: How much a megalitre?

Mr Peterson: for about \$37 million seven months later. I am not sure how KordaMentha—I do not know the megalitres.

Senator HEFFERNAN: Can you get me the details?

Mr Peterson: I can get you the details.

Senator HEFFERNAN: The rest of it does not mean anything.

Senator O'NEILL: I just missed a lot in that speedy interchange. The people who got the money, you are talking about people now who bought assets at the fire sale point, who then sold those assets shortly after for significant profit. Is that what you just said?

Mr Peterson: In relation to the Timbercorp water rights that is exactly what I just said.

Senator O'NEILL: What were the numbers again?

Mr Peterson: I will have to clarify the exact numbers—

Senator HEFFERNAN: You will get us the details?

Mr Peterson: I will get you the details.

Senator HEFFERNAN: And then I will skin them alive.

Mr Peterson: Roughly \$12.7 million was the water rights sold to Boundary Bend and they sold them seven months later to an industry superannuation fund for roughly \$36 million. I will obviously check that for you and forward the exact details. There is an article, which I can forward to you, which lists the exact amount and who they sold to. Sorry: it was \$59 million.

Senator HEFFERNAN: If you could assist the committee, we want to know how many megalitres, was it high-security water, general security—

Mr Peterson: High security.

Senator WHISH-WILSON: Do you feel the evidence you provided, had it been provided to any of the legal proceedings we have seen prior, may have made a difference in judgments or have you had any involvement in the court process too?

Mr Peterson: I am not at liberty to discuss how the class action would have gone. Maybe things could have been done differently. It is easy to say that post the decision having been made. The information that we have obviously, could it have been used, possibly would have changed Justice Judd's decision—I do not know. We are hoping that he obviously—

Senator WHISH-WILSON: He has found there is no misleading or deceptive conduct from Timbercorp and that there is no need to disclose the risk, that that is a separate issue. The fact that there is no misleading or deceptive conduct is a pretty big statement given what you have said today.

Mr Peterson: It is quite hilarious how he can make that comment, yes.

Senator HEFFERNAN: Thank you for appearing today. If you could provide us with the names of who are in the information loop, which you were not in, I would like to give notice today that we will call those witnesses. If they come voluntarily well and good and if they do not we will subpoena them.

Mr Bryant: In answer to Senator O'Neill's question, they were probably the same people who made a lot of money.

CHAIR: Senator Xenophon, I know you have been very patiently waiting.

Senator XENOPHON: I want to ask Mr Bryant a question in relation to the ANZ's role in all this. Mr Bryant, how would you best characterise ANZ's role in terms of their interaction with Timbercorp senior management? Would you say firstly it was a lack of due diligence on the ANZ's part in looking at how Timbercorp was performing?

Secondly, was it more of a reckless indifference, or, thirdly, would you characterise it as a wilful ignorance, in terms of what Timbercorp was doing while ANZ was lending the money?

Mr Bryant: At a breakfast at the RACV Club, completely unrelated to the industry, I met a member of the ANZ staff who had been involved with the Timbercorp group, prior to when I had the breakfast, and my feeling coming away was that the person clearly did not understand what could impact the revenue streams of a company like Timbercorp.

Senator XENOPHON: In your view, was that lack of understanding due to Timbercorp withholding information from the ANZ, or was it that they just did not ask the right questions or do their due diligence?

Mr Bryant: They probably did not ask the right questions, because I am firmly of the opinion that ANZ would have had more information than me.

CHAIR: I want to thank Mr Peterson and Mr Bryant for their incredible courage. It is not easy being a whistle-blower in Australia, and it is not easy to come forward and put your hand up and admit that mistakes were made, and to be able to play a constructive role in making sure there is a fair and equitable deal out there for the many victims, including you. For many reasons a lot of people in your position, because of a personal sense of guilt or embarrassment, would not be prepared to come forth and say, 'We were victims, as well.' I think it was very brave of you to do that.

I also want to acknowledge the incredible trove of documents and internal documents of Timbercorp that you have provided to us. They are now privileged—they come under parliamentary privilege. We will be going through these documents and making sure there is nothing that the committee feels wrongly identifies an individual who does not deserve to be identified. We will be making all of these documents public. I think a lot of the victims here are going to be pretty outraged. I have just had a quick look through this book and I have to say that it is pretty harrowing. Mr Bryant and Mr Peterson, thank you so much for coming forward and providing this information.

Considering the complexity of the issues at hand and considering the detailed nature of all that has gone on here, you know that this committee has previously been calling for a royal commission into these types of matters, related to other issues. Do you believe that a royal commission is required to get to the bottom of all of this?

Mr Peterson: My view is yes. Absolutely.

Mr Bryant: Yes, I do, because I think it goes beyond just bagging managed investment schemes as a form of investment. As a form of investment they are important to the growth of this country. It goes to the heart of what

regulation there is around entities being able to do business in this country. That is what has gone wrong here. The regulation around how Timbercorp could operate and grow to the size it did was clearly inadequate.

CHAIR: Thank you for your evidence.

Proceedings suspended from 11:28 to 11:46

BEZENCON, Mrs Kerree, Chair, Timbercorp Grower Group Committees for Almonds, Olives, Avocados and Citrus

HENRY, Ms Susan Bennett, Chair, Holt Norman Ashman Baker Action Group

MARSH, Mrs Kathleen Ann, Honorary Secretary, Holt Norman Ashman Baker Action Group

WHITE, Mr Neil John, Chairman, Agriculture Growers Action Group

CHAIR: I will begin by tabling some additional documents that were provided by Mr Andrew Peterson. First, an email between Sol Rabinowicz and John Murray, on 8 October 2008, at 11:35 am, which he referred to in his evidence. Secondly, I want to table a document between Sol Rabinowicz and Sam Beaton, Bernard Gates and John Murray, carbon copied to Mark Pryn, on 21 February 2008, titled *Re: ANZ securitisation sale payment*. With the consent of the committee I will table those two documents. There being no objection, it is so ordered.

I welcome new witnesses. Obviously you have heard a fair bit of evidence already this morning. I note that you represent some very different groups, with some overlap, but have been working together to make sure that the victims are adequately and properly represented. I will make the observation that the ability of these groups to work so well together, even though you represent different interests, is very encouraging for a trade unionist like me.

Could you briefly explain a little bit about your groups and your stories and also the different attempts you have made over the years to try to resolve these matters. I know it has gone on for many years. I am not after a very detailed day to day account, because there has been five years of this. But could you just generally outline the extent to which you have tried to resolve these matters.

Mr White: I will go through who I am, who AGAG is and who our members are. I am a Melbourne based financial planner. I have been in the financial service industry since the late 1980s. I am a partner in my own financial planning firm. I am also a member of the FPA and hold a certified financial planner designation. I unfortunately invested in three Timbercorp projects, from 2005, which were secured from finance from Timbercorp. At no time before the collapse of Timbercorp Securities Ltd was I aware that these loans were provided by the ANZ.

Like a lot of the earlier witnesses, it was my understanding that the Timbercorp Finance loans were non-secured and therefore primarily the underlying project was the primary security. When the previous witnesses spoke about the deception and so forth inside Timbercorp, I can now see why perhaps I also was unaware of how that security worked in principle.

AGAG was formed in December last year by Andrew Peterson and me. Our primary goal has been to seek a common sense commercial resolution for all parties, not just the party we represent. In all parties I include my fellow members of other groups, the liquidator and the ANZ. We did not feel that the High Court decision, which was subsequently handed down in April 2014, would be favourable.

In five weeks in January 2014 we acquired over 1,100 members, with loan values at the end of June this year representing about \$275 million. They were 50 per cent, or half of that, at the point of collapse. We have carried out a lot of quantitative and qualitative online surveys. We provide regular member updates through our web site text and so forth.

Importantly, one of the key parties we retained from the very outset was Pitcher Partners, the commercial equivalent of KordaMentha in the market, who has consistently advised us on the attitudes of liquidators, because we felt that that was who we were going to be dealing with. I want to make it very clear, particularly to the committee and to our members, that up until today we have had to work under very strict confidentiality. We have had threats from ANZ, initially, and from KordaMentha that if we in any way mention that we were speaking with them in any capacity they would cease talking to us immediately, which I think is a bit of a precursor to their behaviour, which I will talk about when the time is appropriate.

