Review of the financial system external dispute resolution framework:

Establishment, merits and potential design of a compensation scheme of last resort and the merits and issues associated with providing access to redress for past disputes

(via a Financial Redress Scheme of Last Resort and a Retrospective Scheme)

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Introduction

1. **HNAB-AG** is most grateful for the invitation to contribute to this critically important review and to send a representative to participate in a roundtable discussion of initial consultation questions on 5 May with the **External Dispute Resolution Review Panel** in view of the Government's amendments to the terms of reference on 2 February 2017. We note these include recommendations on the establishment, merits and potential design of what has been termed a "compensation" scheme of last resort and the merits and issues associated with providing access to redress for past disputes. Further to this, and in response to the Panel's supplementary issues paper, our submission elaborates on and outlines the rationale for our position with detailed suggestions and some examples.

2. Some additional comments pertaining to the subject were forwarded to the Panel in February 2017 in light of the Government's announcement after our submission had been lodged for the deadline of the previous terms of reference. As these issues have been worked on further in relation to a *Senate Inquiry into Consumer Protections in the Banking and Finance Sector* and after preparing to meet again with the review Panel we are grateful for this opportunity to provide further information and ideas. It is vital this subject receives a thorough and carefully considered response to address the myriad concerns that have created horrendous life-altering impacts on innocent people.

3. We give permission for all material submitted to the Panel, to be made public and welcome the opportunity to be listed in the report or elsewhere as the *Holt Norman Ashman Baker Action Group* (or HNAB-AG) and / or as individual co-authors.

Scope and principles

(1) Is the Panel's approach to the scope of these issues appropriate? Are there any additional issues that should be considered?

4. In addition to making recommendations on the establishment, merit and potential design of a financial redress (currently titled as a *"compensation")* scheme of last resort the Panel should make the case for this to be extended retrospectively rather than merely considering the merits and issues involved in providing access to redress for past disputes as described in the terms of reference. It should cover the widest possible scope to ensure existing victims are not forgotten and abandoned yet again. Continuing to ignore victims protects and rewards those who have betrayed the people to whom they had a professional, ethical and moral obligation even if not a legal one.

5. Victim-blaming includes ignoring or denying the plight of people who have been targeted, rendered powerless or taken advantage of (which is the definition of *'victim'* and rightly focuses on the offender's conduct not the response of the individual). Retrospective financial redress is imperative. Redress must not be only for those going forward, or those in the past, who have been fortunate enough to be permitted to seek and obtain a determination even if not have the redress due enforced.

6. In offering perspectives and viewpoints for consideration in formulating recommendations which can have a profound impact on the lives and well-being of the victims involved and their loved ones, all parties have a responsibility to be clear about their sphere of expertise, exposure and experience and be open to consideration of unconscious bias. Understanding issues from one position does not necessarily indicate knowledge of how these are applied or operating in reality or to what extent cover-up and skill with, seemingly rife, 'corporate spin' portrays a different or contradictory picture from facts.

7. Consumers finding themselves to be victims of white-collar crime (WCC) have a unique lived-experience with appreciation of issues spanning a range of perspectives of those affected. This includes the conduct and impacts of offenders directly involved in, or enabling, WCC or 'misconduct' (i.e. deception, fraud, negligence, unconscionable conduct etc.) and concerns across the spectrum of power structures related to identification, implementing measures for accountability and responding to efforts to seek, as well as formulate, redress.

8. It would not be acceptable in this day and age to formulate recommendations about domestic violence, sexual abuse, cyber-bullying or other issues without incorporating the experience and viewpoint of victims as central to the matter. This is not occurring enough - or in some spheres, at all – in relation to financial disputes or white-collar crime. We hope that establishment and design of the new **Australian Financial Complaints Authority** and a **Financial Redress Scheme of Last Resort** (including retrospectively) will extend to inviting engagement and participation from victims as consultants.

9. Unless an individual has high levels of compassion (not merely empathy which can be utilized to manipulate, positively or negatively) and/or adequate exposure to being able to imagine standing in someone else's shoes, he or she cannot provide appropriate or responsible comment to progress an issue in a meaningful manner. The problem will remain inadequately addressed and even compounded.

10. There is responsibility to ascertain suitability and qualification (in terms of being informed) of people within power structures and those providing advice or recommendations. Input, and evaluation of recommendations, has serious consequences. An uninformed or inadequately informed position in relation to victims not only re-

victimizes – which can be far worse than the original situation - but inadvertently colludes with the offender/s, providing protection, thwarting accountability and endangering other consumers.

11. Questions that would help identify inadvertent unconscious bias or assumptions based on misinformation or inadequate exposure to the wide spectrum of victims (or agenda) are noted in Table 1.

12. Consideration of the perspective of industry, government and the regulatory system is usually apparent. However, at the root of the issue is the perspective and experience of victims. If this is not adequately understood, measures to address their plight will be limited at best. Abject failure to appreciate key factors will compound matters inestimably at worst. The capacity to stand in victims' shoes to provide helpful, responsible comment is imperative.

13. The following table is offered as a means for contributors to the Panel, associates and government to identify and consider any possible bias or limitation in understanding the facts and reality for victims.

14. It is our experience that industry, commentators, advocates and politicians who have not been adequately exposed to, or sought genuine engagement with victims are inadvertently (or due to agenda) complicit in thwarting the issues at stake from resolution and reform. Consequently, for an ethical, meaningful and fair response to matters related to white-collar crime it must be established whether or not any person inputting, evaluating or responding to input, is coming from an informed position in respect of victims. This could be achieved by evaluating the responses to the following questions:

Table 1:

Capacity to stand in victims' shoes to provide informed comment

1.	Can you imagine you, your parents, adult children or other loved ones being in a position where home, life-savings, superannuation, investments and / or financial entitlements in some way are seriously detrimentally impacted or 'lost' through no fault of yours / your loved one due to deception, fraud, negligence or unethical conduct at the hands of the banking and finance sector?	Yes ☐ No ☐
2.	Do you accept white collar crime / financial misconduct i.e. unethical, unconscionable financial conduct involving deception and/or negligence can result in devastating, life-long impacts on innocent victims?	Yes ☐ No ☐
3.	Would you describe white collar crime / financial misconduct as extending to life-altering, and even fatal, outcomes beyond financial repercussions making it potentially as violent in some cases as activities such as cyber-bullying, emotional / mental family violence or non-contact scenarios where no physical weapon is used and no finger is laid upon the victim?	Yes ☐ No ☐

4.	Do you accept circumstances exist where a person has no responsibility at all for the actions of another/others who impacts him or her?	Yes ☐ No ☐
5.	In your view can emotional, mental or psychological abuse (i.e. destructive or aggressive behaviour) result in severe impacts on the victim, no lesser than direct physical assault?	Yes ☐ No ☐
6.	If placed in the scenario of financial misconduct due to the failure of successive governments and regulatory and legal failures to protect you or your loved ones, do you agree it is unreasonable you or your loved ones may be expected to accept no, or a portion of, or capped compensation where full redress (restoring losses plus compensation for damages, pain and suffering) is – or in the past, was - not possible from the offender/s?	Yes ☐ No ☐
7.	If you found your home or that of your adult child or parent had to be sold or could be foreclosed on, life-savings, superannuation and / or investments were wiped out or decimated and / or placement in deceptive debt had occurred, having not been provided with informed consent and / or due diligence performed by the various professionals and industry members involved, would you think it unreasonable that you receive a fraction of, or no, restitution for your direct and indirect losses as well as no compensation for the incalculable financial and other losses, or the pain and suffering of the ordeal and years of protracted efforts to seek redress and reform?	Yes ☐ No ☐

11. A negative response to any of these questions would indicate the person has not adequately engaged with victims of white-collar crime or is unable to imagine standing in the shoes of these people. This would cast doubt over his or her ability to provide unbiased input, commentary or responsible recommendations in respect of what is fair and reasonable to provide redress for victims as well as other aspects related to the issue.

12. For reasons elaborated below we strongly recommend the subject be referred to as a ***Financial Redress Scheme of Last Resort*** in place of *'compensation'* and a ***Retrospective Financial Redress Scheme of Last Resort***. In brief, the reason for this is that inherent in the existing title of *'compensation'* is a low bar for which there is no good or valid rationale and which tends to prescribe and limit debate.

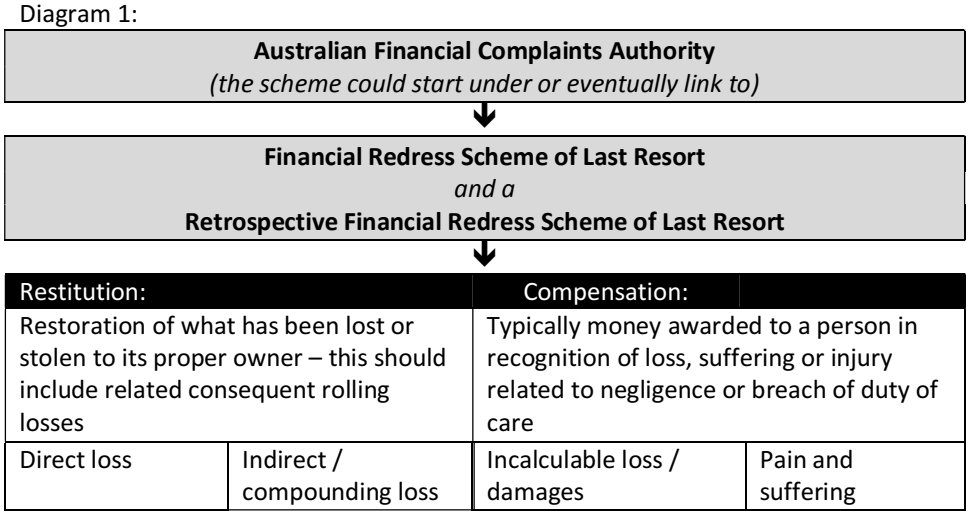
13. **Compensation** is typically understood to refer to payment or award in recognition of negligence or breach of duty of care for loss and consequent suffering especially when it could reasonably have been foreseen or should have been i.e. **damages and / or pain and suffering**.

14. Although some definitions of compensation include the notion of reimbursement (implying a full refund, reinstatement or restoring to the rightful position) it is not clear. Ethically and morally, consideration

is warranted in financial misconduct not only for incalculable losses, damages, pain and suffering but for **restitution** defined as returning, restoring or reinstating **direct and indirect or compounding financial losses**.

15. Detail is provided in Table 12. However, in brief, we propose the scheme should address:

Diagram 1:



16. Terminology reflects unconscious bias or level of appreciation of an issue or an agenda to direct a course of action. Hence, we believe it is paramount to address this in the title of a scheme aimed at retrospective, or current, last resort financial redress for WCC and misconduct for victims.

17. There is also the issue of disputes that have not been assessed for a variety of reasons and for which the current system does not provide a reasonable mechanism for financial address to be determined. Designing a way to include these cases is essential. We underscore the necessity for providing access to, and funding for, competent, ethical, trustworthy professionals to help the claimant, or act on his / her behalf where requested, to:
    i. obtain relevant documents or verify lack of existence
    ii. prepare a thorough outline of the dispute for determination of financial redress (i.e. restitution and compensation as defined above and details in Table 12).

18. The need for assistance of a trusted (enough), highly competent industry member is more likely in cases of sophisticated, complex multi-lender/product WCC and / or where trauma impacts are significant. Typically this will have been exacerbated where years of protracted efforts to seek assistance, or resignation to the lack of it, has been endured.

19. In designing the Australian Financial Complaints Authority, the new one-stop shop body, could encompass or link to a scheme of financial

redress of last resort. Claimants could utilize an industry member known to them whom they trust (or at least, enough) to competently prepare their material for determination. This would assist with efficiency. The professional should be funded by the scheme and subject to approval. Accountants, forensic accountants, advisers and other industry members could provide this service.

20. These professionals must also be held accountable for any misconduct (not human error) discovered by the scheme or through random audit. Accountability should include fines that are a multiple of deception and listing on the proposed AFCA website. Zero tolerance (i.e. ban from working in industry) should deter much misconduct if enforced.

(2) Do you agree with the way in which the Panel has defined the principles outlined in the Review's Terms of Reference? Are there other principles that should be considered?

21. We agree with the core principles of efficiency, equity, complexity, transparency, accountability, comparability of outcomes and regulatory costs. We also believe dignity must be pivotal. Ethical and moral considerations must underpin the approach to avoid the problems of legal loopholes, limitations of the letter of the law or lack of legislation regarding aspects of disputes. Competence must be based on trauma-informed understanding and engagement.

22. The psychoneurobiology of trauma (i.e. the physiological correlates of severe psychological stress including long-term structural and biochemical changes) is necessary to understand how victims are impacted thus how best to assist and respond practically with compassion and dignity. Brain scans (e.g. using fMRI and PET etc.) and other technology confirm clinical experience. A useful reference for professional and laypeople is *The Body Keeps the Score: Mind, Brain and Body in Transformation of Trauma* (published 2014) by the renowned trauma specialist, Harvard psychiatrist Professor Bessel van der Kolk, MD. It is based on many decades of research and clinical experience with war veterans, victims of assault, family violence, sexual abuse and rape and long-term exposure to severe stress and related impacts.

23. As part of accountability, the nature of the WCC / misconduct and the names of firms, banks, industry organizations and specific professionals involved should be listed permanently in an easy to access, user-friendly public forum online. This would provide consumers with a means to check on past concerns, who was involved and whether remedy was volunteered or imposed and what measures have been put in place to avert what led to the dispute. The ASIC register falls considerably short of providing consumers with the information they need to make an informed decision.

24. This would not replace the necessity for a royal commission or commission of inquiry to expose the breadth and depth of corruption and unconscionable conduct in the industry and root out those

responsible in executive positions and to highlight extensive need for radical changes. However, a permanent register would assist with accountability and transparency if designed with thorough parameters to expose and address the activity requiring financial redress.

25. For instance, we have suggested previously that any product issuer or lender involved must be required to participate in designing meaningful informed consent with victims (see examples: Appendix C(i) and C(ii)). We have suggested it is vital to impose penalties that are a multiple of the loss incurred or risked to the victim, or the benefit gained to the offender, in designing a new body to address WCC.

26. If the law protects industry offenders from being held accountable retrospectively, those members / firms involved could be asked to provide the restitution and compensation determined by the scheme of last resort to be owed and to contribute to the costs of the scheme. Agreeing to this would reflect well on compliance with ethical responsibility. This could be publicised via the website mechanism suggested above. Transparency and responsibility would assist in restoring consumer confidence.

27. Working with the victim/s of a product to design meaningful informed consent would also reflect a change in the culture of the firm or organization. This co-operation could also be listed on the AFCA website, in addition to the misconduct, enabling consumers to choose where they are willing to put their money and trust.

Compensation scheme of last resort

Existing compensation arrangements

(3) What are the strengths and weaknesses of the existing compensation arrangements contained in the *Corporations Act 2001* and *National Consumer Credit Protection Act* 2009?

28. The most basic problem with the *Corporations Act 2001* is that successive governments and industry have not put in place a mechanism to ensure the licensee had adequate arrangements for consumer protection. Hence, although the Act requires a financial services licensee providing services to retail clients, to have arrangements for compensating (not defined that we could ascertain) for loss or damage suffered due to breaches, it does not guarantee this will occur.

29. Accountant and financial adviser, [redacted] and numerous staff had only $2million professional indemnity insurance.

30. At least 500 victims of this firm's involvement with lenders and products are known in relation to just one of the many products it spruiked. Liquidator [redacted] testified to this number regarding Timbercorp. HNAB-AG estimates $30million of debt deceptively incurred from this one MIS amongst our group of approximately 130 victims known to us directly. It will be much more given at least another 370 victims of Mr [redacted] firm exists. Two million dollars is patently, staggeringly, inadequate coverage for 1 industry member in the firm, far less all (as it is understood to be) or for the numbers of clients at risk and amount of money for which Mr [redacted] firm was responsible to manage.

31. Further the problem is exacerbated exponentially by what emerged later as *degrees of separation* between independent accountants/advisers who describe themselves as "*authorised representatives*" or claim an association with products and lenders implying trust and confidence. However, this arrangement then permits the lender / product issuer to absolve themselves of responsibility for misconduct in which they participated through negligence or deception (e.g. failure to perform due diligence; accepting incomplete or blank application forms other than an apparent signature; rubber-stamping applications; incentivizing external industry members to spruik their products etc.)

32. If the adviser / industry member enters bankruptcy and / or is declared insolvent and has assets secured beyond creditors' reach there is nowhere for victims to obtain financial redress. Further, if the product goes into administration or liquidation, redress is closed.

33. Moreover, further victimization may be legally sanctioned at the hands of an unscrupulous liquidator (who can demand repayment for deceptive debt, or even unknown placement at all) or where victims are not able to make their case due to complexity or lack of financial sophistication or where they have no faith in the legal system (even if they had the financial and personal resources). People were advised against it by lawyers fearing a David and Goliath battle.