I certainly concur with the earlier witnesses from the Holt Norman group. Despite common public perceptions, our members are not high-net-worth individuals. They did not invest in Timbercorp projects primarily for tax deductions. They are average Australian families who believed that independently provided, highly rated research, supported by a top-200 ASX listed company, which provided projections, would be appropriate and believable. They also believed in the future of the Australian rural community as a significant food bowl. I think this is not talked about. It is very convenient for the liquidator, and the people they ultimately represent in this matter, the ANZ, to create a public perception that we are all greedy rich bastards, when we are not. We are average investors and we were hoodwinked and fooled. I am even more convinced of that, with the testimony even of my own commercial partner in AGAG. I think this fact has now been proven, in a bitter, ironic twist, by

the almond company that now has our investments, thanks to the ANZ and their liquidator, and are prospering on the backs of everybody in this room, people who have lost their houses. It is unbelievable. In my view, they were the victims of a Ponzi scheme.

I also think that the same common directors who are running that finance company are running the actual company that is selling the products. In the financial services industry we have systems for people behaving this way in self-managed super funds, yet we cannot have this system in the corporate world, with a regulator that is consistently being given money to deal with these issues. The ATO has see-through provisions. Why do we have a situation where these very conflicted individuals can run an organisation, collect money from their finance company and fundamentally mislead people and then suddenly, when things go pear shaped and the music stops, as has been said, in flies the liquidator and sells of the assets of one of the companies and basically disenfranchises thousands of people. Then, the other company turns around and demands that they pay their loans at 200 per cent. It might be legal, but it is totally and utterly repugnant and immoral. Without question, this is one of the things that I urge the regulators to look at.

Seventy per cent of our members—800 people—have outstanding loans of less than \$100,000, which means they owed \$50k at collapse. Are these 'rich, significant individuals'? No, they represent the average. Seventy per cent of our members were given loans by Timbercorp Finance in 2008 for their management fees and for their new sales. Seventy per cent of our members were sold projects, it would now appear from the evidence I have heard in this inquiry, of a company that was literally trading insolvent. If that does not make me and the other members angry, I do not know what will.

The stories from our people, as you have heard, are heartbreaking. In Australia when we have floods and when we have bushfires, people deserve and get the empathy that they so deserve. But this disaster is no less. Yet these people, until today, have had no support, for six torturous years. Here we are, trying to resolve a commercial matter, and we had to put beyondblue and Lifeline on our website. This is extraordinary. This is a commercial problem and we are putting beyondblue and Lifeline on our website, because of the stories that were flooding in on emails. It is just extraordinary. I apologise for my emotion. I assure you these are not crocodile tears. If you read the stories of the heartbreak, you will unquestionably agree.

One of those stories was from one of the people who spoke earlier. Their partner wrote me a 10-page letter. I read the letter at 3 am, Saturday morning. I went back to bed and said to my wife—who is here—'No matter what happens, we have to do something.' Something has to be done for these people. I am not a victim in that sense. My loans are about \$380,000. I have the means to deal with it. I have also suffered in the Great Southern but I certainly do not put myself at the depths that some of these people have suffered.

We did an independent survey in April this year and, amazingly, we had 900 respondents, out of 1,100 people. We believe we basically got a response from every family home that we represented through that survey. The person who managed it could not believe the response. It was unheard of to get a response of nearly 100 per cent in those surveys. Bankruptcy responses were 37 per cent. We just did a survey—

CHAIR: What does that mean?

Mr White: The KordaMentha offer of 85c. Can I just clear one thing up: it is not 85c. Let's not let them hide behind 85c. You have to pay the loan out in full. Our surveys show clearly that only 10 per cent of the all of these people can pay their loans out in full. So that 85c in the dollar is available to 10 per cent of people. So fundamentally the 85c is a really nice way of saying to people, 'Aren't we being good guys here?' But they are actually dropping their interest from 13.2 per cent to 10.5 per cent; and guess what that equals? 15 per cent. Ten per cent of the people can access that discount. That is all it is.

Thirty-seven per cent of people told us in April that they would be bankrupted. We now have a number approaching close to 50 per cent who are claiming they are bankrupts. Liquidators will tell you categorically that people in these surveys will often give answers to suit the circumstance. We simply do not believe, however, that we can get 100 per cent of the people to mislead us on a very comprehensive independent survey.

Senator KETTER: Mr White, just to interrupt you for a second. You are referring to a survey of the members of your organisation?

Mr White: Yes. 900 respondents. It was an independent survey. We did not control the survey. We contracted it out and we received the data back. We did that in order to then present that to the liquidator, because we felt very strongly—particularly on the basis of the advice from our Pitcher Partners—that there was no hope of going there and expecting empathy. I could take all those letters of heartbreak; I could do all that stuff; I knew what was going to happen to those letters as soon as I left the room. They would throw them in the bin if they even bothered to ask to hold on to them.

Bizarrely, in this latest survey, 70 per cent of our members said that, if the ANZ negotiated a commercial outcome, they would agree to refinance with ANZ—this time knowing they are refinancing with ANZ—and to secure their loans against secured property et cetera. So there is not a lack of willingness from the members and the affected people to deal with the issue. The problem is the ANZ and the problem is KordaMentha. They are on a shooting-fish-in-the-barrel expedition. Let's not be mistaken here.

The clear message for the ANZ is this: no matter how hard you shake the tree, the same amount of money is going to fall out of it. We have the proof. We have done multiple surveys. We have not been lazy. We have spent our members' contributions very carefully. We know what they will do; we know what the behaviours are. We can predict them.

Bizarrely, when I met with KordaMentha—and when it is appropriate I can go through that time line—they admitted that, although they had been in that chair for five years, I knew their clients better after five months. If they are Timbercorp Finance, why don't they know their clients? I have to do it as a financial planner. Yet here they are liquidating a company for hundreds of millions of dollars about to tip people out of their homes, and they do not even know their client. They admitted to me: 'You know more about these people than we do.'

There is absolutely no commercial case. What angers me is that there is no commercial case. The whole premise on which AGAG was formulated and on which it operates is that there is no commercial case for an aggressive liquidator collection. Are they seriously telling the people in this room, from all walks of life, that they are going to run 3,000 Supreme Court writs through the Victorian Supreme Court? We may as well come back here every year for the next 20 years if that is what they are genuinely proposing. It is a commercial experiment at the expense of the people in this room and all the people who cannot be here today.

We know that if they can settle at 100 per cent of what they owed in April 2009—Mr Korda has argued with me that that is unfair. Aren't they paying back the same as everybody else who owed \$100 in April 2009? It is exactly the same situation. They are not asking for a discount. What they are asking for is to keep their family home and what they are asking to do is pay back their debt. I think there has been enough evidence of this today; that poor woman who has just sold her house and will have to move out in January so she can pay the ANZ. That is the fallout. That is what we know. That is the real pointy end of this whole issue.

CHAIR: Mr White, we will come back to you with some questions. But we might move on to—

Mr White: You'd better stop me, yes.

CHAIR: We may move on to Mrs Bezencon. I also want to note that Mrs Bezencon has travelled all the way down from Queensland to be here today and present her evidence.

Mrs Bezencon: Thanks. I am Kerree Bezencon. I am both an accountant and an adviser. But, most importantly and above all, I am a grower, as were many of our clients. I am also on the committee of inspection with Timbercorp. So we are promoting and defending grower concerns. I am the elected chair of the Timbercorp Grower Group. The TGG was formed in June 2009 to represent growers. It was incorporated, along with some other subcommittees of which I am also chair. TGG has been in regular communication with growers since 2009. We have also communicated with over 2,000 advisers. The database has some 12,000 email contacts.

We have been very active, attending almost all court cases, with direct and indirect representation. We have fought to have the grower's story heard. That story, as Neil mentioned, has not changed. The injustice is utterly unimaginable. The sense of powerlessness is overwhelming. The despair is deep and harrowing. The human cost is beyond measure. You gentlemen are the last hope to right a wrong that should never have happened and should not continue.

Let me put you in the picture, in the shoes of the grower. Let's imagine you have just walked into a Toyota yard. You have decided to buy a small fleet of cars that are going to be used to set up a chauffeur service. You have worked at your cash flows, your projections and your expected income and expenses. Toyota provides critical expert technical analysis about fuel consumption, service down time et cetera. Toyota will manage the servicing side of the fleet and also provide finance. They have seen the figures. In fact, they developed the modelling for you. They have done it before for others. They know the facts inside out. They know how much more rigorous and difficult it would be to get finance from a bank for such an asset. They are happy to lend their name to their finance arm for the purchase. They will make money on the purchase and the ongoing services. Their financiers have seen this all before. They know the Toyota model inside out. They are happy with it all and they are happy to make money.

Now imagine that Toyota, one of the largest corporations in the world, goes under. It is hard to imagine, isn't it? But then what is it to you? You will have to find a new company to service the cars. Hey, that shouldn't be too difficult—a hassle yes, but it is business as usual. Imagine now that overnight, without talking to you, they steal

your fleet and then sell it, without your permission, and have the audacity to say it is in your best interests. They then pocket the money and turn around and demand the full loan amount without one cent of offset for the money from the sale. You protest that this is really wrong. They don't care. What are you going to do—sue?

What we are all now facing is a live loan, a dead asset and no capacity to repay. You complain, as we did. In this case you would complain to the motor vehicle association. We complained instead to others, and they all said it is not their problem. We complained to ASIC over all these five years. They met with us and, after several years and investigation, they cannot even see what the damn problem is. We complained to FOS. Well, they cannot act against a corporation that is liquidated. They suggest you sue the Toyota adviser personally. Usually people complain to their accountant. Some of us decide to help. We contact the CPA, the FPA, the NTAA and ASIC. We talk to the liquidator boards. We talk to MPs. We talk to ANZ and Andrew Slattery. It is not their problem either. They suggest you go seek legal advice.

By now, anyone in that situation has limited resources, limited time and is struggling to survive, pay the bills and understand how the hell it could happen. You find that there are others like you and you join forces.

You appeal to the liquidator of a Toyota. He will be fair. Surely it is his duty. He only survives, however, if he gets work. His next meal ticket comes from where? From the financier, the very banks backing and causing the demise. If this was Toyota, they would be saying it is hopelessly insolvent. He is hopelessly conflicted. You appeal to the court, but now you are underresourced. This should not have happened. You are underresourced, underpowered, inexperienced, lacking expertise—green. Legal aid will not help you; you are not destitute and under the bridge yet. PILCH offers some untimely assistance, so you try self-representation. You are at the most severe disadvantage. Even the Supreme Court clerks tell you you are screwed. Finally, a class action from a legal firm takes the reins, and the rest is truly history.

People like me and the growers involved face a stark, horrifying reality: you did nothing wrong, but you are going to be made to pay. This is the grower story. It is the story of a bank—ANZ—who banked for a corporation where they had intimate and full knowledge of the complete operations and irresponsible lending practices, who made money from these practices, who pulled the plug with the full knowledge that this would actually cause the demise of that corporation, who knew the appointed liquidator would favour them, who condoned the sale of the assets and the growers' rights being extinguished, who are pursuing greedily the victims of their actions. They made the market, they fed the market, they made the money and they destroyed the market—full circle. And now the agribank wants blood money from the victims.

This is also the story of an RE who failed abysmally to protect the interests of growers. Lastly, it is the fate of the Lucky Country to stand up and speak for those without a voice. I would like to quote Niemoller:

First they came for the Jews

and I did not speak out

because I was not a Jew.

Then they came for the Communists

and I did not speak out

because I was not a Communist.

Then they came for the trade unionists

and I did not speak out

because I was not a trade unionist.

Then they came for me

and there was no one left

to speak out for me.

The German people were complicit in the silence. Please don't you be. These growers need a voice and justice.

If I can briefly explain the TGG role: we have done everything in our power to address the issues over five very long years. We have been the only voice for much of this time. Don't get me wrong; we want and welcome the other groups. We are united. Our focus is on the bank. Let's join the dots.

CHAIR: It is okay with me to give over to Ms Henry and Mrs Marsh, and we will get to that when we get to questions. That was fantastic, and thank you so much. I am also happy to table your opening statements if they are written.

Mrs Bezencon: I certainly would like to. I think we have been at it for such a long time. We can join the dots. There is absolute evidence in the court case documents from the recent Woodcroft-Brown case that shows clearly

and utterly that ANZ were in it up to their eyeballs and knew everything. They have admitted it, and the judge is writing that. It shows you clearly without a doubt that they are absolutely implicated. If you fund prostitution then you have to be complicit in it.

Senator HEFFERNAN: Can I ask a question before we move on? I understand you are on a 12 per cent fee for the money—

Mrs Bezencon: No, we were not.

Senator HEFFERNAN: Could you fully disclose your financial interest to business?

Mrs Bezencon: Yes, certainly.

Senator HEFFERNAN: Thank you.

CHAIR: Ms Henry and Mrs Marsh, do you want to speak on behalf of HNAB?

Ms Henry: I am a founding member and chair of the HNAB Action Group, named after the primary directors of various companies run by our former accountant adviser, Peter Raymond Holt. Different from AGAG, which Neil White and Andrew Peterson run, we are comprised entirely of victims, and there is no charge to belong and no financial benefit whatsoever to our group for our involvement in these concerns. We formed in January 2011 after connecting through a meeting at GS Andrews, the liquidator of one of Peter Holt's companies. We were aware of about 40 people prior to media this year and now comprise about 100 victims, with a core group of seven who have worked since we have formed. We have worked tirelessly to bring matters of gross misconduct and fraud to the attention of the authorities, including ASIC, which eventually banned Peter Holt, although only for three years despite his conduct fulfilling ASIC's own criteria for a minimum ban of 10 years to life, which we maintain he should have received had a thorough investigation been undertaken.

As Macpherson and Kelley were running a class action, which we were advised to join, we expected that our concerns would be covered. Regrettably, this did not transpire, and clearly the law is not necessarily about justice. Consequently, when the appeal failed early this year, we became aware that amongst our tasks Timbercorp, KordaMentha and ANZ now also required our focused attention. Involvement in the *7.30 Report* and *Lateline* coincided with support from Industry Super Australia, which learned of our ordeal through two of our members who are its clients. This led to discussing our story with Greg Combet and Ms Robbie Campo as ISA, who assisted us with first meeting parliamentarians in Canberra in June, which led to Senator Whish-Wilson calling a Senate inquiry into MIS and today's special hearing that Senator Dastyari called with regard to Timbercorp.

Even believing that lawyers running the class action would highlight the issues of concern, we had not anticipated the need to fight for justice ourselves with KordaMentha or ANZ until this year. However, we first alerted KordaMentha to our concerns about gross misconduct on 21 March 2012 when we wrote to Mr Mark Korda requesting that he not allow Peter Holt to annul his state debt bankruptcy, which we believed he intended to pursue. We referred to placement in loans without people having any knowledge whatsoever of these loans or authority and believing that we had in fact purchased a product outright. We referred to fraud in what we were told about Timbercorp in selling the product to us, concern that Peter Holt was heavily incentivised by enormous commissions—I understand these are in fact up to 15 per cent by 2008—and that Mr Holt was a predatory rogue adviser who had ruined people financially in the past. As we understood it, it was a liquidator's role to expose fraud. We stated we were keen to meet with Mr Korda to discuss our request not to allow Mr Holt to annul his bankruptcy and continue to ruin lives. We included a PowerPoint presentation that we had prepared for ASIC in July 2011. I have a document here that further outlines details of the misconduct and fraud related to Timbercorp and Peter Holt which I am happy for you to table. We did not receive a response.

We next wrote to Mr Michael Smith, CEO of ANZ, on 2 June this year and copied in Mr Craig Shepard of KordaMentha and also Mr Gonski, Chairman of ANZ, and two other representatives of ANZ. We outlined information about our action group, people being in loans they were not aware existed, advice against people's interests, Peter Holt's connection to Voitin Lawyers and fake debt bankruptcy fraud ring, determinations and ASIC's findings. Specifically we referred to Mr Smith's avowed 'heightened sense of duty and care' to his customers and communities ANZ served, and we requested to meet urgently. We received a reply four days later from James Taylor in the complaint resolution centre ANZ which said that ANZ had no connection with Mr Holt and had not appointed KordaMentha and directed us to contact KordaMentha. We wrote again to Mr Smith on 11 June requesting that he communicate with us given the importance of the concerns. We outlined what we viewed as unacceptable in the ANZ response from James Taylor, the distancing from the loan recovery process, benefiting from Mr Holt's misconduct, dismissing concerns about the administration process regarding the loans, concern ANZ was avoiding scrutiny of its role regarding the loans and recovery and requesting ANZ provide

guidance as it had the authority to do, not to pursue loans, to waive debt related to Holt victims and to repay amounts settled. Again we restated our willingness to meet urgently.