34. Timbercorp, ITC Pulpwood, FEA etc. are examples of collapsed MIS. TFS (now QUINTIS) and [redacted] Margin Lending are examples of a product / lender still operating but which hide behind degrees of separation along with major banks and their subsidiaries that issued loans and heavily incentivized independent advisors to procure borrowers (or in Mr [redacted] case even place people in products without their knowledge, not simply face-to-face deception). This created significant through to dire consequences for victims accessed through [redacted] [redacted] firm.

35. We know of only 2 Holt-related cases able to prepare and present *some* of their losses to FOS (deliberately providing only what fell under the cap). While excluded from presenting far greater losses, they presented as aspect of their situations. One couple spent tens of thousands of dollars on legal assistance for their case. Both couples received

determinations in their favour but have not been paid a cent. Furthermore, FOS also turned away clients of [redacted] because there was no avenue to enforce redress where it might be determined and as he failed to provide documents FOS required.

36. Most people were not able to pursue FOS (due to being overwhelmed and unsophisticated financially to understand the issues; unable to obtain documentation; too traumatized by the losses, consequences and the personal impacts; refused eligibility on grounds of loss exceeding its cap or Mr [redacted] refusal to comply with FOS's requests for material; struggling to focus on earning income to deal with debt they had no control over and having no faith in the system etc.)

37. The *National Consumer Credit Protection Act 2009* came into being after Mr [redacted] collaboration with lenders and products emerged in 2008 and 2009. Consequently, we imagine this presents a problem retrospectively regarding protection, should it cut out pre-existing victims. We do not know whether this Act outlines consequences for those licensees or representatives in breach or ensures victims are not left without proper financial redress. Due to time constraints we are unable to investigate.

38. It should be apparent that, typically, consumers and small businesses are not in a position to assess the information provided by a licensee or the worth of the service provided. Generally, in terms of financial advice, people seek or accept expert guidance and assistance because these skills are lacking entirely, or sufficiently, in sophistication. Protection from losses related to misconduct and the devastating life-altering and personal impacts must be provided as well as accountability of the offender/s upheld.

39. While it is patently apparent to any reasonable person that financial redress should not pertain to product failure, investment losses or return on a product that has not met expectations, it is inevitable that often WCC / misconduct will not emerge or be exposed until such circumstances occurs (e.g. the Global Financial Crisis). The risk clients were placed in may only then arise. We are aware of misconduct that would never have surfaced, including loans victims did not know had existed in the past (even where some had been 'repaid' without their knowing before the GFC) had it not been for problems arising with other products and lenders with which Mr [redacted] firm collaborated.

40. For instance, one of the authors discovered a previous margin loan in the name of a company Mr [redacted] set up to hold the home. The company was de-registered in 2004 after Mr [redacted] said to remove the property as laws had changed and it was no longer useful. It emerged post-GFC that Mr [redacted] motivation was to access the considerable equity in the property to make massive commissions in setting up a double-geared margin loan, which he described as safe and conservative. In fact, it was high risk: he created a profoundly precarious situation. Typically,

he did not mention or explain a margin call or the possibility of these, or the option to utilize a stop loss order. In some cases, neither Mr [redacted] (nor [redacted] contacted people even when actual margin calls occurred. He advised those wanting to sell shares (e.g. in January 2008) that *"fear drives poor decisions"* and not to do so: as a consequence one author lost everything 11 months later. (See Appendix H for data regarding Bankers Trust Margin Lending.)

41. ASIC and successive governments have enabled these activities to occur due to a gross lack of consumer protection. Simple measures such as meaningful informed consent and requirements for due diligence including counterpart copies instead of allowing electronic versions of signatures and unknown witnesses would have averted much of the WCC experienced by [redacted] victims. Independent legal advice on contracts was never recommended: indeed, Mr [redacted] underscored his office was paid to understand contracts and manage matters on behalf of clients. Written documentation of financial circumstances, investment preferences, future goals and plans, changed circumstances, risk aversion as well as regular (monthly) provision of a clear statement of affairs should be standardly required.

42. For example, Timbercorp Finance P/L specified on loan applications regarding its criteria of acceptance that these must be completed in full. Yet it accepted loan applications from [redacted] that had nothing more than a signature. It also accepted some with partial and / or false information filled in by Mr [redacted] staff. It did not perform due diligence, including credit checks it appears.

43. However, [redacted] a liquidator at [redacted] despite discretionary power under statutory obligations to waive or 'compromise' debt, relentlessly pursues victims. This occurs also in its so-called *'hardship program'* where people pay up to 84% (1% less than people deemed *not to be in hardship*) of doubled and trebled deceptive debt due to exorbitant penalty interest rates. Penalty rates occurred after being advised by lawyers [redacted] not to make repayments during its abysmally run class action. (Some could not pay due to financial annihilation.) This concerning advice was noted by Judge Judd. M&K should be required to refund the interest component and fined (a multiple of the impact) for this advice, as well as other aspects of the management of the case that are of concern.

44. [redacted] Margin Lending outright dismissed data and information HNAB-AG compiled and ignored issues outlined. (See Appendix H.) As has been typical across industry, its response was entirely disingenuous and deflected from the issues. [redacted] suggested we contact FOS even though – as it would know – we were outside the time limits as well as many exceeding the FOS loss limit. (Documentation is available.)

45. ASIC has financial responsibility if it was satisfied that [redacted] had necessary PI insurance in place before granting his Australian Financial

Service (AFS) Licence. It is perplexing ASIC *"does not approve"* PI arrangements or have data about renewal cover yet believes it can be *"satisfied"* regarding this in granting an AFS.

46. Further, ASIC was aware of complaints about Mr [redacted] by former victims and industry before his latest batch emerged in 2008/9. Staggeringly, ASIC required Mr [redacted] to pay a *"Security Bond"* of only $20,000.00 in case of '*a*' (singular not plural) complaint! This would not cover one of his victims even at the smallest amount. ASIC informed people who phoned to check Mr [redacted] reputation and bona fide that there was no problem despite past complaints. Although [redacted] is now listed on the banned register on its website ASIC lent false security and confidence to consumers when earlier reports did not result in an appropriate response. ASIC had a key role in what occurred by not providing, remotely sufficient, protections.

47. We understand PI insurance exists to protect licensees against business risk. However, misconduct or malpractice is covered for claims in other scenarios. Consumers should be able to make a direct claim and not rely on the AFS licensee to assist in obtaining the money once a claim is determined to award payment. As it stands it is apparent PI insurance is not a mechanism for financial redress. Yet consumers have been, and are, given confidence by its existence that they will not be sitting ducks for unscrupulous or criminal industry members or left to effectively subsidize and absorb the financial, and other, impacts of WCC.

48. Please see above for detail. The following is a brief summary.

Table 2:
Existing Compensation Arrangements under the Corporations Act 2001 and National Consumer Credit Protections Act 2009

Strengths	Weaknesses
Requires licensee to have arrangements for compensating for loss or damage if Act breached or contravened	Does not ensure or enforce adequate compensation arrangements to be made hence it's a meaningless requirement
NCCP Act seeks to reduce risk that losses can't be compensated due to lack of licensee's financial resources	NCCP Act commenced after WCC related to [redacted] firm and many others was exposed by GFC
Recognizes consumers and small businesses are 'not always' (we suggest typically) able to assess information provided by licensee or worth of the service, and can incur severe financial impacts	Severe personal impacts (extending to death) which can never be restored or repaired are not noted
	Licensees can be 'exempt' from holding PI if regulated by APRA impacting large numbers of people re general and life insurance or deposit-taking institutions
	Inadequate amount and scope of cover, terms and conditions can exclude people and lack of licensee financial resources to make PI policy work

	No mechanisms to minimize or prevent further loss such as forced sale of home, payment of WCC debt etc. by lenders
	No mechanisms to safeguard against liquidators of collapsed products forcing repayment of misconduct-related debt or for provisions of redress for money lost beforehand to such schemes or products
	No mechanism to protect against lenders and products hiding behind manipulation of the law via degrees of separation
	Illusion for consumers that ASIC is demanding adequate protections and providing safeguards e.g. it grants license if 'satisfied' PI arrangements in place yet this is vague and ASIC has no data about renewal coverage – and does not require a minimum level of coverage for relevant parameters for policies
	PI insurance cover exists to protect the business not the consumer
	Total funds available do not guarantee all victims awarded are covered (indeed patently inadequate PI of a paltry $2million was able to be held by [redacted] firm for at least 500 known clients) – and some people do not hold it at all and may lie about holding it

(4) What are the strengths and weaknesses of the National Guarantee Fund, the Financial Claims Scheme and Part 23 of the *Superannuation Industry (Supervision) Act 1993*?

49. HNAB-AG had no knowledge of these until reading the supplementary issues paper. We are unsure if, in its capacity to meet claims arising from the ASX, the NGF would address the serious concerns related to [redacted] Margin lending or Mr [redacted] collaboration. We have been informed [redacted] sent staff to train [redacted] in 2008.

50. As noted, [redacted] attributes lack of informed consent (and consequent financial impacts through to personal decimation and devastation) entirely to [redacted] and his firm. [redacted] did not contact the clients until margin calls went unaddressed by [redacted] (and then only some). The first many knew there was a problem was when their portfolios were liquidated. [redacted] then saw fit to contact people – yet did not before entry to ensure informed consent or perform due diligence. (See Appendix C(i) for an example of informed consent that would have saved losses, anguish and heartache.) [redacted] referred HNAB-AG to FOS (despite ineligibility) not NGF, so we presume it is not an appropriate avenue. However, it is possible this was a deliberate tactic by [redacted]

51. Table 3:

National Guarantee Fund, The Financial Claims Scheme and Part 23 of the Superannuation Industry (Supervision) Act 1992

Strengths	Weaknesses
NGF: NGF has no cap on claims	NGF has no or little general public presence as no-one in HNAB-AG has raised it since forming in January 2011 or been told on approaching lawyers and industry since 2008
NGF funded by ASX participants	ASX participants benefit financially from misconduct that is not identified or for which offenders are not held accountable financially
FCS: FCS protects authorized deposit-taking institutions (ADI)	FCS has a limit on protection provided of $250,000 per account holder per ADI – i.e. restitution and compensation not provided
FCS protects policy holders of APRA-regulated general insurance companies due to failure of these institutions	FCS limits compensation with claims against a failed insurer to $5000 unless policy holder meets certain criteria – i.e. restitution and compensation not provided
FCS is funded by recovery action via insolvency proceedings and if assets are insufficient through an industry level on ADI's or general insurers	In not holding the offenders accountable with appropriate fines, ban from the industry etc. FCS and/or regulators are protecting the offenders and requiring victims and the public to subsidize their misconduct (and profits secured from reach) via insurance premiums
Part 23 SI (S) Act Part 23 SI (S) Act grants financial assistance to APRA-regulated super funds that have suffered loss due to fraud or theft	Part 23 SI (S) Act limits this assistance to where the loss caused a substantial diminution of the super fund leading to difficulties in the payment of benefits
The Minister has discretion re grants - previously these have ranged from 90-100%	It appears that in addition to not all being granted at 100% of loss there is no award for any indirect loss, damages or pain and suffering (however, perhaps these are swiftly addressed preventing this need)
	The Minister grants financial assistance to the super fund after seeking advice of APRA and if satisfied the loss caused a substantial diminution of the fund and that the public interest requires action – not automatically at loss of any amount or, it seems, ensuring offenders are held accountable
Funded by APRA imposing a levy on its regulated super funds and approved deposit funds	In not holding the offenders accountable with appropriate fines, ban from the industry etc. APRA protects the offenders and requires others to effectively subsidize misconduct (and allows profits to be secured from creditors' reach)

(5) Are there other examples of compensation schemes of last resort that the Panel should be considering?

52. Beyond those noted in the supplementary issues paper we are not aware of other compensation schemes.

53. We note in the Fair Entitlements Guarantee, an Australian Government funded scheme of last resort providing assistance for unpaid employee entitlements to those who lose their job due to liquidation or bankruptcy of their employer, that directors of companies and their spouses and relatives and contractors are excluded from the scheme.

54. The same should apply to directors or executives regarding a financial redress scheme of last resort for financial WCC / misconduct. However, careful and competent investigation would need to ascertain if spouses, adult children, parents, siblings and other extended family were complicit or were used by the offender. We have cause to suspect Margaret [redacted] Mr [redacted] has used bankruptcy in the past to avoid responsibility for misconduct. [redacted]

55. Certainly, [redacted] were not used to secure his assets but were duped along with people who believed they were good friends. This includes one couple with a severely disabled son who, tragically died unexpectedly at 19 years old amidst the protracted financial ordeal his parents have endured. [redacted] knew this family prioritized safe investing to secure their son's future when they would no longer be able to care for him. They were dissuaded from property investing. They were assured his investment strategy was secure and solid. [redacted] knew their son, [redacted] and had socialized at their home.

56. Careful investigation should also apply to staff of an offending firm regarding their complicity and / or failure to report concerns about misconduct. This will be difficult if an avenue for anonymous or protected reporting is not available, as an employee would be risking their job and livelihood and possibly career prospects in retaliation. It reinforces the necessity for proper whistle-blower protections including related to financial repercussions. Reward for disclosure of misconduct should also apply – it would save a great deal of anguish the sooner misconduct/WCC was caught and rectified.

57. We believe the government or regulators should also be able, and willing, to extend its capacity to initiate legal proceedings against offenders to recoup losses.

58. The problem with schemes requiring sufficient financial resources of members as a precondition to participate is that it increases risk for

consumers of those who are not involved. These intricacies and conditions are unlikely to be known by the consumer.

59. Funds such as the NSW Law Society Fidelity Fund which receive annual contributions from solicitors as part of practicing requirements that are used to pay compensation for loss due to a solicitor's or firm's dishonest failure to pay or deliver trust money or property, underscore the responsibility of an industry. However, it is unjust and entirely counterproductive to have a limit of $1,000,000 as a total of all claims against a particular solicitor or firm. It means the more dishonest a solicitor or firm, the less accountability as someone else is paying – unless they are prosecuted and held responsible in a meaningful manner. The discretion of the Law Society to increase the amount is encouraging but lacks transparency and accountability.

60. Schemes should follow the example of the Motor Car Traders Guarantee Fund that seeks to recover amounts paid out against the licensee. However, again, we disagree with the notion of a cap on the amount awarded as the victim is made to subsidize the offender and industry. Accountability is not upheld. Justice is not served.

61. Another serious concern is the wait time required in Canada and the U.S. related to when the firm becomes insolvent before an applicant can apply to a financial services industry compensation scheme. More reasonable (potentially) is the position in the U.K. and E.U. of when the scheme or authorities are satisfied the firm is unable, or likely to be unable, to meet claims against it and obligations. However, this is vague and would require a concerted effort to prioritize assessment rather than subject victims to lengthy waiting periods of significant uncertainty (a couple of years or more) given the serious and harrowing financial and personal impacts.

62. Of note, the U.K., Canada, U.S. and E.U. all have industry-funded schemes which are independently administered. However, the range of 'compensation' awarded is disturbingly wide. It is also inadequate and fails to reflect the necessity for accountability and justice. We note the U.K. limits it to £50,000 per person per firm, Canada to C$1million, U.S. to US$500,000 for securities and cash (including a $250,000 limit for cash only) and the E.U. at €20,000 per investor although Member States can provide higher levels. The diversity reflects the lack of guiding principles and appreciation of impacts on people to be able to fairly consider the issues. It seems to be an arbitrary, stab-in-the-dark approach not a careful, responsible, consideration of cause and effect and related human impacts.

Evaluation of a compensation scheme of last resort

(6) What are the benefits and costs of establishing a compensation scheme of last resort?

63. To respond to this question adequately it would be necessary to clarify what the financial redress in a proposed scheme would cover. If it chooses to merely provide a small amount of the financial losses incurred and / or without redress for the personal impacts, no-one but the offender and industry benefit. This would be at tremendous cost to not only the victim but also the trust and confidence of consumers (business and individuals) and the wider community. This in turn impacts the relationship with industry and parliamentarians. It translates to an effect on national economic welfare and community well-being and justice.

64. **Cost:** The costs of a scheme relate to design, establishment, operation and administration. These must meet the need for attracting and retaining genuinely competent staff of the highest personal and professional calibre. This extends to costs for reliable, meaningful and competent oversight and regulation.

65. **Cost:** A central dedicated EDR scheme is proposed to commence 1 July 2018 as we understand it, to be set up to go forward with new cases. It could address existing cases failed by the system retrospectively. It could fund external accountancy or other industry members to assist complainants to prepare cases for consideration. This should include determining losses involved for a competent panel to examine and approve the amount of restitution and compensation or clarify its view of these amounts. Victims could utilize their (new) accountant or another trusted industry professional for this assessment. Preparations for lodging a case with the scheme could be randomly audited to ensure authenticity and reliability to identify misconduct by a claimant and industry member. The cost to investigate whether misconduct occurred could be radically reduced or eliminated where it has been determined already or recognized via industry or parliamentary involvement e.g. as in [redacted] firm involvement with lenders and product issuers.