CHAIR: I am very conscious of questions from a few senators and wonder if we could table the document. Also, I think this is going to be an ongoing inquiry with an opportunity to go through this. I know there is so much detail to go through. Mrs Marsh, we want to give you the opportunity to say a few words too, but we may if possible do it as part of the Q&A. I very conscious of the fact that we have to give the town hall back and ANZ had asked for an opportunity to say a few words as well. We would like the opportunity to ask them a few questions while they are here as well.

Senator HEFFERNAN: I assure the witnesses that, if you table the documents, believe me, I read them, and you will get a phone call. You won't get a bloody email from me; you get a phone call.

Ms Henry: Thank you.

CHAIR: Senator Ketter.

Senator KETTER: I want to come back to Mr White—and thank you very much for your testimony today. You indicated at the outset that you were looking for a common-sense solution to the situation. I think you were talking about that when you referred to your survey, the outcome of the survey and what members of your organisation are prepared to do. Can you elaborate on what you see as a common-sense solution?

Mr White: Through the survey we identified a very clear sweet spot that has been put in a formal proposal and also presented directly to Craig Shepard and Mark Korda on 3 June. That sweet spot is a figure of roughly 45c in the dollar. That today represents the loans being reinstated to their value at April 2009. I also would like to say about this very shallow process by the ANZ of asking people to come forward if they have been mistreated or whatever by an adviser: when we send out forms to people, they barely manage to get one page filled out. We know full well that, if it is more than a page, you may not get the forms back. I would like to say to the ANZ person in the room: please do not insult us by coming back and saying you are going to listen to 1,200 individual cases. I do not believe you.

The reason I do not believe you is that I know the emotional and mental state of these members. They do not have the means to go through another inquisition over the next couple of years. This deserves sensible commercial settlement. I stress: Mr Korda and Mr Shepard, I call on you to do for these people what you do every day. You do it with the people who represent us every day in every other matter. You sit down, you have a commercial negotiation and you work things out. Please just sit down and be commercial. That is all we are asking. We are not asking for a handout. We are not asking to pay back one less dollar in the AGAG case. We are certainly asking that some of these worst-case victims get put into a special category and get treated in the category that that deserves, because they are genuine victims. I do not consider myself a victim, but I know that in the Holt Norman group there are significant numbers of victims. We heard that this morning. Please have social responsibility. If you are telling us we live in your world, have a crack at it and sit down with us.

Senator HEFFERNAN: I need some clarification—I apologise for not being here at the start. We have a customer declaring financial interests. You are a financial adviser?

Mr White: Yes, I am.

Senator HEFFERNAN: Did you give advice to people to take up these propositions?

Mr White: Yes, I did.

Senator HEFFERNAN: Did you earn any commissions out of that?

Mr White: Yes, I did.

Senator HEFFERNAN: Can you nominate how much you earned?

Mr White: In 2006 season, I would have received commissions of 10 per cent, which was—

Senator HEFFERNAN: How much money are we talking about?

Mr White: In that season?

Senator HEFFERNAN: Is it \$100,000, \$300,000, \$600,000? I think it is important—I think like the enemy.

Mr White: I am happy to table that amount.

Senator HEFFERNAN: Just a rough estimate.

Mr White: For the benefit of accuracy, probably \$50,000.

Senator HEFFERNAN: So you have a financial interest?

Mr White: Yes, I do.

Senator HEFFERNAN: Ms Bezencon, do you have a declaration of financial interest? How much did you earn?

Mrs Bezencon: I actually do not know, but my husband was the adviser for Timbercorp and we were getting the five per cent plus—

Senator HEFFERNAN: Would you have got \$100,000, \$200,000, \$300,000?

Mrs Bezencon: It portably would have been \$80—

Senator HEFFERNAN: Can you take that on notice?

Mr White: I can take that on board but I—

Senator HEFFERNAN: I have a very strong view, Mr Chairman: if these people are giving advice and collecting commissions, you have a responsibility. I think you have neglected your duty. The first bloody thing I would have asked is: who in God's name is lending me this money and what is the security? If you did not know that answer, you should not have facilitated the loan.

Mr White: Senator Heffernan, in response to that—

Senator HEFFERNAN: Square up if you want to.

Mr White: I think in my opening address—and I am not sure if you understood what I said—I was very clear about the issue of my role as a financial planner. I think the other thing with the commissions is that, if you are going to investigate the quantum of commissions, you need to investigate it in a holistic way, not in a simple one-point question. The average investment in this case is \$40,000-odd dollars. I am not going to sit here and be in any way claiming that 10 per cent commissions by today's community standards are correct; it is incorrect, and I regret that very sincerely. To prepare to the type of work properly that is required on a \$40,000 investment, financial planners typically ask for a figure of between \$2,500 and \$5,000.

I think we need to put things into some context here and not just call it a commission: it was a legal amount—

Senator HEFFERNAN: Thank you. I realise you can talk under concrete and we haven't got much time. My question is: surely to God the most basic question—I have asked the boss of Bendigo Bank the same question, Mr Navara the same question; they duck it. Wouldn't you have a responsibility to a person who comes to you and you present them with this package to say to them, 'If you don't know it, you should know it: what is the securitisation of the facility?'; and if it is their home, tell them it's their home.

Mr White: I think you should read the *Hansard* of what I said earlier. I was very clear on the fact. I will go back to my opening statement, which I will happily—

Senator HEFFERNAN: Please don't.

CHAIR: There are a couple of points—I am very conscious of the time.

Mr White: I think I said that I believe that the security of the loan was the underlying asset. I think the earlier testimonies showed very clearly that we, as financial advisers, were completely unaware of that—

Senator WHISH-WILSON: This is really important. Could you just re-emphasise that point? You were unaware—

Mr White: Absolutely.

Senator WHISH-WILSON: that people buying these schemes were mortgaging their homes?

Mrs Bezencon: No, I didn't say that.

Senator WHISH-WILSON: Sorry, that is where I thought you were going.

Mr White: I was saying that I undertook loans with Timbercorp—two points: I had no idea they were backed by the ANZ and I certainly had no idea that, other than the underlying security of the actual woodlots or the agricultural lots, there was any further security than that set up.

Senator HEFFERNAN: Just pausing there: if that is the case, then how come your home is at risk? You must have signed something that gave the bank the capacity to say, 'Give us your home'?

Mr White: Clearly, I must have, yes.

Senator HEFFERNAN: What sort of a dope financial planner are you?

CHAIR: Senator!

Senator HEFFERNAN: I will withdraw it, if it offends you.

Mr White: It is offensive and it is completely unnecessary.

CHAIR: Senator—

Mr White: You have formed an opinion that is incorrect.

Senator HEFFERNAN: If you did not know—and you are a financial planner—that you had signed a document that had put your home on the line, then what is wrong with it?

Mr White: I did not sign a document.

Senator HEFFERNAN: How come there are people out there with their homes on the line?

Mr White: Senator, I did not sign a document that specifically put my home on the line. I signed a document that I understood was for a non-secured loan.

Senator WHISH-WILSON: Mr White, what you have said to me is probably the critical point of one of the issues that the committee is going to have to investigate in more detail, which is that ANZ is claiming everyone's money and houses, yet it does not seem as though they had anything to do with the origination and signing of these loans. I do not understand how they can now claim responsibility of your assets financially when they had nothing to do with it, except indirectly. I understand that there is a lot of emotion in here, but it is considered unparliamentary to clap during a Senate inquiry. I am not being rude, but I ask the audience if you could, please, refrain from doing that.

The issue here to me is really critical. We have to bore down into a lot more detail after today. ANZ is claiming money and people's houses on full recourse loans. You were not even aware of it as a financial planner, and you have a sophisticated knowledge and understanding of financial products. That is a really critical point. We need to find the documents on what heads of agreement were signed between Timbercorp and ANZ, and who was working in the origination and signing of these loans. We need to get into this in a lot more detail because it is not stacking up.

Mr White: I think importantly, for Senator Heffernan's benefit, in relation to the loans with Timbercorp Finance, it is a company that is being controlled by a liquidator who is aggressively pursuing the people whose loans are owed. Timbercorp Securities Limited, which is a separate company where the assets have been sold off, is a totally separate issue again, notwithstanding they had common directors which I addressed earlier. That is, quite frankly, the nub of the problem. The money that was provided was ANZ but the loan documentation was with Timbercorp Finance. Yes, maybe I can talk under concrete, Senator, but as long as I talk sense while I am under the concrete I think it is relevant.

CHAIR: I just want to cut off where we are at the moment, because I do want to get to Ms Henry, and I want to bring us back to what we were talking about. We can have an endless discussion about what did, should or should not have happened in Timbercorp. Frankly, I think there is a universal view in this room that what happened was wrong, was improper, and if everyone here was able to do it again there would be a whole lot of different decisions made, particularly based on information. I think we have established that, and we have had senior executives of Timbercorp say that they were kept in the dark and frankly argued that there should be a royal commission into this matter.

The question at hand at the moment is about what are the steps and possibilities of trying to resolve what is a desolate and horrible situation. I think we deserve that for the victims that we heard from this morning. With the indulgence of senators I would like to get the discussion back there. There is so much to look at and there are so many questions that have been raised this morning, and there was explosive testimony earlier today. We will get to the bottom of all of that about what happened, about who knew what and about who was responsible. Justice deserves to be done there. That being said there is also a question that a lot of people have of how we resolve this now that we are here, not just how we got here. To that end I will turn to Ms Henry.

Ms Henry: Thank you very much, Senator. I feel absolutely compelled and I would really like to distinguish that the Holt, Norman, Ashman, Baker Action Group are separate to the other groups. We are entirely victims. We had no financial understanding. We did not get commissions. We did not put people in these projects. We are victims of complete and utter fraud, and I cannot think of any other situation where a fraud victim is actually required to pay one single cent to the people who have ripped them off. I really would like to say that I have enormous trouble with the wordings that have been used by KordaMentha and others as a result in saying that they have offered us discounted settlements. This wording denies that people's loans have effectively doubled on the 2009 loans with interest penalty rates and, more particularly, as far as we are concerned a victim of white collar crime or fraud cannot be offered anything but their money back, and compensation. Further demands for more money that was fraudulently obtained from us is not a discount but a further injustice if it can be legally enforced while the masterminds and the executors of this misconduct remain safe and sound and scot-free with our money.

I sit here and feel that I do not know how to convey it. It feels like I am in some sort of—I do not know. How can anyone ask, especially the Holt Norman victims, to pay? It is like you come in and rob us and then you want to take more. Then you say, 'We're actually going to take a little bit more, but to be kind we will discount it a little bit for you.' It is beyond basic common sense. I think this has to be appreciated. I do not know about anyone beyond the Holt, Norman, Ashman, Baker victims. If you did not even know that you had a loan, if you were told a whole lot of stuff, which numerous of us can confirm is the case before we met, so we did not get together and concoct an argument—

Senator WHISH-WILSON: Ms Henry, I will just stop you there. With your victims group we have heard some extraordinary claims that people did not even know they had loans, do you know how widespread it was across the tens of thousands of investors that we know were in these streams?

Ms Henry: No, because we only know about our group.

Senator WHISH-WILSON: Have you had any sort of feedback from other groups as to how widespread this might be?

Ms Henry: No.

Mrs Bezencon: Everybody was in the same boat. As a financial adviser they certainly seemed to have got the raw end of the stick. They did not get information. They were asked just to sign blindly and with no follow-up. Certainly from an advisers point of view you would never ever have the power of attorney to sign documents on behalf of clients. That is an absolute conflict.

Ms Henry: We did not know that we were signing a power of attorney. What we were told we were signing was not what we were signing.

Senator WHISH-WILSON: We will get into Great Southern at some stage, hopefully, as a committee. I had better not say that we will, but I would like us to. In relation to the practice of Mr Holt and his firm, I am wondering how widespread that kind of malfeasance was?

Ms Henry: We have been told—and I cannot remember who right now, but someone has told us—that there are 2,000 victims of Peter Holt and his company.

Senator WHISH-WILSON: There were 2,000?

Ms Henry: Yes.

Mrs Bezencon: One thing to be said is that everyone who actually invested was a victim in the sense that you had an asset and suddenly the asset got sold, taken away, your loan did not get offset and you got nothing. You got a large loan and a dead asset. That is 18,000 people.

Senator WHISH-WILSON: I have a quick question on that asset. Something I looked at last night when I was going through some evidence, in terms of your share of that asset it seems as though you have cropping rights, I suppose, which is one way to put it. Both you and Mr White have good financial understanding. Were you aware, when you were investing in the schemes or putting others in them, that really what their asset was a right to crop some trees but you did not actually go in the land?

Mrs Bezencon: That was not true for the woodlots. In the woodlots you own the land. In the horticulture they referred to them as lots, which could lead to confusion, because they did say it was lots. You were given a parcel and a map and you were shown where your lots were and you could go and see them and hug the trees, so to speak. There was certainly a perception that you actually did get the tree although the documentation certainly said that you were entitled to the harvest. The trees only went across into the other entity after 23 years. So you effectively got a 23-year annuity income, and most of the clients we had were in self managed super funds and it suited them because it was long-term uncorrelated annuity income.

Mr White: In my case I certainly was aware that I was engaging in a loan with Timbercorp Finance. I want to make it very clear that I knew I had a loan and I knew I had an obligation. I certainly did not know that ANZ was the backer of that loan, and I certainly did not believe that the loan had any more recourse than the underlying rights to the crop. I think that is really the point you are asking, and I want to be very clear on that.

Senator WHISH-WILSON: I think it is extraordinary. I really do.

Mrs Bezencon: If I can just very quickly read it, it says: 'What security is required?' This is below 'An explanation'. It says: 'We require a fixed charge over your interest at any time in the project, including in the lots and the project agreements.' What would you think that means?

CHAIR: Mr White, Mrs Bezencon, Mrs Marsh—unfortunately we did not get a chance to get to you today—and Ms Henry, thank you so much. I know the incredible amount of work you do. I know you represent a lot of

people and I know that it is a thankless task a lot of the time. I really appreciate the assistance you have been giving this inquiry.

Senator HEFFERNAN: We have not started yet.

CHAIR: We are only just getting started, so there will be a lot more of this. Thank you.

MORRIS, Mr Jeff, Private capacity

[12:41]

CHAIR: Welcome. For the interest of the many people in the public gallery who have chosen to attend today, I will say a few words about Mr Morris and just place Mr Morris in context. Mr Morris became known to the Senate economics committee during the quite large inquiry we did into the role and conduct of ASIC. It is fair to say that Mr Morris was fairly instrumental in revealing information and documentation regarding the role of the Commonwealth Bank. I think others have described him as the CommBank whistleblower. He really revealed quite a bit of information that led to the calls of this committee and other places for a royal commission into the conduct of the Commonwealth Bank. I know Mr Morris has quite a bit of expertise in some of these areas. I will ask Mr Morris to make a few opening remarks and then give the senators an opportunity. I know there are quite a few questions, Mr Morris, and I know you always have good things to say, so I am not sure if you can keep your opening remarks relatively brief.

Mr Morris: Thank you for this opportunity to address you on this important matter. I come before you as someone who has spent the past 30 years working in the financial services industry. I have degrees in economics and law from Sydney university and I am a certified financial planner. I have worked at three banks in my career: as a corporate tax manager at NatWest, as a vice-president at Bankers Trust, as well as being the whistleblower at the CBA.

What happened to these people in Timbercorp is simply a repetition of a story that has been played out in financial services in this country time and time again. The common element is always that there is a group of people who have been fleeced—decent, ordinary Australians who put their faith in men in suits and who, in one way or another, had this faith betrayed. The cast of characters responsible for this litany of disasters is long and varied. One, however, towers above all others. As Napoleon once said, a major disaster implies a major culprit. I accuse ASIC of being that major culprit. Through their lethargy, the financial services industry has been allowed to develop without let or hindrance from the regulator, not just riven with conflicts of interest but fundamentally based on conflicts of interest that act to the benefit of all the players involved except the victims, who are spat out at the end of the process. Financial services have been so ineffectively regulated in this country as to create a haven for predators, or, as the chairman of ASIC recently put it, a paradise for white-collar crime.

Timbercorp, like Great Southern and many other scams, was at bottom a Ponzi scheme that relied on harvesting a new crop of victims each year to keep going. Once the music stopped, it was all over. The tax office bears some responsibility for what happened here, issuing black-letter law tax rulings without due regard to the broader commercial reality. These rulings were used to validate and even market these schemes. People were reassured by these rulings, as they were by letters from large accounting firms published in the product disclosure statements approved by ASIC. There should be more to regulation than just checking the i's are dotted and the t's are crossed in the fundamentally fraudulent but technically compliant glossy documents used to promote these schemes. Incredibly, though, in this country that is about the extent of the product manufacturer's obligations under chapter 7 of the Corporations Act. It imposes disclosure obligations, not conduct obligations, on product manufacturers. This single fact goes a long way to explain Timbercorp and similar product failures. This has of course been the case for some time but no doubt stung by recent revelations of their incompetence in the CBA financial planning scandal and other matters.