66. **Benefit:** A key result of a fair scheme providing financial redress would be domestic and international confidence in Australia where it develops a reputation of ensuring victims of WCC do not suffer being left out of pocket and people are not permitted to be used as fodder for corruption in the banking and finance sector. This should involve prioritizing financial consumer protections or safeguards and accountability of offenders. Transparency is vital. People are reluctant to do business or invest money in countries that are deemed to enable or condone corruption particularly where innocent people suffer and authorities are protected. Iceland did not prop up the banks in the GFC. It held senior executives accountable (including via prison sentences), earning public confidence and ensuring industry change. This has translated financially. Due to the response of parliamentarians, Iceland is reportedly thriving now despite almost all its major banks collapsing in the GFC.

67. **Cost:** Short-term savings in establishing a scheme of redress that does not provide proper, or any, redress to victims – including retrospectively – would not only be galling but will continue to cost the trust and confidence of Australians and thus the economy. Compounding financial hardship, homelessness and injustice seriously undermines confidence in politicians and governments. It not only sees them lose elections, but more dangerously, it risks national security and stability. Authorities are meant to serve the people, not take advantage of power or pursue self-interests at the expense of others.

68. **Cost:** Failure to confront corruption leads to developing unrest. A vicious circle develops as society fractures exacerbating the degree of instability and injustice. Democracy turns into its shadow: tyrants and dictators emerge or thrive. Fear, ignorance and self-interest can quickly become violent and destructive. This is apparent throughout the world today in places people did not expect serious unrest or disquiet. Lenders, financial services, business and governments cannot continue to ignore or take advantage of people while lining the pockets of the 1% "elite" with power and money.

69. The above rationale focuses on the practical cost to Australia. From an ethical point of view victims of financial misconduct and crimes have been betrayed by inadequate legislation in consumer protections that benefits, encourages and protects industry offenders. People deserve proper redress. The appropriate ethical question regarding redress is: *Why should offenders and industry be allowed to profit from, and keep, money which has been:*

    (i) effectively stolen (mismanaged, misused, risked without informed consent or proper authorization etc.)
    (ii) acquired, or required to pay, deceptively
    (iii) withheld in part or full
    (iv) or in some way negligently or deceptively incurred direct, indirect and incalculable financial loss and / or pain and suffering to the victim?

70. Successive governments, regulators and industry bodies have a responsibility for what has been able to occur making Australia a *"paradise for white collar crime"* as Greg Medcraft, ASIC Chairman noted it could increasingly become. Unfortunately, the problem has not yet generally been understood sufficiently by power structures for it to be standard for genuine consultation, collaboration and participation with victims of complex white-collar crime to occur.

71. Disturbing assumptions and unconscious bias is apparent even amongst authorities who mean well and endeavour to assist. Commentators and politicians reveal a lack of understanding of how aspects of WCC occur, the issues and impacts. It is similar to comments about family violence or sexual abuse which would now draw condemnation but were once accepted (e.g. even by educated people such as judges who blamed the victim including children; believed a

wife could not be raped or provoked and deserved to be hit; or thought a nun would be more traumatized than a sex worker by rape; or that boys or men could not be raped or sexually assaulted or victims of family violence etc.).

72. **Benefit**: The ultimate assessment of benefit should be fairness and ethical consideration to victims and their loved ones, accountability of offenders, plus trust and confidence in society, industry and government to be transparent, responsible and act according to democratic and humane values, integrity and decency.

73. **Cost:** The financial cost should be secondary. If it is not, the fabric of society is placed at risk given the consequence to the nation.

Table 4:
Costs and benefits of a financial redress ('compensation') scheme of last resort

Benefits	Costs
Build confidence and trust in industry and therefore seeking advice, investing and ensuring a robust economy etc.	Financial cost to industry non-offenders via levy (although still responsible for ethical codes) - *so this is not a cost but an investment in industry security long-term*
Repair some of the devastating damage to lives of victims and their families	Potentially impacts taxpayers - although we believe industry and government should fund through penalties for offenders which are a multiple of loss incurred or risked or benefit gained (any levy should be paid back this way in future) - *so this is not a cost long-term*
Require industry to reduce or minimize possible risk: devise procedures and meaningful informed consent; counterpart copy originals; genuine witnesses; etc.	Any costs borne by non-offending firms could be recouped from penalty fines rather than passed onto consumers (in a claim-back system for ethical behaviour) - *so this is not a cost long-term*
Increase awareness of stakeholders including shareholders that they must demand measures to reduce risk to barest minimum as it affects their bottom line if innocent people are victimized	Feared *'moral hazard'* issues of consumer complacency about risk-taking and induced riskier behaviour of firms is possible – however, it would be substantially reduced if not entirely eliminated if meaningful informed consent and due diligence were required: risky investing is a different matter on every level from misconduct - *so this need not be an issue*
Hold offenders accountable – and deter with fines of a multiple of loss/risk or benefit imposed (and used to fund scheme and pay redress where other offenders cannot if inadequate provisions to ensure accountability)	Feared *reduction of the incentive for stringent regulation or rigorous administration* of the existing compensation arrangements is not an issue if these issues are given the due attention these should demand - *so this*

	is not a new issue and need not be a future one (Note - many victims would dispute these are currently stringent or rigorous)
Require ASIC / regulators and industry to be competent, accountable, transparent and effective	
In essence, it will change industry culture and strengthen economy and society	
Will gain public respect and provide confidence that parliamentarians and government will not tolerate corruption and forget or abandon victims of the banking and finance sector	

74. The notion of *"stringent regulation or rigorous regulation"* has been lacking to date hence the predicament of victims such as those known to HNAB-AG. A financial redress scheme of last resort (and a retrospective one) would underscore that industry culture and conduct must change and parliamentarians will not ignore or enable corruption in the industry to persist, particularly at the expense of innocent Australians.

75. The concern it would encourage consumers to become complacent about risks is unfounded in our view. Many victims of [redacted] sought conservative assistance and were risk-averse: they were assured the firm's strategies were in alignment. The moral hazard fear expressed would only have this result if relevant measures were not required of the adviser and consumer such as:

    i. written financial goals, risk level and circumstances (i.e. client completed questionnaire)
    ii. documentation of current financial status by industry member
    iii. provision of signed meaningful informed consent.

    Of course, these presume appropriate accountability, penalties and disciplinary measures exist.

76. Financial firms may engage in riskier behaviour if they knew a scheme would cover losses only if there was no penalty or accountability. Where misconduct is suspected it should be investigated and penalized in a meaningful manner if confirmed. Individuals or firms should:

    i. be required to repay money used to provide redress through a percentage of future income until recouped if insolvent
    ii. pay a penalty that is a multiple of losses incurred, risked and/ or benefit gained

iii. be banned from practice in the industry – zero tolerance if the amount involved is not possible to repay or it is a second offence or involves serious impacts financially and / or personally for the victim/s
iv. be considered for imprisonment (with rehabilitation offered)
v. be required to participate in a Restorative-Justice style program with the victim
vi. be required to provide free services to underprivileged or disadvantaged individuals / groups in society as part of making amends (and be monitored or supervised to ensure there is no further misconduct).

(7) Are there any impediments in the existing regulatory framework to the introduction of a compensation scheme of last resort?

77. The existing regulatory framework is wholly inadequate to create trust and confidence in introducing a scheme for financial redress of last resort going forward or retrospectively. ASIC's incompetence and evident disinterest in addressing issues practically, or consulting with victims, is a marked concern. This is recognized within industry and by whistle-blowers, advocates, investigative journalists, and academics.

78. A major impediment in the existing framework is the lack of competence, confidence, reliability and trust experienced by victims. Our voices are not sought or heard, at all or enough. It is not a matter of victims being "*voiceless*" but rather of authorities failing or refusing to listen or treat the information, and people, with due respect. Appropriate action typically does not occur or is not followed through.

79. We would have serious concerns about the involvement in a redress scheme of certain industry professionals given our direct experience, evidence of astonishing corporate spin to protect their self-interests and concerning conduct. This also applies to ASIC as well as other individuals we have mentioned. Some details have been provided in our previous submission and its Appendices as well as this document.

80. Impediments are also likely to relate to:

i. agenda of offenders
ii. efforts to thwart financial accountability
iii. agenda of some politicians.

(8) What potential impact would a compensation scheme of last resort have on consumer behaviour in selecting a financial firm or making decisions about financial products?

81. As noted in the table above, such a scheme would impact consumer behaviour in terms of increasing confidence to seek guidance and financial assistance related to investing. This is inevitable because it would signal government takes misconduct and corruption in the

banking and finance sector seriously, and will not condone it or abandon victims to the consequences.

82. Consumers would feel greater trust if industry is required as a result to substantially lift its game and create measures to inform, conform and reform to ensure ethical conduct.

83. It would highlight that any service should provide a consumer with assurance of not only expertise but also ethical conduct. This could be checked via a reporting mechanism online for transparency and accountability. The current ASIC register is not suitable. It would strengthen the economy and domestic as well as international confidence in the Australian industry and government.

9. What potential impact would a compensation scheme of last resort have on operations of financial firms?

84. We anticipate the impact would be to recognize that the conduct of their own individual firms will come under scrutiny if it has not already in being held accountable for misconduct in terms of reputational damage of concern to prospective customers / clients and requirements to safeguard consumers.

85. This would highlight the necessity to review and design practices and procedures to ensure firms minimize risk where it cannot be eliminated. Firms would be motivated to proactively identify misconduct even before the victim discovers it and take ethical and swift action to provide redress to the satisfaction of the victim. It must not absolve the firm from transparency in being reported online. This would encourage confidence in consumers to know misconduct was identified by a given firm and properly rectified voluntarily, or if required forced compliance under new (meaningful) requirements.

86. In other words, we expect it would cause the majority of firms to tighten and strengthen ethical conduct top down and bottom up. Those which may take the view losses from their misconduct will be covered by others are probably of a mentality that nothing much will impact them short of zero tolerance i.e. ban from industry, imprisonment, access to assets currently permitted to be secured beyond reach and accountability held through future earnings etc.

87. Any measure that reinforces accountability and transparency can only benefit the industry, community and nation as a whole.

10. Would the introduction of a compensation scheme of last resort impact on competition in the financial services industry? Would it favour one part of the industry over another?

88. As outlined above the introduction of a financial redress scheme of last resort would, inevitably, promote healthy competition. It would significantly benefit industry as, by creating a risk rating or evaluation

(in terms of not only misconduct, but also, response to it), it results in promoting those reputations that are ethical and trustworthy. It gives those having engaged in misconduct a chance to be rated well for their response including designing safeguards and provision of redress.

89. Beyond listing on a website (as described elsewhere in this submission) firms could attract customers by promoting the level of consumer satisfaction in terms of advertising:
    i. preferably being free of, or a low percentage of misconduct / WCC reports to EDR e.g. the Australian Financial Complaints Authority (and past EDR)
    ii. what the misconduct entailed
    iii. how – or if - concerns were addressed internally in terms of fair restitution and compensation and the time taken
    iv. how offenders and enablers were disciplined
    v. what measures were designed to avert the misconduct occurring in the future.

78. Of course, victims should not be identified publically. Each should be given a personal code to be able to check the details provided to the public and take action via the AFCA should it be incorrect.

90. HNAB-AG does not have the expertise to comment on whether a scheme would favour one part of the industry over another. However, we imagine that this would be minimized as long as proper penalties were imposed and not able to be avoided through insolvency or bankruptcy by offenders along with zero tolerance at least in the situations listed above.

91. Comments to questions 8-10 are based on the premise that restitution and compensation would be awarded as well as fines imposed which are a multiple of loss incurred, risked or benefit gained at a minimum. We believe zero tolerance of misconduct – particularly causing severe impacts or a second offence regardless of how minor – is warranted to send a clear message demanding change in industry culture.

92. Restitution and compensation as defined and designed in this submission (Diagrams 1 and 2; Table 12) would put industry on the highest alert that power structures (government, regulators etc.) will not tolerate WCC. What has operated effectively as a protection racket will cease. The existence of this scheme would radically impact firms. Greed and misuse of power (the root of the issue) will no longer be as easy or lucrative. The consequences to most offenders would outweigh the benefits.

93. We have noted in our previous submission that lenders are responsible for redress for credit card fraud. As a result they invest heavily in 24/7 efforts to minimize costs incurred to the bank. Lenders know that if victims were left to discover thousands of fraudulent dollars on their monthly statement and forced at law to pay for it, consumers would

not use credit cards. Industry should equally be held accountable for types of misconduct which must be seen for what it is - theft that occurs from within its ranks. The landscape of the financial sector and banking industry would be unrecognizable if held accountable. All Australians would benefit thus strengthening the industry itself.

94. The enforcement of proper, responsible, swift redress would change existing culture, as the payoff would be radically reduced.

11. What flow-on implications might be associated with the introduction of a compensation scheme of last resort? How could these be addressed to ensure effective outcomes for users?

95. Flow on implications include:

i. the necessity for trauma-informed, highly trained, competent assessors and panels to assist with accountability and understanding of a case: this is magnified when it involves numerous products and lenders in sophisticated multi-lender/product white collar crime through an accountant or adviser (*Note:* in the experience of [redacted] victims most financial counsellors and consumer advocates have little experience of multi-lender/product misconduct. Lawyers also appeared out of their depth. Many victims report having received more information, assistance and guidance from our representatives and other HNAB-AG members than financial counsellors, advocates or lawyers.)

ii. access to competent professionals to assist with obtaining documents, preparing the information and presenting it to the scheme for determination of restitution and compensation (as defined above)

iii. establishing who is eligible, how far back a dispute is permitted to go and whether a cap on redress is acceptable, is imperative to clarify - we strongly recommend:

1. anyone should be eligible who alleges misconduct / WCC occurred including retrospectively if verification exists that it was reported to an industry member or organization or health professional or authority on discovery or when able (given trauma impacts).

2. it should include family, or representatives, of deceased, ill or incapacitated parents or other family members on their behalf.

3. if a time limit is imposed on how far back a case can go it must relate to discovery not the actual misconduct, and factor in circumstances related to delay in taking action: sophisticated activities may not be discovered unless there is a crisis (e.g. GFC). Even if 14 years were to be determined as the time period, unless there is

provision for *consideration of special circumstances* where the event/s occurred much earlier, it would exclude victims of [redacted] collaboration with banks and products issuers).

4. we vehemently oppose any cap on the amount of restitution and compensation awarded: however, if one is imposed we cannot strongly enough recommend it be determined based on certain criteria e.g. restoring people who have lost their homes to purchase one of the same quality and location; addressing those in hardship having had to refinance; restore retirement for elderly people having to work etc. (see Table 12). People not in financial hardship and experiencing only mild trauma impacts could be prioritized later (see Table 10). Until funding is established they could be paid to a *preliminary cap* with the *outstanding balance* paid later from the pool of funds acquired from penalty fines imposed at a multiple of loss incurred, risked or benefit gained (along with other contributors such from multi-national tax dodgers – see Appendix I). *Measures to offset the balance owed* could be provided in the meantime (outlined elsewhere).

5. people should not be required to first go through an IDR process of longer than 30 days or where there is reason to believe the fraud and deception is of a degree or nature that the offender is unlikely to provide a genuine response or where he or she has declared bankruptcy or insolvency or has insufficient PI Insurance.

iv. concern about ASIC's role and competence to adequately regulate the scheme (see Appendix A)

v. adequate promotion of the scheme to consumers who have been victims of WCC/misconduct – while accountancy firms and other industry bodies could be required to notify their clients in writing by email or letter of the scheme there will be people who no longer utilize any financial service due to their experiences and circumstances

vi. educating the public as adult children / families of deceased victims also deserve to have their parent/s case addressed and consumers safeguarded from offenders via transparency and accountability

vii. necessity for protection of victims from being forced into the court system by offenders keen to avoid the scheme and manipulate outcomes assisted by deep pockets to deliberately

wear victims down with delays and appeals and who are more likely to win on the basis of loopholes about which they are well versed etc.

viii. freeze ability of offenders, liquidators and others from access to the victim's accounts or pursuit of demand for payment, or repayments, of alleged loans or to impose a penalty interest given inadequate legislation that can be used to determine legal (not ethical) 'default.'

ix. consultation with, and participation of, victims in the design and implementation of the scheme, in addition to, other relevant parties

x. offenders, their families (particularly spouses) should not be eligible: however, parents, children, siblings, etc. should be assessed for complicity and collaboration versus being unwitting pawns: [redacted] utilized his immediate family in his arrangements to secure his assets but the degree of involvement requires genuine investigation – the ban should not extend to those relatives who sought, or accepted unsolicited, financial advice in good faith, trusting [redacted] and his colleagues (we are aware of cousins and close friends of [redacted] who were deceived in the same manner as his other clients)

xi. review of professional indemnity insurance: how much is required per client and/or type of service; amount of money handled; when it is paid, and when not, and how it is accessed upon a determination in favour of the client/s

xii. it is not enough for ASIC to claim it requires AFS licensees to satisfy the regulator they have the necessary arrangements in place for PI insurance and then hide behind noting it does not provide approval of these – ASIC could require a certain minimum standard of coverage and criteria (in consultation with victims and consumer advocates, not pulled out of thin air with no rationale such as its '*Security Bond*' requirement of a paltry $20,000 for [redacted] firm despite handling hundreds of clients and many millions of dollars): this is an example of ASIC's gross incompetence in recognizing and/or acting on the potential for financial impacts on consumers.

xiii. ways of funding the establishment of the scheme and the payment of restitution and compensation are elaborated elsewhere: in brief, the issues that have occurred in the industry are the responsibility of successive governments, regulators and industry, hence these should each be held accountable to fund its establishment and redress for unpaid, and as yet undetermined, cases – this could be recouped through imposing a penalty fine on offenders going forward that is a multiple of

loss incurred, risked or benefit gained by the firm or individual. This is necessary to primarily change the industry culture, create a disincentive for engagement in WCC/misconduct and hold offenders accountable as well as remedy the financial loss to victims and compensate for devastating impact (or, the inconvenience in minor, less traumatic scenarios) and repercussions to society.

96. Restitution and compensation awarded must be protected from pursuit or access by anyone associated with lenders and products related to the WCC / misconduct including liquidators and bankruptcy Trustees where someone has been forced into this situation. It must also be tax exempt as it is not income.

97. Another flow on implication is the potential of the banking industry to attempt to thwart fair remedy through such a scheme via a scare campaign to encourage victim-blaming. Efforts to threaten funding the scheme must be addressed (a commission of inquiry or royal commission would help educate the public as to the level of corruption that occurs and its impacts). It will cost all Australians if banks pass on costs. They should not be allowed to pass on costs given the massive profits of the banks – some of it acquired dubiously – and as they enjoyed being propped up financially by government over the GFC (unlike their victims) – along with sanctioning outrageous salaries and bonuses for CEO's and senior executives. While shareholders would suffer short-term, they have had almost 9 years of awareness of rolling scandals and enormous WCC/misconduct to pressure banks to change their culture to protect against losses and claims and provide redress.

98. Misinformation and disinformation by those with vested interests in avoiding exposure through such a scheme as well as the costs in providing remedy for WCC/misconduct will need to be proactively addressed. For instance, there have been concerns expressed, such as by the Australian Banking Association, that consumers may think the scheme is to cover investment losses in general. Frankly, this is insulting. Investment loss, about which an investor was fully informed and chose to accept, is entirely different from those related to WCC/misconduct.

99. Deception and / or negligence is a betrayal of trust with far more profound impacts than the devastating direct, indirect, compounding and incalculable financial losses. The betrayal by the system (political, regulatory, legal and industry) to hold offenders accountable or provide remedy in a swift, compassionate manner is an even greater trauma especially for those most affected. The ABA, industry, regulators and successive governments have much to answer for in this regard. Current parliamentarians and power structures have an opportunity to remedy this travesty.

100. Concerted efforts to educate the public about what has occurred, and is still occurring, requiring radical reform, will help avoid potential further distress and trauma to victims in being blamed for any actual or threatened impact by the banks' or industry's response.

101. There must be support for raising community awareness to demonstrate the same compassion and care (and resources for recovery and support) for victims of financial abuse/WCC/misconduct as there is for any other form of betrayal by trusted people including victims of family violence, sexual abuse in general as well as institutional responses to offences, the Stolen Generations, James Hardie asbestos victims and so forth. Being subjected to WCC and trying to seek redress is like being isolated and alienated in an invisible, or ignored, war the victim did not start or want and cannot end.

102. It should be underscored however, that even if all taxpayers or all non-offending industry is required to pay any levy it is ultimately a good investment. It benefits everyone through the changes in industry culture that will result. This will strengthen the national economy and confidence domestically and internationally in Australia's financial system and in politicians across all supporting parties.

103. We note the level of *'compensation'* awarded internationally ranges vastly from absurdly low caps in the UK at £50,000 per person although this is per firm, to a little better in the USA at US$500,000 for securities and cash (and $250,000 for cash only) to C$1 million in Canada. We understand there is a minimum compensation in the E.U. of €20,000 with Member States able to provide higher levels. We are unsure if this reflects there is no cap in the E.U.

104. A limit of AUD$1million would not cover the purchase of a replacement home in Australia for many victims. Data indicates the home one author was forced to sell in early March 2009 would now be about twice as much to purchase. A subsequent cheaper home, requiring a massive mortgage in comparison to the one before, was purchased in the hope a court case would help turn things around. However, this home was also lost 2.5 years later in December 2011 due to legal advice there was no PI or means of obtaining financial redress via court. This home is also worth substantially more now and would be impossible to buy without fair restitution given increased property values. This is the case for almost all people who lost their homes due to what is effectively theft that has been sanctioned in, and by, the banks, industry and regulators.

105. A capped compensation that might be awarded now would prevent entry into people's former locations and equivalent standard of home in the vast majority of cases. Almost 9 years have transpired since the WCC was exposed with financial losses significantly compounded. Not to mention inestimable personal impacts across all aspects of life including health.

106. It must be an independent scheme, not operated by industry. There must be oversight from a panel of industry, consumer and victim representatives. It must be subject to genuine independent regular random audits of cases and decisions. Victims should also be paid restitution and compensation where discrepancy is found in the scheme's treatment.

107. Those currently operating FOS or other EDR should not staff the new scheme for financial redress of last resort unless they have undergone a standard of training to ensure their skills and professionalism is of the highest standard and calibre. Further, if it were to be staffed by anyone whom victims have experienced as of concern regarding his or her conduct (e.g. through in-house or hardship programs) confidence in a scheme (or AFCA) would be seriously undermined.

12. What other mechanisms are available to deal with uncompensated consumer losses?

108. Other mechanisms could be used in the interim between when a victim is provided with full restitution and proper compensation. This has been referred to in the previous submission. In brief it could include:

(i) placing a **halt on tax assessed as due** to the amount of losses or outstanding balance of restitution and compensation determined until it is covered or paid (i.e. refund tax collected on behalf of employees and release those who are self-employed from payment)

(ii) **waive payment of stamp duty** on purchasing a residential property

(iii) require offending lenders to **provide interest-free loans** for home, investing or business until full restitution and compensation is paid before resuming at the normal rate

(iv) provide **grants from government and industry** to enable people to address hardship, loss of their home, bankruptcy (which should be annulled) etc.

(v) provide **tax deductions to philanthropists and organizations** (not banks or industry) who assist with redress via donations

(vi) assistance through **greater contributions to superannuation** than is generally permitted currently

(vii) requirement to participate in a **Restorative Justice-style program** with offender/s, supervisors, senior executives and CEOs along with the victim and loved ones to create an opportunity to communicate the impacts, and for offender/s and enablers to face the human consequences of their actions

and hopefully want to commit to changes and make amends (which would include designing measures to safeguard consumers and avoid a repeat situation). We strongly believe senior executives from ASIC and other regulators as well as parliamentarians should regularly attend such a forum – we anticipate genuine engagement in witnessing a victim impact statement and the interchange would have a profound impact on appreciation of the issues and hence the nature, quality and relevance of the resultant actions of power structures.

13. What relevant changes have occurred since the release of Richard St. John's report, *Compensation arrangements for consumers of financial services*?

109. As far as victims are concerned not a great deal has changed since the release of Richard St. John's report in April 2010 or indeed, after countless senate and other inquiries. Senator Peter Whish-Wilson noted this year when putting forward a bill in the senate for a parliamentary commission of inquiry (i.e. similar to a royal commission only instigated by, and reporting to, the parliament - which has only occurred once in Australia's history) that Small Business Ombudsman, Kate Carnell lamented very little has changed in the last decade despite 17 parliamentary inquiries into misconduct in the banking and financial services sector. Further he noted, Greg Medcraft, Chairman of ASIC said at a recent senate estimates that there is still a cultural problem in the industry.

110. Senator Whish-Wilson has counted 28 different parliamentary inquiries into the industry across states. He has sat on countless in the 5 years he has been in the senate. He noted that a key recommendation from the Senate Inquiry into the Performance of ASIC was that a Royal Commission was needed into the concerns whistle-blower Jeff Morris exposed related to the CBA because parliamentarians have limited time, resources and powers to deal with these issues and there was a belief the regulator was not able to get to the bottom of it. We recommend this link to the Senator's important and significant speech: https://m.youtube.com/watch?v=DuFkSv9pdh8&feature=youtu.be.

111. This further powerful speech in the House of Representatives by Bob Katter MP correctly describes, with compelling examples, grave concerns about deceit and misconduct by the banks, the gross injustice of the system and why there is a necessity for a royal commission: https://m.youtube.com/watch?v=8L6222Bcn38

112. Certainly, nothing has changed for those victims the system has failed who are known to HNAB-AG including victims of other industry members and organizations. It is over 8.5 years since the misconduct to which we were subjected occurred. For some, it is even longer.

113. Hopefully, the fact this review has been commissioned reflects there is now enough concern amongst power structures about a troubling

perspective which appears to be implied by Richard St John's report that victims who have been failed by the system should just accept it and effectively suffer a compounding double-hit of loss and betrayal. That position protects and enables corruption and misconduct, to not only occur, but flourish.

114. We cannot comment directly on any change in the experience of ASIC since Government accepted Mr St John's recommendations including taking a more pro-active stance on monitoring licensee compliance with compensation requirements. However, the fiasco we encountered with ASIC regarding the Security Bond related to [redacted] (referred to elsewhere and in Appendix A) does not augur well for meaningful response and change.

115. We remain concerned Richard St John's recommendation that licensees provide *"additional assurances"* to ASIC in relation to PI insurance cover is too vague to be meaningful.

116. Reviews, reports and recommendations are important to the degree to which the participants take an ethical position and properly consult and examine, bringing their own skills and expertise without agenda or conflicted motivation or influence. It then requires parliamentarians and government to act responsibly. In our experience it does not inevitably, or necessarily, occur. This informs our view that a Commission of Inquiry or Royal Commission is necessary into the banks and finance sector with a commitment from parliamentarians to respond in a responsible and meaningful manner. While establishment of either of these commissions is related, it is separate to the necessity, to urgently establish a scheme for proper financial redress, including retrospectively.

117. Senate inquiries provided great hope but failed to deliver on outcomes to help victims. Moreover, victims became profoundly disillusioned and demoralized when, after an initial interest and passionately concerned response by some parliamentarians, there was a failure to follow through on commitments and issues recognized as serious.

118. For instance, Senator Sam Dastyari was a force to be reckoned with, speaking out in parliament about [redacted] as a fraudster and supporting Senator Peter Whish-Wilson's call for a senate inquiry into forestry (and horticultural) MIS which he also chaired for a time. (HNAB-AG participated in the hearing although very limited time was available to do justice to the issues for our members. See paragraph 145 regarding Dr Evans comments.)

119. Senator Dastyari met with HNAB-AG representatives, visited 2 who were witnesses at a hearing in November 2014 immediately after, kept in regular contact beforehand offering assistance with our aims and pushed KordaMentha into creating a *"hardship program"* as a result. (KordaMentha's so-called hardship program quickly emerged as a

farce yet it could have been a landmark vehicle for ethical treatment of victims of WCC. See Appendices D, E, F, G.)

120. Regrettably, Senator Dastyari did not seek feedback about the progress of the hardship program or respond to information sent to him when early on, serious concerns (about which there is evidence) were reported by our members in relation to both the liquidator [redacted] and KordaMentha's so-called *"independent hardship advocate"* [redacted]

121. Repeated attempts, in 2015 and early 2016, to communicate with the Senator and his former advisor, [redacted], fell on deaf ears. However, Hansard related to a follow-up hearing in August 2015 notes, Senator Dastyari sought feedback in the 9 months between the 2 hearings from [redacted] the liquidator and ANZ – but disturbingly, not the victims. The impact cannot adequately be described. Nor was the opportunity extended to HNAB-AG to respond to the comments or claims made by these people (and others mentioned in submissions) who were given right of reply.

122. As a result, under duress with no real option, many people have been forced into settlements for misconduct-related debt with no redress for the WCC losses prior to, or including, KordaMentha's subsequent demands. Independent liquidators informed us that the industry view is [redacted] victims should have been waived (i.e. debt compromised in full) and other Timbercorp victims should have been settled at 10-30%.

123. Of note, at the first annual review of banks in October 2016, ANZ Deputy CEO, [redacted] Timbercorp's largest remaining creditor, also expressed the view that [redacted] victims should not be pursued. Yet he claimed a different view in March 2017. This was after ANZ received a letter from HNAB-AG requesting the bank reimburse settlements given [redacted] victims have been forced into these by the liquidator, [redacted] who refuses to accept ANZ's guidance or exercise his discretionary power under statutory obligations. [redacted] See Appendix E and D-G.)

124. Inconsistent demands (in comparable, or in even worse, circumstances) occur in the hardship program. We have seen punishment via demands for greater monetary amounts and / or conditions (e.g. caveats on homes and number of years) when Mr [redacted] is upset or angry (about aspects of the ongoing court cases or efforts by HNAB-AG). Insider acknowledgment of this has been provided even recently.

125. [redacted] eventually, resigned in June 2016 citing concerns about lending endorsement to the program regarding a *"significant minority"* of cases. According to a survey, reports and observation by HNAB-AG

concerns extend well beyond a few. Many people expressed to HNAB-AG representatives being concerned about upsetting Ms [redacted] or Mr [redacted] Neither seemed to have an understanding of Stockholm Syndrome where traumatic bonding results in needing to align oneself with someone who has significant power and control over ones life in some significant form. Many chose to comply out of fear.

126. Settlement demands range from 0 – 84% (the maximum demand being only 1% short of people *not deemed* to be in hardship).

127. [redacted] replacement, [redacted] has expressed the disturbing view that he cannot foresee a circumstance in which he would resign: this means he must pressure, coerce or manipulate victims to pay more to meet the liquidator's demands and/or he believes he is more competent than Ms [redacted]

128. From ongoing reports, it is certainly not that Mr [redacted] has managed to obtain a more reasonable approach from [redacted] or been lucky enough that [redacted] [redacted] saw the light and has lowered demands or treated [redacted] victims fairly, far less with full waiver. Indeed, we are aware of people who were unable to cope with the months (extending to well over a year – and even over 2 years) of protracted unresolved 'negotiations' with the liquidator and 'advocate.' Many, feeling battered and traumatized, acquiesce to demands the former advocate saw as unreasonable. This includes a case where the man was known to be suicidal and had attempted suicide.

129. Even during [redacted] involvement, known cases of serious mental health concerns including active suicide attempts took months or over a year to conclude. Further, the treatment of many people from both so-called "*independent advocates*" as well as KordaMentha, is disturbing. This week, the most recent email received, is typical of what has been sent to HNAB-AG for well over 2 years. The man is known to the hardship program to be suffering psychologically as a result of the deceptive financial annihilation and personal cost to his family. He wrote "*I can see how people just fold, they (KordaMentha/hardship program) really wear you down. It's a heartless tactic against the vulnerable.*"

130. In response to comments by [redacted] about the liquidator, in early 2015, HNAB-AG suggested she encourage KordaMentha to participate in trauma-informed training to help understand people were not merely delaying providing information or responding as some sort of strategy or tactic but that this was a symptom of severe distress. Moreover, the need for swift redress given trauma was underscored. This did not occur: instead the liquidator arranged for its advocate and her team to receive what amounted to suicide prevention training. Evidence of interaction with people in this category does not reflect they were responded to with appropriate sensitivity or prioritized. In addition, the liquidator either does not care to be informed or ignores

what it knows about the state of people in severe distress and actively uses it against people. We have countless examples.

131. KordaMentha principal, [redacted] testimony at a senate hearing [redacted] Commitments made have not been honoured. A summary is included in Appendix F.

132. With the disappearance of Senator Dastyari, or other parliamentarians willing to examine the material in order to hold KordaMentha to account, the liquidator ignored ANZ's encouragement. ANZ had cautiously expressed to HNAB-AG representatives its guidance was to treat [redacted] victims *"as swiftly as possible"* and "*very generously"* and *"incredibly compassionately."* Survey data indicated well over 90% refute this occurred. We understand an independent industry member understood from ANZ at that time that [redacted] victims were to be waived through the hardship program. As noted above, in October 2016, at the first annual bank review [redacted] ANZ Deputy CEO is on record that [redacted] victims *should not be pursued* i.e. provided waiver in full. Put simply, KordaMentha's aggression increased soon after Senator Dastyari dropped his commitment at the beginning of 2015.