ASIC in their submission to the financial system inquiry have pointed out that there might be merit in giving them greater powers in relation to the regulation of financial products and product manufacturers. One would have thought that this was blindingly obvious and long over due. The Financial Conduct Authority in the UK has such powers. No financial planner or accountant worth their salt would have put their clients into these agribusiness schemes. The level of commission alone should have sounded a note of caution about their bona fides, but of course the commission was there precisely to seduce the judgement of these experts. The unaccountable research houses also played their part by providing defective product ratings, on which these professional advisers sought to rely and used to help sell these products.

Last but by no means least, we come to the banks. Ever since Watergate, the question everybody asks in this situation is: what did the banks know? No competent financial services professional could have been under any illusions as to what was going down here. Just as in the Storm Financial debacle, the banks with their telescopes and their blind eyes were an integral part of the scheme. The ability of the investors to tap friendly banks for loans was the lifeblood of both the Storm and Timbercorp models. If the banks did not know, they ought to have known. The time was that the banks cared too much about their reputations to get mixed up in this sort of thing. Now, with the property imperative to shovel money out the door, all that seems to matter is documentation and security, and as long as you have both of them, you do not need to worry about soundness.

Another crucial question to ask is: when did the banks know? When did they know that Timbercorp was doomed? The bankers in any organisation normally know before anybody else. Did they call in the receivers straightaway or was it in the bank's interest to let the organisation continue trading and taking the punter's money?

Let me give a simple example of how these things were sold. Someone came to me once for a second opinion on a forestry investment being spruiked to her by a financial planner she thought was a friend. I told her that you could gauge how bad it was by the level of commission payable—sure enough, eight per cent to the planner. He had not mentioned that. In fact, he said he was just doing this to help her. The advice was incompetent in that the investment would generate \$57,000 of tax shelter and yet her taxable income was only \$45,000. Not that there was any advice as such. Despite the pressure to sign up, the plan had also thoughtfully provided a 'no advice' waiver to be assigned. That is what these people do when they know what they are peddling is garbage. The poor girl left my office in tears, distraught at the deceit and betrayal. She was one of the lucky ones.

So there we have it, a paradise for white collar crime, presided over by the timid and hesitant regulator ASIC, as the previous Senate inquiry found them to be. The main culprits involved in this scam being, aside from ASIC, the product manufacturer, the banks, financial planners and accountants. Whilst what happened here is different to what happened at CBA, the environment in which both occurred is the same as is the terrible impact on the victims. The linkage is actually more direct than that, as I believe that many of CBA's financial wisdoms and financial planners put people into Timbercorp, which I do not find at all surprising given the other things that were going on there.

How many more times must this harvesting of victims be played out before we see fundamental reform of financial services in this country? We need a royal commission into white collar crime and we need a new regulator.

Senator KETTER: I am interested in your comment about when the bank knew about what is going on. You made the comment that banks normally know what is going wrong with companies before anyone else does. Could you elaborate on your knowledge about that?

Mr Morris: I will give you an example. In 2004, I was working at CBA and I had a meeting with a couple of people from a different area of the bank, a property lending area, and the two principles of Fincorp, the founder and treasurer, who was also his nephew. This was in 2004. At the end of the meeting, I was gobsmacked and I said to the other CBA people: 'What on earth is the bank doing dealing with spivs like that? They are clearly going to go broke.' The two fellows from the other area thought that was quite funny. They said: 'We know they're going broke. That's why we're dealing with them. We're the intensive care unit.' That was two years before Fincorp went broke, and the CBA had that business in the hands of an intensive care unit, looking out for the bank's interests. And no doubt there was no 'intensive care unit' on the organisation chart; that was probably the nickname for it. Look, the banks see the cash flows, they see the money going in and out, and they know how these businesses are working—and that is their business at the end day.

Senator KETTER: Basically you are pointing to a conflict of interest there?

Mr Morris: Well there is if the bank is lending to the business and at the same time is lending directly to the customers of that business. It does create a conflict of interest in that possibly—I do not know what has happened here, and I stress that nobody knows what has actually happened here, and the only way to get to the truth would be to have a royal commission, with the power to subpoena the documents and call witnesses and spend the time on it. But it is certainly quite possible that the bank could decide to let the business run on for a couple of years and take more money from the investors if that had the effect of reducing the bank's direct exposure and increasing the banks security over various investors' properties. That is a possible scenario, and that is a big problem.

CHAIR: That is the scenario, the model, that was put to us earlier today, Mr Morris, by senior executives of Timbercorp. For someone from a banking background, is that feasible?

Mr Morris: It is entirely feasible. But the trouble is, of course, it is not going to be easy to find the evidence to prove that that is actually what has happened.

Senator KETTER: You pointed to the need for a royal commission, so not only into this unfortunate episode but also into the banking sector overall?

Mr Morris: Yes. I have never actually called for a specific royal commission into CBA because I think the whole sector needs to be investigated.

Senator HEFFERNAN: Hear bloody hear!

Senator KETTER: You have already pointed to some of the parallels between what happened in the Commonwealth Bank and what has happened here. Can you elaborate on that?

Mr Morris: There is a common element in that they are operating in an environment that has been regulated by ASIC. And when you have a regulator whose focus is just on disclosure, because that is where their power is under the Corporations Act, and when they focus on documents and they are not focusing on conduct, then they are just—to me, as somebody who has been in the industry for a long time, it just seems as if ASIC have never been interested in getting involved, have never been interested in getting their hands dirty. They stand back, and when another crop of victims get harvested they fold their arms and basically say: 'Nothing to do with us. We've investigated, we didn't find anything.' This is pretty much what they did with at CBA before the Senate inquiry looked into it further. That is the problem, and I think everybody in the industry knows that ASIC is a joke.

Senator KETTER: Do you think the whole truth has come out in respect of the CBA scandal?

Mr Morris: Not at all. The bank have never admitted the full extent of what went on there. There are things that have gone on in Cairns. We have never had an explanation as to how a planner called Rollo Sherriff came to be suspended by the Financial Planning Association back in 2004 and then allowed to go back to practising by the CBA. It was covered up. A number of victims were paid off at that stage and then he blew up again in 2010. There has never been any explanation as to how that happened.

Senator KETTER: When you say there is a cover-up, how far up the management chain do you think that cover-up went?

Mr Morris: I wrote to the top of the bank in June 2009, and so it went all the way to the top. What was frustrating was that nothing changed and they allowed executives who had been involved to collect bonuses and leave and so forth. So there is a lot more there. I guess it will be explored at a separate hearing, but there is a lot more to come out there.

Even in their submission to the last Senator inquiry, CBA were quite dishonest in the way they presented the way Nguyen had been suspended. They did not mention his earlier suspension and they did not mention the fact that there were whistleblowers and articles in the trade press that forced their hand. CBA's submission, which was adopted by ASIC, would have given the world the impression that they had found a crooked player and put their hand up. That is just not true, and nobody at CBA has taken responsibility for misleading the Senate in relation to that.

Senator HEFFERNAN: I have the 2008 *Timbercorp Projects Finance Package* application here.

Mr Morris: Hopefully you did not fill it out, Senator!

Senator HEFFERNAN: I have never seen anything as simple. It says, 'Good on ya, cobber; we've accepted your proposition.' I have to say the financial planner that put this guy through this needs his head cutting off.

Mr Morris: Incompetent.

Senator HEFFERNAN: In this document—I will table the document—

CHAIR: That document is tabled with the consent of the committee.

Senator HEFFERNAN: It signs up the power of attorney. These financial planners said they did not know people were putting their homes at risk. This power of attorney in this document, which this guy has signed, and Timbercorp agribusiness has accepted, says:

... do anything which you can do as owner of the *secured property* (including selling or leasing or otherwise dealing with the *secured property* and starting, conducting and defending legal proceedings ...

They have handed the complete power of their affairs over, under the mantle of a financial planner, saying, 'Sign here.' The guy has only signed this in one place. He has only filled out three lines about his business, how much he earns and his costs. He reckons it only costs him \$200 a week to live. And there is the approval, in June 2008. I table this document.

CHAIR: The document has been tabled. We will remove personal details of the loan documents.

Senator HEFFERNAN: Yes, delete the personal details.

Mr Morris: It is my belief that people are far too trusting. They go to financial planners and they place their trust in them. It has long been a belief of mine that people cannot tell the difference between a good and a bad planner. There are good planners in the industry and I think it is a shame that everybody gets tarred with the same brush. Equally, as we all know after recent media attention, the standards to qualify as a financial planner were ridiculously low. So basically financial illiterates, waving some certificate—which you can do on-line tests for and do in a couple of weeks—have been running around masquerading as financial planners and putting people

into these rubbish products which they themselves do not understand. But because they wear a nice suit, they sound plausible and they have command of the jargon, when they put a form in front of people, people just sign it. The tragedy is that people sign things without reading them. It is like loan documents. I think if most people read their mortgage document through, word for word, and insisted on having it explained to them, they would be appalled at the powers that the bank has in that document.

Unfortunately, people do these things because they are placing their trust in people. The reason the unscrupulous elements in the industry are so free to operate is because they know they have nothing to fear from the regulator. All that has happened here with the Holt fellow is that he has belatedly been banned by ASIC from working as a financial planner. He is still practicing as an accountant. He can get somebody else—he can get one of those kids with a scrap of paper—to be the financial planner in his office.

If you are caught by ASIC the worse you face is being lashed with a wet lettuce leaf, quite frankly. That is why these people feel absolutely fearless to keep behaving in the way they have.

CHAIR: I just want to acknowledge Jenny Macklin's presence in the room. She is the federal member for Jagajaga, who has been a very strong advocate for a lot of Timbercorp victims. Jenny has travelled all the way from interstate, Victoria, where she was speaking last night, to be here today. I just want to acknowledge her presence and thank her for coming today.

Senator WHISH-WILSON: Mr Morris, how easy is it to be a whistleblower in an organisation like a bank?

Mr Morris: It has been a tough journey for me over the past six years. In particular, it was my family that really bore the brunt of it. There were three of us, originally. One unfortunately died four years ago. He was only 35 years old. I was the leader of the group, and I have always wondered whether the stress of this had something to do with his early death. I do not know; I never will. It has had a terrible impact on the other whistleblower's life. He spent six months having nightmares, afraid that the perpetrator in this case was going to come for him with a sawn off shotgun. As I say, my own the family suffered.

So there is not a lot of incentive to be a whistleblower, but you do not really have any choice either if you have any sort of morality, because the things that have been going on in this industry have been going on for far too long and it is time that something was done.

Senator WHISH-WILSON: Are you still practising in the financial services industry?

Mr Morris: I am not practising. I am still a certified financial planner; I am just not practising at the moment.

Senator WHISH-WILSON: If you get up and running, you have my business, for what it is worth.

Mr Morris: Thank you.

Senator WHISH-WILSON: I am interested in CommBank—and I and others on the committee were part of the ASIC inquiry. What do you think the key risk was for CommBank in terms of their response to the scandal and trying to address it?

Mr Morris: In fact, when I wrote to the senior managers at the bank, including Ralph Norris, in 2009, I pointed out in that document that the lower level managers were putting the bank's good name at risk and that they did not understand the fundamental importance of the brand.

Senator WHISH-WILSON: Reputational risk is the key?

Mr Morris: Exactly. Sadly, it seems that nobody has ever really got that, because the bank have never really put their hand up. They still deny that there was a management cover-up, but they have actually got rid of a lot of the managers who were involved—who, unfortunately, because of the way this industry is regulated, are elsewhere in other places working their magic. The bank have come up with this latest compensation scheme, clearly only in order to avoid having a royal commission, and they are running this scheme in the same high-handed way that they behaved for the past six years. They seem to be subject to even less supervision than they were subject to before. ASIC is not even supervising this latest scheme. CBA is appointing and remunerating all the players involved and the victims who come forward are first going to have to run the gauntlet of CBA's own customer experience people, who have been fobbing the victims off for years. The man in charge of that is the same man who has been there for six years. I think this scheme could cost them \$200 million.

Senator WHISH-WILSON: With what we are dealing with today, which I think is just the tip of the iceberg, regarding financially engineered products like MISs, how much reputational risk do you think there is for ANZ on this issue, now that we are only just starting to uncover—

Mr Morris: I think there is risk and it is pretty much identical to the Storm Financial situation. CBA at every opportunity sought to argue that they were just the lender and were at arm's length from the financial adviser. Frankly, that is rubbish. The bank was deeply involved in that scheme. As I say, if they did not know, they ought

to have known as competent financial people that the Storm model was unsustainable. I will give you proof of that. In the nineties, when I was at Bankers Trust, the company made a decision not to deal with the Cassimatises, who were later involved in Storm. In the 1990s, Bankers Trust made a decision not to deal with them, and they did it partly out of reputational risk and partly in trying to do the right thing. But nobody would even bother wasting their time reporting anything to ASIC in those days because you knew that nothing would happen.

It is the same with the Timbercorp thing in that the bank obviously rests on its dignity and says, 'We're a bank; we're a lender. We're going to shift the whole problem onto the product manufacturer,' which is now defunct, 'and the financial advisers.' To be fair, the financial advisers should not have to carry the whole can here. The advisers who put people into these products were incompetent—there is no question about that—but they were only incompetent and maybe a little greedy.

Senator WHISH-WILSON: On that point, we have not really got any details today as to how the originators of the finance at Timbercorp were trained or what standards they were held to. If ANZ was not directly financing these people itself, they were doing it through a shelf company and through God know who. We do not have any detail as to what kinds of standards they were putting in place—we do have a document. You have talked about culture before in financial institutions. How would you advise us as a committee to approach this issue?

Mr Morris: I think what you need is for some whistleblowers to come forward. You really need that inside information. To be honest, I think you are going to be groping in the dark trying to find out what actually happened. I believe it would be very difficult for this committee, with the time and the resources that you have, to get to the bottom of this. I think this will take a royal commission. CBA will take a royal commission to get to the whole truth. I think there is still more that can come out at the next Senate hearing. The point is that, when the finance minister let CBA off the royal commission, they heaved a huge sigh of relief and it is business as usual. So the lesson has not been learnt. The royal commission is also necessary for everybody in this industry to learn the lesson. I cannot understand why you would let CBA off the spectre of a royal commission before all the victims had been paid, before you had seen the colour of their money. I honestly believe that you are up against it here. The challenge will be to find the smoking gun.

Senator WHISH-WILSON: Senator Heffernan is the only government senator here. It will certainly be interesting to see how they respond if this committee puts up a second recommendation for a royal commission. If that gets ignored, it is going to be a lot harder for them. I am not saying that we will; that is something that is decided by the committee as a whole.

Mr Morris: I think it is inevitable. We have seen so many of these things over the years. Cast your mind back to Estate Mortgage in 1989. Fincorp, Australian Capital Reserve and Westpoint were all just a straight reply of Estate Mortgage in 1989. The reason these things are happening 25 years later is that nothing has changed. If we do not have a royal commission I suspect nothing is going to change and things will keep happening. As more of these things come to light—and I think more is coming to light at the moment—denying a royal commission would be like trying to hold back the sea. I think ultimately it has to happen, simply because the problems are so widespread and so bad. The reason the CBA and Timbercorp story resonated with the public was that just about everybody in this country has been done over by a dodgy financial planner, or has a friend or relative who has, or has had problems like this with a bank with Timbercorp. There is just too much of it around.

Senator HEFFERNAN: I just rang Timbercorp. This bloke is not there anymore; he has disappeared into the ether. They said they have never heard of the guy who signed this agreement—and we will delete the names. We have received evidence from financial planners, accountants, who say they were not aware of what was being put on the line, that they are purer than the driven snow. But if they have agreed for their clients to sign this document it is all in here! I mean, the power of attorney in here almost gives up your children it is that powerful.

Mr Morris: That is about what it is designed to do, that is right.

Senator HEFFERNAN: So this has gone through a financial planner and then it has gone back to Timbercorp—from the client, not from the financial planner. I think we have a long way to go on this.

Mr Morris: Indeed.

Senator XENOPHON: I just want to go back to the class action against Timbercorp, which was dismissed by Justice Judd of the Victorian Supreme Court. One of the reasons for his decision was that there were not significant risks under the act because Timbercorp was financed by the banks, which provided it with a strong cash flow. So, in a sense, being funded by the banks gave it protection against action by those who lost their money. Would you see the ANZ's role here as showing a lack of due diligence, wilful ignorance or reckless indifference? What is your view given your knowledge of how the big banks work?