133. Moreover, despite knowing of the openly electronically recorded meeting in February 2015 in which [redacted] stated the above, it was outright denied by [redacted] when she, eventually (after follow-up from HNAB-AG), spoke with him a staggering 5 weeks later. People's lives and financial futures were in the balance. She is well-respected in the industry and no doubt her reputation is well-deserved in many regards. However, it seems she acted for KordaMentha's interests and was unresponsive to many serious concerns of the victims – for whom she was meant to 'advocate.'

134. People's lives quite literally, as well as their psychological well-being, their families, homes, careers, work, health and futures were, and still are, on the line. An "*advocate*" has a responsibility to prioritize any relevant information and act in the best interests of the victim as quickly as possible. She did not do that. Nor does her replacement. They seem to be representatives for KordaMentha.

135. [redacted] resignation (announced in May 2016) was far too late. It was not courageous or honourable. It seemed designed to protect her interests given certain matters related to her involvement. Had she resigned before the second MIS hearing in August 2015, HNAB-AG and other victims may have had an opportunity (beyond the minimal time provided after we requested to present) to speak to concerns of the utmost seriousness. [redacted] only resigned a few months after Senator Xenophon became involved at our request. It was also at the time Naomi Halpern, one of the authors, ran for the senate in the 2016 election. These events would have underscored to [redacted] if in any doubt from correspondence outlining concerns since late 2014, that HNAB-AG will not let the issues rest.

136. Senator Xenophon agreed to assist HNAB-AG with serious concerns regarding demands and treatment. KordaMentha responded to his involvement (commencing in December 2015) by meeting with the senator, his advisor (Skye Kakoschke-Moore, now a senator) and representatives of HNAB-AG and [redacted] Unfortunately, themes were ignored despite efforts by HNAB-AG. The focus was merely on the actual example cases compiled to illustrate concerns. Even amongst these, some still remain outstanding. All required an unnecessarily, inordinate time and anguish to reach a conclusion (note – concluding a case is not the same as a satisfactory outcome or process).

137. In June 2016, Senator Xenophon assisted in further meetings with HNAB-AG and KordaMentha related to the Deed of Settlement. However, due to his schedule and workload the senator has not been able to assist in finalizing these amendments over the past year. However, his help should not be required. It falls under the role of the advocate, [redacted] Further, KordaMentha is unnecessarily leaving the matter unresolved extending the horrendous and protracted distress for victims. The liquidator has not been genuine in engagement throughout.

138. People fear signing the deed, as it exists, given it provides no closure or certainty and contains errors in statements of fact. Genuinely independent lawyers have advised against signing it. Advice from independent liquidators and comparison with other deeds underscores it is not a standard deed as [redacted] and the advocates claim.

139. Given experiences to date of commitments dishonoured (even given in senate testimony) and intentions being disingenuous, nor do people have confidence in [redacted] claim he will provide a retrospective letter to cover any amendments. It is noteworthy, he will only permit amendments for [redacted] victims yet aspects apply to everyone. However, despite significant fears some people have signed the deed because they cannot cope with the situation and / or felt pressured by [redacted] or believed (from either advocate) there was no real choice.

140. [redacted] appears to be the main lawyer people are directed to from the list of KordaMentha's *"free independent lawyers"* in regard to the deed. The title implies legal advice is given and thus is in the best interest of the person signing the deed. However, [redacted] has subsequently qualified this service as providing *"explanation"* about the deed, not legal advice. Mr Berrill merely reiterates what [redacted] and [redacted] or now, [redacted] tell people – which is the deed is standard and must be paid or legal action or bankruptcy will commence.

141. One wonders just how much money has been paid to [redacted] and other legal colleagues, as well as the 'advocates' and their team, to pressure and force victims of WCC to pay for misconduct-related debt

which even the largest creditor, ANZ, believes should have been waived for [redacted] victims.

142. HNAB-AG is aware of a serious matter related to KordaMentha's conduct in which it would be the responsibility of a lawyer to provide advice but this was not provided in the consultation with [redacted]. KordaMentha claims it is offering *"free independent lawyers."* In fact, what is provided is merely a re-iteration of what [redacted] and the advocate/s state. This permits KordaMentha to make the bogus claim *"legal advice"* was offered. It is typical of spin doctoring in the industry.

143. Had parliamentarians been able, or willing, to engage with victims, much of this would not have occurred. On appointing [redacted] in 2014, KordaMentha, supported by [redacted] ANZ Deputy CEO and Senator Dastyari, lauded her as the best in the business. Yet, her resignation 18 months later, citing unwillingness to be seen to endorse the program due to a *"significant minority"* of concerns, **did not raise an eyebrow –** far less result in an inquiry being launched. The green light for [redacted] at KordaMentha glowed stronger.

144. The deafening silence after initial activity in 2014, signalled to KordaMentha it could act as it pleased. [redacted] behaviour changes when political and media pressure is on. It goes to the lack of integrity amongst some in the industry protected by inadequate transparency and safeguards. Already protracted cases [redacted] was concerned about persist to date over a year after her resignation: some acquiesced in despair and under duress (for which there is evidence).

145. On June 11 2017, Dr Evans wrote an article in which he said victims should predominate at senate and other hearings - not industry. We would add that the timeframe to provide testimony in person is wholly inadequate and inappropriate for victims especially of complex multi-lender/product WCC. A thorough understanding of trauma-informed engagement is also necessary for parliamentarians including in private meetings and phone calls through to public (or *in camera*) hearings.

146. As many parliamentarians recognize, the above underscores why a Royal Commission or Commission of Inquiry is required. In addition, it illustrates the limitations of parliamentarians not having adequate time and resources to be adequately informed in order to act or be mindful of the issues and urgency for support of recommendations to translate to meaningful change.

147. We do not understand Richard St John's conclusion *"that it would be inappropriate and possibly counter-productive, to introduce a more comprehensive last resort compensation scheme…"* We agree to an extent that it is inappropriate non-offending licensees are required to contribute to underwriting the ability of other licensees to meet claims against them for compensation. However, the entire industry is

responsible for ethical codes of conduct, or lack thereof, to sufficiently protect victims from a great bulk of misconduct / WCC.

148. From what we understand Mr St John did not propose measures such as fining offenders a multiple of loss incurred, risked or benefit gained which has various rationales including for use to fund cases where offenders cannot.

Potential design of a compensation scheme of last resort

14. What are the strengths and weaknesses of the ABA and FOS proposals?

149. Interestingly neither the ABA nor FOS proposals refer to accountability via the fair strategy of funding financial redress through fining solvent offenders and their organizations a multiple of losses incurred, risked or benefit to them gained or obtaining a percentage of future income from insolvent offenders. We have noted elsewhere the numerous benefits of holding offenders accountable financially.

150. In brief, regarding the proposals of ABA and FOS for a compensation scheme of last resort our view is:

Table 5:
Proposals from Australian Banking Association and Financial Ombudsman Service

Strengths	Weaknesses
FOS:	
Industry funded	If industry funded means it is passed onto consumers this is a concern
Cover retail clients	Exclusion of small business – this should be included as should family / representatives of a deceased, ill or incapacitated person
Cover unpaid EDR scheme, court or tribunal determinations or awards	*"Appropriate"* cap is highly subjective – restitution and compensation is the only appropriate, fair or responsible outcome for victims of WCC/misconduct
All AFS licensees providing services to retail clients must be a member of the scheme (in order to meet obligation to have 'compensation arrangements' under the *Corporations Act 2001*)	The obligation to have 'compensation arrangements' under the *Corporations Act 2001* does not cover proper redress regarding the amount per client / consumer or numbers of these or money managed – it did not protect [redacted] victims on discovery of WCC in 2008/9. Further, accountants and others effectively give advice not always couched as financial / investment and should be included if involved with product recommendation or any handling of financial affairs

	An offender could misrepresent or outright lie about holding an AFS; further most consumers would not know how to identify a false document if someone claimed to be a AFS licensee – it requires an independent, easily accessible, user-friendly, well-publicised website to confirm
	Obligations of *Corporations Act 2001* were not met by [redacted] and colleagues; it did not seem to include lenders or product issuers to our knowledge – they were able to distance from liability behind degrees of separation hence these need tightening or enforcement by regulator / government if not safeguarded
	An EDR scheme assessing or investigating a dispute must have high levels of competence, professionalism, staff retention (versus churn), expertise, knowledge of the product/s in question, no conflict of interest and have trauma-informed training in engaging with the victim as well as be accountable through regular random audit: panels would best reduce human error or inadvertent bias or misconduct (see Table 1)
	In general, the concept of ASIC approval provides little or no confidence or trust for victims and also (it would appear given direct feedback and extensive reading) from ethical and concerned industry either - this includes whistle-blowers and ordinary members persecuted for minor admin errors while WCC / misconduct and scandals are ignored or reluctantly and half-heartedly 'investigated' with little or no meaningful outcome
	The scheme must be independent, not accountable to industry but to a larger body of representatives of consumers and former victims advocating for people
Accepts necessity for retrospective unpaid determinations	Wants to limit unpaid determinations retrospectively to 1 July 2008 when FOS was established – which while it would capture WCC exposed by the GFC which became clear soon after, it does not address those cases refused a hearing (on the basis of the absurdly low cap of

	$150,000 at the time; Mr [redacted] non-compliance with requests for documents; or the marked trauma; as well as victims' (and it seems FOS's) lack of understanding of what, and how, complex multi-lender/product WCC occurred – it has taken years for individuals and HNAB-AG to unravel
ABA Proposal:	
Impose a levy structure	While ABA does recognize it can be difficult to distinguish general advice from specific personal advice at times we are unsure how calculations are intended to work based on different types of advice
Actively encourage improved practice and professionalism integrated with other regulatory and risks management	Encouragement is not enough - we suggest it should be *standardly required* – including meaningful informed consent (see Appendix C) with written and updated circumstances and goals of clients from outset
	Cap on size of dispute and compensation – no valid rationale is provided: it is hard to imagine the individuals making the proposal would accept this for themselves if placed in the worst case scenarios as opposed to taking a hit and having time, resources, support and options to recover financially
	Presumption that a cap will exist and is appropriate for 'compensation' - there is no acknowledgement of accountability for restitution of direct, indirect or compounding losses as well as compensation for incalculable losses and pain and suffering
	Focuses only on financial advisors ignoring the role of accountants, lenders and product issuers, brokers, insurance companies and others
Supports development of a scheme through flexible processes with legislative underpinning to ensure contributions; establishment in a timely way	It supports industry based processes (we strongly believe it should be broader); we are very concerned flexibility to adjust its remit, terms and processes could leave it open to being altered and undermined, disadvantaging victims and protecting offenders through instability, industry and political games or further misconduct etc. – it should not be able to lose anything which safeguards

	victims (and favours industry advantage at victims' expense) and must only tighten protections
Governance arrangements should include an independent chair, legal expert, equal numbers of industry and consumer representatives	Victims are omitted. The notion of the title of an *"independent"* chair and governance participants does not inspire confidence based on experience: they must be truly independent, preferably with the chair not from industry (an industry based chair cannot be claimed as imperative to understand issues: if a non-industry professional - otherwise competent - cannot understand issues what hope do victims have?); governance should have access to genuinely independent trusted industry advice; there must be equal numbers of former victims in addition to consumer representatives (in our experience some claiming to act in a role as consumer '*advocates'* even when highly respected within the industry, have not understood or been keen to understand or act on issues regarding complex multi-lender/product WCC and have been made comments and taken positions influenced by who pay them and/or expectations of the role which are not aligned with consumer interests under existing legal possible outcomes) – all staff must have undertaken proper trauma-informed training
	Does not recognize full-time operation of the scheme may be required at least initially (until the industry culture changes sufficiently) given the thousands of cases (especially if a retrospective scheme is dealt with in the same vehicle) – it suggests ABA is manifestly out of touch or seeks to minimize the impacts and breadth of damage amongst the community
Investigation, once the new one-body scheme (AFCA) exists, of those providing the administrative services and collecting funding levies	Lack of awareness (despite extensive reports and rolling scandals occurring including whistle-blower testimony) that ASIC approval provides little or no comfort or confidence – a scheme should be audited and investigated by a separate body as well as internally on a random basis by anonymous evaluators

Notes correctly that unpaid determinations are the result of a combination of regulatory and conduct failures	Believes that unpaid determinations are the result of a combination of regulatory and conduct failures which are addressed through the new professional standards framework and not a direct result of the absence of a last resort compensation scheme – this peculiar position is lost on us: the lack of a scheme is due to inadequate regulation which enabled misconduct and WCC – *why should victims be penalized for what is the responsibility of industry and regulatory systems?* It would be akin to dismissing claims for compensation of past sexual abuse victims at the hands of institutions because no scheme existed beforehand to provide redress, and having failed to establish adequate safeguards!
	Proposes prospective claims only, ignoring retrospective claims of victims of serious WCC who are suffering devastating losses and personal impacts, *and whose experience has brought about the necessity for such a scheme*. Ignores accountability, responsibility and ethical conduct - apart from compassion, or remorse for industry conduct that has been enabled. Dismisses unpaid determinations existing before date of scheme.
	Notion of an *"appropriate"* event (not defined) is concerning as are cut-off dates for claims – reflects lack of understanding (and meaningful consultation with victims) and/or motivation of greed and self-interest over responsibility, accountability and professionalism
Notes need for validation of insolvency or wind up of the financial advice business i.e. that it is genuinely insolvent	Verification from an administrator or liquidator that the assets of a FA business will not cover *'the'* determination (does ABA assume there is only one victim?) does not mean the business has not designed and implemented a strategy to secure assets beyond the reach of creditors. In the previous submission, we referred to Federal Court cases involving an *alleged fake-debt bankruptcy ring* (with [redacted]

	[redacted] who feature in [redacted] personal bankruptcy which appears to be part of his overall personal and business plan to secure his assets while declaring he has nothing on paper. Consequently, forensic investigation of suspect bankruptcies is necessary but must not delay victims obtaining redress (which it would for years if required to wait). Fines in these scenarios could take the assets once unravelled and enforce genuine insolvency and bankruptcy. It should result in jail and a permanent ban from the related industry (financial or legal). Failing that it must at least result in genuine supervision and ongoing audit. Any requirement such as the ABA suggests that, in addition to validation of the status of the FA firm, all other redress avenues should have been exhausted is patently unreasonable. It would leave a loophole as it could be argued court action is required to determine the case even if no award is possible. As noted in detail elsewhere in this submission there are many reasons legal action will not be possible even if there was confidence of justice being delivered - this is regrettably, typically not the case. Everyone knows that, by and large, *"you get monkeys for peanuts"* and many victims won't even have peanuts. Apart from this, experience has demonstrated law firms do not always understand, or seek to properly understand, the relevant details particularly in sophisticated, complex multi-lender/product WCC. The trauma factor and inability of the victim to handle such a requirement must be appreciated where losses and impacts are dire. The system is stacked against the victim and works for the offender with deep pockets, knowledge, resources and relevant contacts - and much less to lose (safely secured and / or at little personal risk)
Cover general advice provided by financial advisers, product manufacturers and robo-advisers (who deliver FA online using algorithms and technology) as well as personal advice to avoid market distortions and take	While recognizing the difficulty for consumers in acknowledging the difference between personal and general advice and agreeing this should be taken into account, the ABA ignores the responsibility of banks / lenders to

account of the low level of consumer understanding of the difference between personal and general advice	train retail staff providing retail bank services to be competent to do so or alternatively, ensure they are not able to do so, and to provide redress where staff overstep the line or area of competency – if a nurse performs a doctor's function (e.g. provides a diagnosis or medication or operates on the brain, heart etc. the clinic or hospital is also responsible). ABA also absolves research houses that publish general advice reports of responsibility, thus leaves risk ongoing, despite it being recognized they have provided information supporting the interests of the firm / organization paying for data. This is a conflict of interests. We do not understand enough about securities dealers or derivatives dealers to comment – but if providing advice or arrangements they should be included along with anyone else providing this role in industry.

151. A broad scheme is necessary to provide maximum protections for consumers and small business. As noted previously while we do not believe it should be permitted, should these costs be passed onto customers and shareholders, it is ultimately not without benefit, as a scheme would pressure for change in industry culture.

152. It cannot reasonably be claimed that costs must be passed on given the enormous profits made and ludicrous salaries and bonuses paid to bank and other CEOs and senior executives. Moreover, costs could be contributed via meaningful penalties and fees imposed on offenders who are solvent and taking a percentage of an insolvent offender's future earnings and investments. Further suggestions follow later.

15. What are the arguments for and against extending any compensation scheme of last resort beyond financial advice?

153. In a nutshell the inadequate legislation, regulatory requirements and industry codes of conduct do not protect consumers from lenders and product issuers utilizing degrees of separation to distance themselves from liability and responsibility. They hide behind various structures and external financial advisors, accountants or brokers etc.

154. Often these industry members were previously represented as working together, collaborating and united. [redacted] as familiar with his strategy for investment loans for margin lending. He provided assurance the major (then respected) bank evaluated it as sound, hence collaborating. People had no reason to question the CBA (or other banks) would not

be operating ethically or may be participating in WCC out of greed and because they could take advantage of their position through access to clients of 'independent' advisers and others.

155. Further, representations of advisers / accountants being *"authorized representatives"* since emerged as unfounded at law leaving those lenders and products safe from liability.

156. Where the 'professional' initially servicing the victim has insufficient PI insurance, or exclusions do not safeguard him or her and / or the advisor enters insolvency or personal bankruptcy (often by clever, strategic, careful design retaining assets and lifestyle) victims are left without recourse to restitution and compensation.

157. There is no valid reason from the perspective of integrity or ethics that lenders and product issuers who collaborate through deception or negligence should not be held accountable. It is imperative authorities appreciate that [redacted] could not have achieved what he did without the lenders and issuers involved. Had they performed due diligence and ensured prospective clients were aware, provided informed consent and had access to statements and correspondence that were intelligible and accurately interpreted, we would not be victims of WCC. Years of distress and lives still impacted in devastating ways not would be the result. HNAB-AG would not exist. We would not be writing this submission.

158. In brief the arguments related to extending a scheme for financial redress beyond financial advice are:

Table 6:
Argument for Extending a Scheme for Financial Redress Beyond Financial Advice

For	Against
Advisors like [redacted] and his firm could not have achieved what they did regarding fraud, deception and negligence had lenders and product issuers not collaborated or failed in due diligence. Accountants also provided advice: many consumers did not know there was a difference between an accountant or financial planner or advisor. Brokers, mobile lenders and others have been involved.	None that reflect a civilized and democratic society
Lenders hide behind degrees of separation between them and the victim's advisor / planner / accountant etc.	
Product issuers hide behind degrees of separation between them and the victim's advisor / planner / accountant etc.	

Unscrupulous liquidators should also be included: KordaMentha's so-called *"hardship program"* for Timbercorp is an example of serious issues regarding both the liquidator and principal, and concerns related to both of its so-called *"independent advocates"* and listed lawyers offering so-called *"free independent legal advice"* (see Appendix F)	
There is no avenue for countless victims beyond court (which is not always justice – we have noted it benefits those with the deepest pockets, best positioned to access knowledge, resources and contacts and with the least skin to lose). This includes a lack of meaningful avenues over concerns with lenders, product issuers, liquidators etc. and none at all regarding research houses or those indirectly contributing the problem. Victims often do not have the resources emotionally or financially, time, connections, sophistication etc. and may be struggling with the impact of financial annihilation or severe hardship and its myriad personal consequences	
Advice, generally and personally, is not always easily distinguished and may be given by tellers or others who are not qualified even when not endeavouring to engage in WCC/misconduct for their personal benefit or gain (e.g. bonus, reward, kick-back, promotion etc.)	
Some products are not marketed as financial advice products but effectively are best categorized as such e.g. Aveo products are not primarily an Aged Care service but an investment which appears designed in favour of the business and not the unsuspecting elderly person	
The scheme should extend to whistle-blowers who can incur significant repercussions including financial and even death threats as brave, model Australian, Jeff Morris has outlined. (He deserves an Australia Day honour but may be unlikely to receive one as CBA sponsors these awards….)	
The scheme should extend to journalists who may be penalized via financial impacts etc. where editors or senior colleagues respond to pressure or deem investigative activity, or reporting truth or facts, potentially too risky.	

159. There is not only no valid reason to limit the scheme to financial advice but every reason to include lenders, product issuers and liquidators who have gargantuan resources, contacts and deep pockets to squash the average, financially and legally unsophisticated, consumer who is often, also in a state of deep despair and trauma due to what has occurred. Other related categories of people impacted should also be considered as noted above.

16. Who should be able to access any compensation scheme of last resort? Should this include small business?

160. The scheme should be available to any consumer including a representative of someone deceased, ill or incapacitated. It should also include small business. The legal system often does not provide justice and is adversarial and protracted. Ethical considerations can be overturned or denied because of legal loopholes and inadequacies. Cases can be strung out over years. These are strategies to financially ruin victims – if not already decimated hence seeking help – and to wear them down in the hope they will back down due to significant stress compounding trauma. It is also a way to punish victims by irate offenders particularly those used to getting away with their activities.

161. Anyone who has incurred direct, indirect and/or incalculable financial losses with resultant pain and suffering and been failed by existing avenues (in seeking, being unable to seek or prevented from seeking help) related to financial misconduct / WCC should be eligible. This includes:

(i) Victims who have been unable to receive payment for existing determinations enforced which were obtained from EDR or court.

(ii) Victims who were excluded from existing schemes due to:
- loss exceeding the cap
- inability to understand their circumstances to prepare a case
- personal circumstances, lack of resources or lack of confidence in seeking financial or legal assistance to prepare a case for a scheme
- too traumatized to take action
- any reason in which debilitation and lack of financial sophistication and consequent impact of WCC rendered the person in a position of disadvantage.

(iii) Victims as a result of any industry member or organization, whether advice was sought, or offered, or activity occurred without their knowledge through financial advisors, accountants, banks, mortgage lenders, credit providers, insurance policies and so forth either in private scenarios i.e. externally (mobile lenders, brokers etc. working with private firm or actual *'authorized representatives'*) or in-house in banks and their subsidiaries,

insurance companies or hardship programs etc. This should include lawyers providing third party advice related to these scenarios.

(iv) Victims who were inadequately advised, or responded to, by third parties such as lawyers on seeking help.

(v) Victims (whether alive or deceased) whose affairs were handled by an industry member (including acting as Enduring POA or Guardian etc.) as a result of incapacitation, disability or any other reason etc.

(vi) Whistle-blowers who have suffered financial loss or personal impacts associated with work on WCC.

(vii) Reporters, journalists or individuals who have suffered financial loss or personal impacts associated with work on WCC.

17. What types of claims should be covered by any compensation scheme of last resort?

162. Types of claims should be broad so as not to exclude scenarios. They should include:

1) financial advisors / planners
2) accountants
3) operators of MIS
4) lenders for MIS
5) product issuers
6) margin lending
7) superannuation
8) credit providers
9) liquidators
10) brokers
11) mobile lenders
12) investment schemes of any nature (including those advertised as a different category of product: see below)
13) lawyers

163. It should include products that are better categorized as financial products but which have been promoted in some other manner such related to aged care. For instance, appalling exploitation of some residents in retirement villages such as the Aveo model has been reported. Ian Yates, CEO of the Council on the Aging (COTA) has stated *"Retirement village contracts are quite complex financial relationships, more akin to a financial services product."*

164. However, we vehemently disagree with his suggestion that retirement villages would be better regulated by ASIC for the reasons we have outlined in the previous, and this, submission. We are in complete agreement that retirement village financial products should be

regulated as a financial product but by a new entity that is competent, willing and able, to provide proper safeguards and redress with meaningful responses to complaints and enforcement of penalties that are not a slap on the wrist enabling misconduct to persist unabated.

165. Investigation and the exposé of Aveo, and its related business Freedom Aged Care, by Walkley Award-winning Fairfax journalist Adele Ferguson, her colleagues and 4 Corners (screened on ABC, 26 June 2017) appears to fall under the category of numerous financial scandals they have aired.

166. It is disturbing beyond measure that it is reported as far back as 2007, a Federal Parliamentary Committee made recommendations to improve protections for residents and 10 years later these have not been implemented.

167. ABC journalist Meredith Griffiths reported on 27 June 2017 that Age Discrimination Commissioner, Kay Patterson has called on state, territory and federal ministers to work together to implement these recommendations now. She reports Federal Aged Care Minister Ken Wyatt claimed people would not have to wait 10 years for him to take action. While he committed to look at the report's recommendations, Griffiths reports COTA notes *"the 2007 report will not solve the problems because the sector was changing as a result of federal legislative changes in 2012 and this year."* None of this inspires confidence. It is a disgraceful indictment on what occurs in reality.

168. The fact it has been 10 long years since the report reflects yet another failure of power structures to act on known concerns (and recommendations from an investigation) resulting in financial losses and pain and suffering for retirees. It is typical of response to reports related to other power structures and must stop.

169. Victims (or their relatives if deceased) of this type of financial exploitation should also be able to seek redress through a retrospective scheme.

18. Should any compensation scheme of last resort only cover claims relating to unpaid EDR determinations or should it include court judgments and tribunal decisions?

170. A scheme should cover unpaid determinations wherever the source arose related to the industry. Until, and unless, accountability is seen as necessary, industry will not change enough as has been demonstrated over the past many years. The community as well as victims are impacted. Moreover, there is no ethical reason a victim, left without restitution or compensation from any scheme determining it is due, should be left unpaid. Proper redress for the victim should be central.

171. A scheme should cover all victims, including unpaid EDR determinations, court and tribunal judgements. However, it must not

be limited to these for reasons outlined in this and our previous submission.

172. If a scheme does not cover all scenarios it will leave open doors and in turn invite further misconduct and WCC. It also would not be an ethical response to victims or the broader community. The fundamental question which must be kept front and centre of these issue is:

> *Why should victims wear the financial and personal cost of the financial crimes of others when, at least, the financial impact can be remedied?* - In a democratic, civilized society there is no good reason why the victims should be further victimized.

19. What steps should consumers and small businesses be required to take before accessing any compensation scheme of last resort?

173. Any steps required must be manageable – including provision of support practically by industry where necessary, easily accessible, affordable and refundable through the scheme if any cost at all. Expectations must be based in trauma-informed understanding.

174. A consumer discovering possible concerns or presented with indications or evidence of WCC/misconduct must substantiate it directly or indirectly. This may require expert professional assistance or engagement to ascertain negligence, deception or fraud. This is likely necessary in complex cases to determine the direct, indirect (and where time has elapsed) compounding financial losses for claiming restitution and to identify incalculable losses.

175. Other professionals may be helpful in assisting with preparing a victim impact statement or supporting report. We are all too aware a statement will be impossible for many people to provide or to do justice to in outlining impacts. Counsellors, psychologists, doctors, action groups or industry members who have assisted someone since discovery of the WCC may be able to help verify pain and suffering for compensation. However, there must be no duress or invasion of privacy or confidentiality regarding involvement with health-care professionals (this occurred related to KordaMentha's hardship program: people were encouraged to provide personal details and obtain mental health reports with the enticement of a better settlement being able to be negotiated).

176. There is a cringe factor regarding any notion of 'proving' anguish. Part of the pain and suffering is the lack of understanding and support from the community and power structures. It is isolating. Most other people do not understand the impacts or the on-going repercussions.

177. Table 11 outlines examples to assist in identifying WCC.

178. Table 12 outlines aspects of determining losses and impacts.

179. This stage before accessing a financial redress scheme of last resort will likely require access to competent industry assistance for many people particularly in cases of multi-lender/product WCC. Hence a scheme should fund provision of qualified professionals and / or pay for the service or a trusted accountant or industry member known, or recommended, to the alleged victim to assist with compiling the data.

180. If the concerns are not founded and the victim has engaged in deceit he or she should cover the cost of the assessor and be prosecuted. There must be access to an independent reviewer to ensure there has been no incompetence or misconduct by the professional whose assistance was sought (e.g. collusion with offender/s or a conflict of interest unknown to the victim): where such misconduct is discovered, if beyond reasonable doubt of human error, the assessor should be fined, banned from providing this service and subject to meaningful action.

181. If any related concern is founded the cost of professional help to examine and prepare the case should be covered in full by the scheme. Preferably, the scheme would fund the assistance upfront and recover costs from the offender. A problem could occur as many people do not know if their query of misconduct is founded, or will produce 'hard enough' evidence, or if what drew attention to a possible issue is genuinely no fault of the professional (which is likely to be claimed on raising it with him or her). Consequently, people must be educated that a query is worth attending to, with help to ascertain validity provided without fear of costs which may prevent or stymie pursuit of examination. Of course, changes in standard requirements and procedures would radically reduce the eventuality of what has transpired as outlined in Table 11.

182. Apart from certain circumstances outlined below, the victim should then notify the offender/s of the concerns and provide the opportunity for direct restitution and compensation within 30 days.

183. Engagement with IDR should not be required where:

    (i) the conduct is such that the victim reasonably believes he or she would not receive, or is not receiving due consideration having already contacted the offender/s, or
    (ii) the misconduct suggests gross fraud, deception and deliberate negligence across numerous lenders / products (thus being too complex and unlikely to receive a genuine response)
    (iii) the resultant or potential impact causes significant distress leaving the person debilitated or
    (iv) there are other pre-existing personal circumstances limiting his or her action (e.g. carer for an ill or disabled person, suffering significant physical or psychological health problems, coping with a death or some other crisis etc.)
    (v) it requires a representative (e.g. family member or friend or concerned community member or professional) to act on behalf

of the victim due to his or her incapacitation physically, mentally or emotionally or, on discovery having become deceased.

184. If a case is resolved in-house the offender/s should still be reported to the scheme to be publically declared in order for prospective consumers to be warned and make decisions. A penalty that is a multiple of the loss incurred, risked or benefit gained should still be imposed by AFCA. However, where the offender/s swiftly remedy the WCC/misconduct (i.e. less than 6 weeks) and provide full restitution and compensation this should:

    (1) result in the lowest level of penalty (i.e. three times the amount rather than higher on the scale of 3 – 10 times)

    (2) attract the highest rating of confidence of offenders (i.e. beyond not engaging or permitting WCC / misconduct) on the AFCA consumer warning website.

185. The above suggestion provides an incentive for the offender/s to remedy the situation as a matter of urgency rather than have the case go to an independent scheme and have their reputation further damaged beyond a permanent record of permitting, or engaging in, WCC / misconduct in the first place and incur a higher penalty.

186. Direct efforts to notify of discovery and resolve the matter with the offender/s should not expose the victim to threat, intimidation, harassment, assault, further trauma etc. If he or she is not confident to engage directly, the assessing professional who has assisted or prepared the case could present it to the offender/s for acceptance and redress. These professionals must be audited to prevent corruption by way of financial benefits and kick-backs from offenders or their colleagues.

187. Where deeds of settlements (or of assignment or transfer etc.) may be required they should provide certainty and closure and be limited to the facts without confidentiality or disparagement clauses which can be used to silence facts. Further, victims should not be required to pay for deceptive or negligent debt. They should be paid full restitution and compensation and not lured into accepting a reduced percentage of the amount lost, risked or the gain or benefit to the offender/s for a quick resolution.

188. In cases where the victim may have some responsibility – which must not be assumed, presumed or seen as inevitable but carefully ascertained (for instance, recognition in the *Trade Practices Act* of what constitutes *unconscionable conduct* given the power imbalance between an industry professional and consumer) - and a settlement (versus restitution and compensation) is proposed the case must go before the AFCA for assessment to ensure the person has had some responsibility

and has not been placed under duress or accepted a scenario out of distress (wanting it over) or fear.

189. There must be provisions to ensure frequent genuinely independent audit of direct negotiations so victims are not subjected to what currently occurs.

190. These comments also apply to small businesses.

20. Where an individual has received an EDR determination in their favour, should any compensation scheme of last resort be able to independently review the EDR determination or should it simply accept the EDR scheme's determination of the merits of the dispute?

191. Provision for a scheme to review existing EDR determination is essential. We are aware of concerns that FOS has made determinations more in favour of industry (its members fund FOS and for which there does not appear to be regular, random independent audit). Of the 2 [redacted] cases we know FOS determined they had some responsibility, which the people deny. This is supported by countless others who experienced the same themes, patterns, behaviour, lies and deception. We recognize, at times, some consumers may share fault.

192. However, the level of deception and negligence of Mr [redacted] firm, across hundreds of people of varying professions and trades, with different levels of financial sophistication, demonstrates consumer responsibility is not an issue. There must be genuine and sincere considered care taken not to mistake the idea of shared responsibility, or of reducing the poor image of industry, with an approach that is akin to blaming victims for betrayal and abuse from those they had a right to expect and trust professional service and conduct.

193. We recognize it is sometimes seen as being equitable and fair in arbitration to apportion responsibility to some degree to both parties. However, this approach is not only based on erroneous thinking in WCC but demonstrates a complete lack of understanding. It is possible FOS takes this stance at least, at times, to appease industry – the hand that feeds it - without adequate transparency and audit.

194. The competence, integrity and professionalism of a new body should be of the highest calibre. (This also means they should be well paid with attractive conditions.) Random (unannounced) and anonymously performed in-house and independent external audits of cases and decisions would minimize human error or misconduct and provide a safety net to ensure fairness and accuracy.

195. Determinations victims believe are unfair, or which the scheme deems worthy of review, must occur.

196. It is also possible there may be scenarios where an alleged offender/s has genuine concerns and wants a pre-existing (or future) determination examined.