Mr Morris: I think you have probably covered it. It is one or all of the above. I think the reason banks are doing this sort of thing today when they didn't do it 20 years ago is that there is so much focus now on banks' performance and profits. Banks have become sales machines. I think a lot of the probity, a lot of the old-fashioned stuffiness of a bank where you actually had to go and apply for a home loan and you had to have been a customer of the bank for several years before you qualified for a home loan—now you have people filling out forms from the boot of their car in your lounge room. They are now chasing sales; it is all about chasing sales. The banks are all doing this. They all put aside, perhaps, what they know they ought to be doing. It comes down to the lender in his car. He needs to make a certain number of loans to make budget not just to get a bonus but in many cases because he is under pressure to do that to keep his job. So it comes down in a cascading hierarchy from the top. Everybody's bonuses are driven by the sales of the tier below them. Because they are sales machines, yes, you would look at Timbercorp—Timbercorp and the others were a joke in the industry. Anybody who in any way had half a clue knew that the whole thing was a scam and would blow up at some point.

Senator XENOPHON: On getting finance from the bank, it appears from Justice Judd that it seemed to provide bank cover to Timbercorp in defeating the class action against them.

Mr Morris: That is right. The fact that the bank was involved probably linked—I think a lot of people said they didn't know ANZ was involved. Had people known that ANZ was involved it probably would have provided them with comfort that it was on the up-and-up, because you had one of the big four involved. It was like people in Storm getting margin loans from Colonial, which is part of CBA: they were thinking, 'It's got to be a reputable company because they're involved with Colonial.'

CHAIR: Mr Morris, thank you, again, for coming before us. I know you have been a friend of the committee and on numerous occasions you have come and presented evidence.

Senator WHISH-WILSON: Thank you for speaking up and doing everything you have done.

BROWN, Mr Gerard, Group General Manager, Corporate Affairs, Australia and New Zealand Banking Group Ltd

[13:02]

CHAIR: We have a representative here from the ANZ Bank. I thank Mr Gerard Brown for making himself available. Mr Brown is a guest of the inquiry; he is a guest of the committee. I ask everyone that they afford him the due level of respect that we afford all our witnesses. I note that we are running ridiculously over time and that we are not going to have an opportunity to probe all the ANZ matters. I have absolutely no doubt that this is a hearing that is going to be continuing and that there will be plenty of future opportunity to do that. Mr Brown, I invite you to make an opening statement.

Mr Brown: Thank you for the opportunity to make a brief statement today. I would like to acknowledge the seriousness of the issues that the committee has been hearing today. I have listened carefully to the proceedings and will convey to the highest levels of the bank what has been said here today.

We committed some time ago to make a formal appearance before the committee once our submission has been made on 15 December and the advice review that we have underway has progressed, and also when the deputy CEO of the bank is available. At that time we propose to make a comprehensive statement and will respond to the relevant issues that have been raised here today.

CHAIR: Before we get to questions, there are a few acknowledgements I want to make. I want to personally thank Mr Brown. I have had several conversations, meetings and discussions with Mr Brown. While there have been different views at different times, Mr Brown has always made himself available and has putting myself and others on the committee in contact with the highest levels of the bank. I acknowledge and appreciate that. I also acknowledge the fact that the bank has decided that ownership of this matter is going to be given to the deputy CEO, Mr Graham Hodges, and acknowledge the fact that a bank, or an institution, the size of ANZ is placing something in the hands of the deputy CEO is a demonstration of good faith and trust in the significance in which they see the matter.

Obviously it has been reported in the media. We have been in contact with the chairman of the bank. We have been in contact with the deputy CEO. I know senior figures on both sides of politics have been in touch with senior members of the bank, right up to that top level. While we may hold some different views, I want to acknowledge before we get to questions the positive role that Mr Brown has tried to play in getting these matters resolved. Frankly, I think there are a lot of questions as to what happened in Timbercorp and the role of many organisations, including the ANZ Bank. That will be explored in due course, but I think the priority for a lot of the victims and a lot of the people we heard from here today is to have this matter resolved as soon as possible. I think that is a view that the bank would share with the victims groups. The sooner these matters can be resolved and the sooner the hardships can be addressed, the better for all.

Senator HEFFERNAN: It might be premature to ask incisive questions, but one of the curiosities for me, and it has become more apparent today, is that part of the answer is that loan document. You may be able to come to this better in December, but were the people in your bank who were in charge of this facility to Timbercorp conscious of the need to trace the performance beyond the second lender to the actual performer? The person who bought the lot itself rather than the shell company, Timbercorp Finance, should have been of interest to the bank. Did you have full traceability to the performance of the Timbercorp lot?

Mr Brown: A number of the questions this morning have gone to the relationship between the bank and Timbercorp, which I think one of your colleagues referred to as the heart of the matter. We intend to make a comprehensive statement about the relationship between ANZ and, in particular, Timbercorp Finance when we have the opportunity to appear before the committee once our submission has been made. We have made some good progress on the financial planning review.

Senator HEFFERNAN: When you set out on this journey with Timbercorp, protecting the interests of the bank, did you believe that you had more security than the vines in the yard, as it were, on this facility? What was the security that the bank had in the back of its mind that it would not go belly up?

Mr Brown: We would like to be helpful to the committee, and the best way for us to do that is to be given the opportunity to make a comprehensive statement—and I emphasise it will be a comprehensive opening statement, as the chair has acknowledged, by the deputy CEO of the bank. We will go to the heart of these matters which there have been a series of questions about and a number of claims made by people appearing this morning. I have made detailed notes about those matters and we will address them when we appear.

Senator KETTER: I note in the media release yesterday that there is a comment that the ANZ has offered to intervene in any case where a customer feels they were given inappropriate advice from an ING Australia aligned financial planner. Can you elaborate on what sort of assistance you are able to provide there?

Mr Brown: Yes, and thank you for that question. If there are any people the committee is aware of who were directed into Timbercorp by ANZ financial planners or the various affiliates, if we are able to be made aware of their details as soon as possible, we will take whatever action is necessary in relation to hardship issues.

CHAIR: On that note, we have been presented with a document today that has a list of, I believe, 120 different people. I do not believe they are ANZ planners but I believe they were planners in companies that are now owned by ANZ. That is my understanding. If these are going to be public documents, I will provide that list to the bank. I will ask the committee at some private point whether we would be prepared to present that list to the bank even if it is not a document that we are going to be making public.

Senator HEFFERNAN: Chair, could I just seek clarification on the affiliates of the bank. When someone is an affiliate of the bank, does the person dealing with the affiliate as their financial adviser realise that person is an affiliate of the bank?

Mr Brown: They may not.

Senator HEFFERNAN: Could I put one final thing on the record, just so people in this room know how bloody difficult all this is and how the law is an ass. A financial planner who has several hundred clients is involved in an MIS. I will not describe it because he is going to cop it. The financial planner's clients were suing him through the court system. During the hearing where he was being sued, the financial planner was called into the judge's chambers and told by the judge that he was not going to win the case and his best advice was, 'You'd better go bankrupt,' which the financial planner did on the advice of the judge during the bloody case.

CHAIR: I think it is fair to say that Mr Brown is not really in a position to comment on that.

Senator HEFFERNAN: No. I just want to get that on the record.

Senator KETTER: Mr Brown, you may not be able to answer this question, but given what we have heard today in relation to Timbercorp—and we have also had evidence about what has happened with another major bank, the Commonwealth Bank—don't you believe it is time that we had a royal commission into the industry?

Mr Brown: At the time when we have the opportunity to make a comprehensive statement, we will address that matter.

Senator WHISH-WILSON: I appreciate you appearing at very short notice. It is a sign of good faith and I look forward to asking questions when the right time comes. The only thing I would say on record—and it is just my personal philosophy—is that I would ask that you sometimes but not always put people before profits.

CHAIR: In conclusion, I want to acknowledge and thank all the witnesses we have had here today, all the different people who have come with their stories. It has been a very difficult day for a lot of people. There have been a lot of very emotional stories. I also acknowledge the contributions that people have made and the incredible amount of travel that people did to be here today. Mr Brown, in concluding, I want to thank you and I appreciate that there are others. You will speak to this more fully at a more appropriate time, but thank you for making the trip down to hear the stories directly. That concludes our first hearing into the managed forestry investment schemes.

I thank the secretariat, the sound team and the staff for the support that we have been given. I note that Mr Turner and Dr Dermody have travelled from Sydney to Perth one day after another, for hearing after hearing. I think the Senate Economics Committee holds more inquiries than anyone else, so that is something we are continuing to work on. I thank everybody. Submissions are still open. Tell us your story. Make a submission, please. We are trying to get to the bottom of a lot of matters.

Committee adjourned at 13.22