21. If a compensation scheme of last resort was established and it allowed individuals with a court judgment to access the scheme, what types of losses or costs (for example, legal costs) should they be able to recover?

197. All costs should be able to be recovered so no-one who is a victim of WCC is further disadvantaged. Certainly, if a determination is made it confirms the problem was not the victim's fault hence he or she should not be out of pocket. We have outlined above why investigation of a query or suspicion of misconduct should also be funded: in sophisticated complex cases, or even simple scenarios, victims may be out of their depth to be sure.

22. Should litigation funders be able to recover from any compensation scheme of last resort, either directly or indirectly through their contracts with the class of claimants?

198. We do not believe we have the expertise or knowledge to reasonably comment on this matter. On the surface it seems reasonable.

23. What compensation caps should apply to claims under any compensation scheme of last resort?

199. There is no valid rationale for a cap on compensation. We have outlined why financial redress must include restitution as well as compensation for incalculable losses, damages and pain and suffering. We do not imagine people walking in our shoes, making decisions about this would believe a cap is fair, appropriate or reasonable - particularly if the WCC/misconduct was not minor but resulted in their financial annihilation, loss of home and assets or hardship, placement in deceptive-debt and life-altering personal, family, work and health impacts.

200. Further, the source of the misconduct is money – the financial theft, mismanagement, deception, negligence and gain to the offender at the victim's expense can be restored and the impact can be compensated. This contrasts to other travesties that can only be compensated. There is a moral and ethical duty to provide restitution and compensation for victims of financial misconduct/WCC.

201. While we strongly oppose any cap, if a cap is to be imposed this would more reasonably be applied to people not in financial hardship or those not suffering from moderate to severe related trauma impacts. See Table 10 regarding how priority could be approached in terms of hearing cases as well as awarding redress. This same approach could be used in prioritizing cases regardless of a cap being imposed.

202. Imposing a cap effectively lets industry and offenders get away with WCC. They still profit from their conduct at the expense of victims who continue to suffer. The profit outweighs their loss when caught.

203. We have outlined ways victims could be assisted until full restitution and compensation was paid. This would alleviate undue financial costs to industry and government until these were recouped from penalty fines and a bank levy. Other avenues of funding financial redress are described below.

204. We urge the Panel to consider the cost for victims both financially and emotionally in terms of being able to purchase a similar home in the same area from which they were forced to leave. Likewise, others struggle with significant or crippling debt having being forced to refinance their home – sometimes several times. (We are aware of country property not even getting one offer during 3 years on the market: hence selling is not always even possible). Repercussions are extensive. It would be a travesty and a painful insult if a mere token compensation were considered acceptable as an outcome of such a scheme going forward or retrospectively. (See Table 12 for aspects to calculate losses and impacts.)

24. Who should fund any compensation scheme of last resort?

205. Further to comments about funding such a scheme in our original submission, and additional comments provided after the government amended the terms of reference in February 2017, a scheme could be funded by contributions from:

(i) A levy on, and / or portion of profits of, major banks and industry organizations known to have contributed to scandals (although the entire industry could be included – exempting those who made reports to ASIC) having failed to design and implement adequate safeguards or standards to avert or impose responsible consequences for accountability of direct offenders through to supervisors, senior executives and ultimately their CEOs

(ii) A fund pool set-up from penalties applied to cases going forward set at a multiple of the losses incurred, risked or gained by the offender – firms and organizations retrospectively identified as having been unethical or unreasonable, if not technically illegal, could be asked to contribute to the costs of restitution and compensation and resolving a case via the scheme, without additional financial penalty

(iii) Regulatory bodies

(iv) Funds from demanding zero tolerance of multi-national tax avoidance (see Appendix I)

[Note: the Government reported more than $3 billion in savings at May 2017 due to its crackdown against multi-national tax avoidance]

(v) Business and philanthropists could be offered tax deductions (excluding industry organizations and members unless free of misconduct)

(vi) Government (including funds from reviewing exorbitant pensions and benefits to retired politicians).

206. It should not be funded by a levy on taxpayers. Industry should not be permitted to pass on a levy to consumers.

207. Industry has profited, more than handsomely, from its negligence and active complicity in deception compounded by grossly inadequate legislation, codes of ethics or enforcement of these.

208. In a nutshell, it is gross corruption at issue. Proceeds of crime have lined the pockets of offenders and related organizations causing tens of thousands of innocent people and their families to suffer personally as well as financially.

209. Successive governments and regulators have enabled lenders and product issuers to utilize the [redacted] of this world to their full advantage. The corruption is unconscionable.

25. Where any compensation scheme of last resort is industry funded, how should the levies be designed?

210. Beyond the comments in the previous question we do not think we have expertise or skill to comment on the specific design of levies.

26. Following the payment of compensation to an individual, what rights should a compensation scheme of last resort have against the firm who failed to pay the EDR determination?

211. In addition to financial accountability for being bailed out of their responsibility by the scheme, the offending firm failing to pay the EDR determination(s) must be held accountable in terms of reputation to warn other consumers who may be potential clients or customers. This includes the principal or CEO, other senior executives as well as direct offenders (if not any of these people).

212. The capacity to put in place strategies to avoid financial responsibility while protecting their own assets in the case of private firms and directors appears to be rife.

213. A scheme should have the right to garnish a percentage of money flowing to that individual or firm (i.e. not necessarily stated income which may be far reduced from what is accessible or drawn in).

214. We strongly believe where ethical conduct and proper safeguards to protect clients or pay claims were not put in place, assets should not be able to remain secured beyond a creditor's reach in Trust funds and companies in other names such as that of a spouse. We recognize this may penalize innocent family members, however, it may provide incentive to some offenders not to risk their families in the manner they are willing to risk other people and their families.

215. Moreover, it would create the necessity for spouses and family of industry members to seek genuinely independent legal advice before committing a signature. Of course, unless, original counterpart copies and other measures to ensure informed consent and knowledge of these mechanisms are required, the capacity for fraud related to using family remains high – as has been inflicted on clients of offenders.

216. Consequently, changes in requirements of families participating in these structures where one is a member of the industry, are required to protect spouses, children or extended family, being used by unscrupulous offenders for their own ends.

217. However, zero tolerance from operating in the industry and a meaningful term of imprisonment (with training in other work skills) for not safeguarding the means to ensure clients are not compromised financially, along with the plethora of related personal repercussions, would seem a fair outcome in terms of accountability and a disincentive for some, if not all.

218. Without a type of *Restorative-Justice style program* to bring offenders and enablers (from industry to regulators and parliamentarians) into contact with their victims and the human impact, the opportunity to fully 'rehabilitate' or change their attitude towards how they affect other people's lives will be substantially reduced.

219. It would also potentially benefit a scheme in recouping costs via a willingness of the offenders and enablers to recognize their responsibility and commit to ways to remedy related financial impacts to the victim, society and the scheme.

27. What actions should ASIC take against a firm that fails to pay an EDR determination or its directors or officers?

220. We remain in the utmost serious doubt that ASIC is appropriate to serve this function without such radical reform as to make establishing a new body necessary. We lack confidence in its willingness or competency to fulfil such a role. This goes well beyond our direct experience and relates to countless reports in the media and from industry members with whom we have spoken about reports they have made that never saw any action taken.

221. Indeed, when we first formed HNAB-AG at the office of [redacted], after a creditors' meeting called by the

liquidator for the insolvency of [redacted] firm, [redacted] very generously and kindly offered the use of his boardroom for us to meet. However, his frustration and resignation in regard to the system was evident. He warned against getting our hopes up or wasting our time reporting he had seen action groups come and go. He advised that despite efforts victims never got anywhere because power structures did not listen or act. [redacted], an accountant at this firm, has also been tremendously helpful and immeasurably generous with her time and expertise. We are grateful beyond words that we were invited to the meeting and for their invaluable assistance since. [redacted] are among those who have restored our faith in the integrity of some professionals in their industry.

222. ASIC's role enabled the culture of white-collar crime to flourish and thrive. Our concerns have not been alleviated in recent years related to our efforts to engage with the regulator or from stories conveyed to us by other victims.

223. ASIC was, and remains, out of touch with issues. It is disinterested, unwilling and incompetent to perform, or require, basic regulatory measures to safeguard consumers and deal with offenders. (It expends energy on minor administration errors or infractions such as fining someone $200 for forgetting to notify ASIC within a few days of a change of business address amidst the chaos of the move.) Significantly, we are aware of spin provided to parliamentarians in relation to HNAB-AG. Misleading testimony is profoundly disturbing. We have touched on this in various submissions (and included information in Appendix A).

224. However, any regulatory body providing the role of disciplining directors and officers in a meaningful and effective manner who fail to pay an EDR determination should:

    1. Implement zero tolerance via a ban from working in the industry (not just a ban from a particular role or office or type of service). This should apply not only in cases where a firm fails to pay an EDR determination but in cases of misconduct (as opposed to reasonable human error) that results in significant financial or personal impact on the victim/s. Only after considerable, persistent, efforts from HNAB-AG beginning early in 2011 (despite pre-existing complaints long before the GFC) did ASIC act – to a degree - in the case of [redacted] In September 2012 (3 years after hundreds of his clients were devastated) he was finally banned by ASIC from holding an AFS Licence. However, the ban was for only 3 years. In addition, the law requires CPA Australia to hold a disciplinary hearing if a member becomes a bankrupt. However, [redacted] then CEO of CPA Australia*, was disinterested in our concerns or evidence regarding his organization's acceptance of [redacted] patently inaccurate information in forming its

conclusions. [redacted] has been able to continue to provide services as a charted accountant (having phoenixed his business). He then engaged people to provide the front line financial advice service in his firm. This is a qualification able to be obtained in as little as 4 days training until new legislation to be implemented on 1 January 2019.
*The correspondence with CPA Australia will be provided on request.

2. Be empowered to garnish a percentage of future earnings leaving the offender with a basic gross income e.g. $70,000 until losses to victims covered by others have been repaid. If the offender is employed the money owed could be directly paid by the employer. If the offender is self-employed the money should be based on a percentage of what the business takes rather than the official income as the money is available to him/her and the salary may be unreflective of the actual financial situation.

3. Be empowered to garnish money and assets in trust companies and other mechanisms to secure assets beyond creditors' reach where misconduct is established.

4. Investigate the complicity of spouses or other family members or associates in protecting assets and where confirmed, impose a fine (a multiple of amount involved) and imprison where corruption has incurred impacts beyond minor. However, there is a case to ban those inflicting even minor impacts as getting away with smaller levels of misconduct may lead to riskier activities and more substantial misconduct with greater consequences to innocent people which could be avoided.

5. Require participation in a Restorative Justice-style program with the victim/s, including family members and associates of the offender/s (as well as other related authorities to inform their decisions and actions) and to provide the opportunity for genuine amends to be made. This includes returning money to the regulator or contributing to the funding for the scheme of last resort. Providing voluntary services to society would also acknowledge the impact on the wider community. (This is detailed elsewhere and in our previous submission.) This mechanism should also be part of the new AFCA to change the culture from power structures down.

6. Be empowered to enforce imprisonment particularly where insufficient compliance and co-operation to remedy impacts occurs. While there does not appear to be evidence that a token or even a lengthier period of incarceration will provide a deterrent or meaningful accountability it may result in co-operation to provide financial redress if jail time is extended to the time it took for all the offender's victims to recoup their

direct and indirect losses and compensation for the incalculable loss, damages and pain and suffering. Incarceration should entail training in some other career, the full cost for which should be applied to future earnings (like HECS only set at 100%).

7. Require listing of the offender and organization on a user-friendly website (associated with the Scheme and regulator) dedicated to communicating (clearly and simply) the history of industry members, firms and organizations: a rating system could indicate:

    (i) severity of type and degree of impact of WCC/misconduct

    (ii) responsible, timely, redress with minimal further trauma inflicted by the offender in remedying impacts of misconduct in terms of restoring direct and indirect losses as well as compensating for incalculable losses, damages and pain and suffering.

8. Be responsible in the absence of accepting a zero-tolerance position broadly, or for particular misconduct or levels of impact. The use of a well-publicized, user-friendly and permanent website record would become even more imperative. Further, in permitting continued involvement in the industry, the regulatory body should then bear responsibility for future misconduct by the offender. This also relates to inadequate safeguards to protect consumers remaining in place (as noted these could include practical, cheap, requirements for meaningful assessment of a client, monthly statements of affairs and genuine informed consent limited to 1 page or 2 sides – see examples Appendix C). Any service or product that results in misconduct must be reviewed in this manner.

28. Should any compensation scheme of last resort be administered by government or industry? What other administrative arrangements should apply?

225. A scheme providing financial redress of last resort should not be administered by industry. Corruption and conflict of interest is extensive. Transparency is imperative to limit what has been enabled to occur and flourish.

226. Industry has proven to be ineffective, unwilling or influenced by a conflict of interest. The potential for negative or corrupt influence from other industry members or organizations is not unlikely. We have witnessed situations where one part, or member, of the industry covers for another or changes a stance including providing testimony to

senate hearings and parliamentary committees. Impacts on careers, promotion, reputation and financial benefit would all be potential targets of influence and thus considerations for industry members administering such a scheme. While anyone is potentially a target for influence to be applied via these means even where his or her career is not tied to the industry the choice exists more easily to move on if unwilling to address or challenge such pressure.

227. It is hoped that the calibre of professionals involved is such they would expose corrupt or dubious activities to influence the role. However, history shows this is not inevitable or reliable. People can be deeply respected and achieve the highest levels of authority and accolades yet hide disturbing histories of dubious conduct through to cover-up or engagement in crimes.

228. This underscores that processes for transparency and meaningful audit are required, in addition to professionals being of the highest calibre in terms of integrity, ethics and responsibility in administering such a scheme. These qualities do not require industry knowledge or skills. It would be necessary to have access to people with industry expertise, as well as inclusion in an administrative committee.

229. We may not fully understand the intricacies and realities but we suspect that if the scheme were to be administered by the government it may be too easily subject to the vagaries of politics. It should not be possible for the scheme to be a political football leaving victims unsure if it will exist in the future should industry and its gargantuan pockets buy political favour.

230. Prolonged uncertainty is one of the most difficult, undermining and debilitating impacts. It must not be permitted to extend to the ongoing existence of, or trust and confidence in, a financial redress scheme of last resort – or a retrospective one.

231. Ideally the scheme should be administered by a broad section of competent and ethical professionals of the highest calibre including, but not limited to, industry members, consumer advocates and former victims.

232. It is essential victims are involved given their lived experience. Insights and practicalities from their perspective hold considerable value. Consumer advocates have their unique contribution but are not substitutes for victims.

233. We have had the experience of extraordinarily compassionate, concerned and competent professionals in the financial sector and legal service who would be well suited to the task of chairing or holding an administrative position. However, it should not be limited to these fields. It seems preferable that the chair is from an entirely different field to bring fresh thinking and reduce the possibility of making

assumptions or engaging in narrow thinking based on industry or legal perspective.

234. We have concerns about specific industry and legal professionals holding the chairperson's position (or any related to a proposed scheme or AFCA) given issues we have witnessed or had reported to us over many years. Some of the professionals we have encountered left us deeply disillusioned by their conduct (for which there is evidence). There are some who are held in high esteem amongst their colleagues. Victims would be alarmed to see these people involved.

235. This underscores that appointments to the administrative committee should not be professionals about whom victims have noted concerns to regulators, senate inquiries or other such avenues where evidence or substantiating evidence exists (including where it may not have been examined after being provided or offered).

236. In our view a stand-alone scheme is preferable until, and unless, the proposed new body is able to integrate it.

237. It must be designed so transparency of administration is intrinsic to its operation. This includes regular audits of decisions and of the administrative staff (with identity of participants – staff and victim - kept anonymous from auditors).

29. Should time limits apply to any compensation scheme of last resort?

238. Based on our experience, applying a time limit to enter the scheme or since the misconduct occurred, would need to be carefully examined with scope for special circumstances. As outlined in the previous submission the level of distress, overwhelm, confusion and trauma can be extreme on discovery particularly when out of ones depth regarding financial sophistication. This can extend to months or years. It can exacerbate over time due to related matters beyond the victim's control. Consequently, the ability to discover the misconduct in a timely manner or to take action is potentially severely compromised.

239. This is likely, but not inevitably, compounded in scenarios of complex multi-lender/product WCC/misconduct. A single product/lender may also cause life-altering, devastating consequences leaving the victim out of his or her depth and struggling with aggressive and threatening demands or being ignored altogether by industry.

240. This is typically magnified, to beyond overwhelming, where numerous financial products, lenders and / or liquidators are making demands, threatening, intimidating or thwarting efforts through obfuscation, lack of response or outright denial and manipulation of the system or their authority.

241. The victim may have limited financial literacy particularly with sophisticated products thus, struggle to understand what has occurred

or the financial and legal consequences. (One advisor, who generously offered, pro bono, to determine figures for the MIS situation in which she was placed said he would not put clients, or extended family members, in a product they did not understand.) In addition, the distress can have impacts on family, relationships, work and health. These often exacerbate as time goes on. Marriage breakdown, reactive distressed children (due to parental distraction and tension, loss of home, relocation to new area and school impacting friend groups etc.), elderly parents' distress, difficulty concentrating and coping at work, and social impacts along with physical and mental health impacts from the relentless and harrowing stress, take a marked toll.

242. Neuroscience demonstrates in a severe stress response the brain does not process information, make decisions, record memory or handle emotions in the normal manner. This means that a victim is not up to par, or at his or her usual level of competence to attend, or act on, challenging material. This is especially so where certainty, security, safety and life as it was, is under extreme threat or has been altered significantly as a result of the WCC/misconduct being discovered.

243. Survival, and minimizing the direct misconduct-related financial demands and consequent rolling impacts is the immediate priority. This may take months or even years: the threat of bankruptcy in some cases amongst our members persists over 8.5 years later. The personal toll related to this is harrowing. Thus it may be many years before someone can begin to understand the mechanics of what occurred far less get a good grasp. The ordeal can render people easily re-activated to the trauma. Victims report being triggered by legal or official processes or documents - or even just opening an ordinary bill long after the uncertainty of further demands and loss has 'settled' (separate to the ongoing impact of its repercussions including being without restitution and compensation and required to pay for placement in deceptive debt).

244. This includes people who hold down jobs with high levels of responsibility or public profile. Victimization or trauma activation does not distinguish between rich or poor, low or high-functioning people. We are aware of someone in the police-force who was a previous victim of [redacted] His position saw rectification of his demand for losses by [redacted] However, like lawyers, doctors, businesspeople and others who experience trauma reactions of shame, humiliation and / or fear being blamed and this placing their reputations at risk, he has not come forth to provide his story.

245. Consequently, if a time limit is to be applied it is imperative that there be:
    1) provision for a competent, trauma-informed accountant or suitable professional to assist with, or take on the task, of obtaining relevant documents, noting what had not been provided which should have been, examining the conduct and

calculating the direct and indirect (includes compounding) losses and noting what are incalculable. Using a list such as outlined in Table 12 would be helpful. The table also includes examples of considerations regarding damages, pain and suffering. A counsellor, psychologist, mental health expert or doctor could provide comment about the pain and suffering (however, it should be borne in mind that many, especially older men, will not seek psychological help for anxiety, depression, insomnia, suicidality or other trauma symptoms that are not seen as purely physical e.g. chest pain / heart attack). Nor should it be required or duress imposed. Dignity, confidentiality and privacy must be uppermost.

2) Legislation to freeze action by industry against victims, such as being forced to sell their homes or refinance or have accounts debited for repayments, until a matter is assessed is required. The facility for this to occur immediately, before the case is prepared or determined, is crucial to prevent further impacts. Unless circumstances prevent it, the victim would then be required to approach the scheme within a maximum of 3 months after compilation of the case.

246. We underscore there must be provision for special circumstances on any time limits. This is elaborated elsewhere in the submission.

247. The existing time limits to lodge a complaint with FOS of 6 years since discovery of the loss or within 2 years of receiving an IDR response from a financial firm are entirely inadequate for the realities of complex WCC/misconduct. This is underscored given the overwhelming impacts on the life of the victim. The breadth and depth of the conduct can swamp even someone with some financial sophistication. The ripples across all aspects of life mean external assistance or delegating responsibility to prepare the case is essential for some.

248. A time limit is warranted on concluding retrospective and future cases by a scheme given the breadth and depth of personal, family, social, career, work, health impacts as well as the financial. If an EDR or a court or tribunal has previously determined the case and it is deemed satisfactory by the complainant it should be relatively straightforward to confirm payment for the victim. If review of the determination is requested, or required by the scheme, it would obviously lengthen the process. We believe cases should aim to be concluded within six weeks of a case being presented. Enough staff must be engaged. It must not be permitted to drag on for months or years. The impacts are severe and extend to costs to society. Uncertainty is toxic.

249. In short, no limits should apply as we understand currently occurs with superannuation disputes.

30. How should any compensation scheme of last resort interact with other compensation schemes?

250. We are not sure we can comment from an informed position or quite what the issues might be. It is unclear why a victim would need to approach a financial redress scheme of last resort if an existing adequate one was available. This would make sense only if the victim did not agree with the determination.

251. Other schemes that have determined a loss and cannot enforce its payment should automatically refer to a scheme of last resort. (We understand the new body would address this concern going forward.) Certainly, unpaid FOS, CIO, court or other determinations should be included.

252. It is noteworthy that, as we understand, SCT has no outstanding unpaid determinations whereas at 2 May 2017, FOS has unpaid cases totalling $13,909,635.50 excluding interest. It would seem this represents a small amount in terms of the overall system and people excluded from it. The fact that SCT determinations are paid due to the nature of prudential regulation in the superannuation system indicates the failures of proper regulation in other sectors of the industry.

31. Are there any aspects of compensation schemes of last resort in other sectors and jurisdictions that should be considered in the design of any compensation scheme of last resort?

253. We note that administration is an independent scheme in Canada, United States and the European Union but in the United Kingdom it is accountable to the regulators. We have expressed our view that ASIC, as the current regulator, does not command respect, confidence or trust to fulfil any sort of meaningful or effective administrative role from the perspective of victims. Many industry members with whom we have discussed matters concur.

254. We have concerns about the severe impacts on victims and their loved ones if Australia takes the position of U.K., Canada, U.S., and E.U. that a claim cannot be applied for until the scheme is satisfied the firm is unable or unlikely to be able to pay claims against it.

255. In the case of [redacted] he declared "voluntary bankruptcy" as well as went into business insolvency. This was likely part of a carefully designed plan to protect his assets and escape responsibility. He entered business insolvency a couple of years after WCC/misconduct was discovered (by his last batch of victims). [redacted] and other lawyers held off advice and decisions about taking action because of concern money would not be accessible or available. They were first contacted in December 2008 providing the final advice later in 2010, a good 18 months later. Requests for exorbitant *'disbursement'* costs made the choice to pursue action impossible.

256. Hence, if a stipulation is applied that the scheme must be satisfied the firm is, or is likely to be, insolvent, victims could be in the position of obtaining an ethical assessment and be awarded a determination in a humane and timely manner through a new scheme (AFCA) yet not be able to take it to a financial redress scheme of last resort for many months or even years later. This is not acceptable even if legislation was devised to ensure their assets could not be touched while restitution and compensation was held up.

257. A scheme of last resort could recoup redress paid to victims as a creditor of the insolvency or bankruptcy. Legislation should support this capacity. We have outlined measures to reduce attractiveness of such strategies for offenders and also of recouping financial outlay incurred by the scheme / others in providing redress to victims.

258. As noted HNAB-AG strongly opposes a scheme being simply about *'compensation'* – money is the medium of the crime and its goal. It can, and should, be restored. In addition, compensation should be paid for the personal consequences. Money can, in fact, be obtained unlike some other forms of crime where the medium cannot be reinstated and *only* compensation is possible to apply.

259. For instance, in cases of physical assault, torture, rape or sexual abuse the victim's position beforehand in relation to the medium cannot be reinstated. Nor can health be restored to victims of asbestos or other such situations where the injury is directly health-related. Nor can childhoods or decades of adult life impacts on families be returned to victims of institutionalized sexual or child abuse or the Stolen Generations who lost their families. Likewise, war veterans cannot always have physical or psychological injuries restored.

260. Psychological suffering has neurophysiological correlates i.e. the body and brain is profoundly effected structurally, hormonally or biochemically and physiologically. This is measurable and visible due to advances in medical technology regardless of the person's awareness. Any person exposed to major trauma may find relief and recover well with competent therapy and assistance. However, they cannot be restored as such – they are changed forever.

261. Certainly, some people emerge stronger and forge happy, productive and meaningful lives despite what has occurred. However, this does not excuse or minimize what occurred. Many struggle due to numerous factors, not the least inadequate support to recover from, or better manage, their circumstances. Many become chronically physically and / or psychologically unwell and impaired. Some die of stress-related disease. Others attempt, and some complete, suicide as a result of the consequent trauma.

262. Regardless of the cause necessitating redress there are financial and personal impacts as well as pain and suffering to varying degrees. The

only difference in the case of victims of WCC is that the actual cause of the problem is money. Financial losses can be restored – in full plus the related fall-out. Consequently, *restitution* for the direct, indirect and compounding losses should be provided in addition to *compensation* for the incalculable losses, damages and pain and suffering.

Legacy unpaid EDR determinations

32. What existing mechanisms are available for individuals who have legacy unpaid EDR determinations to receive compensation?

263. We understand there are no viable mechanisms available for people with an unpaid EDR determination. Court is not an option for most for reasons outlined elsewhere.

33. Is there a need for an additional mechanism for those with legacy unpaid EDR determinations to receive compensation? If so, who should fund the payment of the legacy unpaid EDR determinations?

264. There is a need for unpaid past and future EDR determinations to be funded as well as for past, *unheard* cases (excluded by existing EDR schemes) to be determined and funded. This could be dealt with through the new one-body AFCA and / or through a separate financial redress scheme of last resort. These unpaid determinations should be funded by:

1) industry levy and addition requirement of those with a history of misconduct – primarily the major lenders and organizations
2) fines contributed to a dedicated pool – via penalties that are a multiple of loss incurred, risked or benefit gained imposed
3) government / regulator – possibly a loan paid back as the penalty fine pool develops and by extracting a percentage of the offender's earnings
4) fines from holding multinational tax dodgers accountable
5) donations - which are tax deductions for philanthropists and businesses (excluding industry).

Providing access to redress for past disputes: RETROSPECTIVE REDRESS

Circumstances which have prevented access to redress

34. Other than circumstances that may be covered by a compensation scheme of last resort (such as outstanding unpaid determinations), what kinds of circumstances have given rise to past disputes for which there has not been redress? Are there any other classes besides those identified by the Panel?

265. In addition to the range of scenarios the Panel already recognizes have given rise to disputes not receiving redress through EDR i.e.:

- the firm is insolvent;
- dispute exceeds scheme's monetary limits/cap;
- outside time limits;
- personal circumstances including cost, distress etc.

we are aware of:

1) **WCC/misconduct emerging substantially later (many years) after other activities were discovered** related to the same advisor / lender / product - hence subsequent claims may also not be able to access redress. This could be minimized going forward by professional forensic investigation of a case particularly where complex multi-lender/products are involved. We have noted a scenario where an unknown [redacted] margin lending loan was discovered in 2016 which [redacted] had taken out in a company name in 1999 without authorization. Known [redacted] loans (although grossly misrepresented) were taken out personally in 2007 in the case of 2 people (who had sought accountancy services for their business) but never invested as a business and did so only separately in a personal capacity. Concerns around the 2007 matter, including requests for documentation from [redacted] did not reveal the earlier unknown loan.

2) **Deeds of settlement (or of assignment or transfer etc.) entered into under duress to reduce the demand for repayment, avoid court or bankruptcy threatened by a lender or liquidator (where the misconduct-related product has also collapsed)** deny the right of the victim to take action against the product, lender or liquidator. Consequently:

   a) Recovery of loss blocked by Deeds entered into due to no genuine choice in order to reduce loss, or extract from deceptive debt, or avoid court or bankruptcy, should be accepted in a scheme for redress. The distress and trauma involved at the loss of money paid before misconduct is revealed, with yet more pursued afterwards by unscrupulous lenders, is compounded where a product then also collapses leaving the victim at the mercy of liquidators disinterested in ethics who can choose not to exercise discretion under statutory obligations to waive the debt - *even with* support of the creditors to do so (far less obtain financial redress for those who are 'unsecured creditors' i.e. unwitting consumers). The distress fuelled by injustice is immense. Victimization on top of initial victimization is disgraceful.

   b) There should be no question of redress where a liquidator refused to exercise his/her discretionary power under

statutory obligations to 'compromise' (i.e. waive - in full) misconduct-related debt and there are ethical reasons to support it expressed by independent liquidators or industry members. It is particularly relevant where the largest voting creditor has provided guidance or encouragement (as it cannot instruct a liquidator) not to pursue a subgroup or all of the victims.

c) For example, in October 2016, ANZ's Deputy CEO Graham Hodges told a parliamentary committee Holt victims should not be pursued for Timbercorp debt. ANZ is the largest remaining creditor. Yet liquidator, [redacted] persists in relentlessly pursuing victims. Further, ANZ has avoided responding to HNAB-AG's request the bank reimburse those settlements given [redacted] (See Appendix F in particular; and D-G.)

d) Where a liquidator, bank or industry member has provided testimony to a senate hearing, parliamentary review or committee and is misleading or inaccurate, or it is not honoured, the consequences should be considered in a scheme of redress. For instance, [redacted] provided testimony to a senate hearing that covered a range of commitments [redacted] He also made misleading and inaccurate statements for which there is also evidence. The hardship program advocates have contributed to this being denied or minimized although the reason for the eventual resignation of [redacted] supports aspects of it. (See response to Question 13 and Appendix D, E, F, G).

e) In addition, the view of independent liquidators should be taken into consideration as to how a group of victims should, and could, have been treated under the law given discretionary powers within statutory obligations in view of misconduct or WCC regarding the product, lender or external linked advisor. We have evidence of extraordinary spin by omission and commission. We are astonished that authorities often accept the word of culprits, or those with vested interests in supporting them, in efforts to deny fact or truth or their enabling role. This extends to efforts to misrepresent those endeavouring to seek justice. It is easy for offenders to dismiss victims' claims as due to being distressed, angry, uninformed or misinformed. This occurs far too often.

f) Deeds mean people have been forced into relinquishing their right to redress for further loss demanded of them in addition to what was deceptively used, acquired and lost in

financial products/schemes whether or not ongoing or collapsed. This is a serious related matter. Money paid to these products in repayments, fees and penalties etc. are further losses. This should be covered in a scheme of last resort where there is hard, or circumstantial, evidence that misconduct-related activities occurred (regardless of whether or not the so-called 'investment' collapsed).

3) **Degrees of separation protect lenders and product issuers from liability** under current legislation despite their negligence or collaboration in deception. Legal degrees of separation can permit a lender or product to hide behind structures and other industry members, particularly independent financial advisors and accountants. They incentivize these members with massive commissions and kick-backs to promote their products but take no responsibility for their own failures in, or deliberate choice not to perform, due diligence.

   Relevant to understand is:

   1. There are cases of failures of due diligence (to determine suitability, serviceability, informed consent, authenticity of signatures or witnesses, provision of relevant correspondence to the 'investor' or 'consumer') and / or adhere to their own application criteria while rubber-stamping a particular advisor's clients. This is relevant to complicity and enabling people like [redacted] to cause the damage inflicted.

   2. In contrast, the minutiae of details required is onerous, the number of staff involved substantial, the legal scrutiny is extensive making the time taken to approve release from misconduct-related or deceptive debt inordinately (and inhumanely) protracted- even when they know their victims are terminally ill, in dire hardship or on the brink of bankruptcy and have suffered for years. Yet these same lenders and products accept people being placed into loans and products without the equivalent care and attention to detail or even their direct involvement.

   3. It is *"beyond ridiculous"* to quote Sarah Henderson, MP who bore witness to part of the experience of one of the authors with CBA and TFS (now QUINTIS): despite a plea to end the debt within a month, one way or another (i.e. release or force bankruptcy) it took a total of over 10 months to finalize the deed. It took 7 weeks to obtain a few signatories for a deed CBA and TFS had confirmed. (Note: after having had the complaint for 7 months, the CBA denied responsibility outright some 3 years ago,

after finding it having lost the complaint). There is no doubt the release from the remaining deceptive debt was only provided due to Ms Henderson's assistance and persistence: it is disgraceful that victims require parliamentarians to apply pressure for a modicum of assistance. [redacted]

4. Victims are signed up often under time pressure on incomplete loan applications (assured these would be completed by the industry member once financials are 'updated' etc.) and without accurate or meaningful informed consent or encouragement to seek independent legal advice or awareness this is necessary.

5. The contrast of no, or inadequate, checks on entering a consumer, versus releasing those most devastated and at risk of resultant bankruptcy, is extreme in MIS and margin lending. Most people are not released. It requires relentless effort and pressure via assistance from an authority such as from a local Federal MP who is willing to stay the course such as Sarah Henderson MP.

6. Lenders and product issuers typically deny a claim outright despite the facts. They have the resources to make a legal case a pointless, further traumatizing, protracted process.

4) **Deceased, ill or incapacitated people** whose situations may not be discovered until well after the activity, or be able to acted on, by a representative or family member, or where court may not be possible financially or emotionally (separate to concerns about legal loopholes and deep pockets of industry in thwarting justice) also should be included.

5) **Further detail is provided as it is necessary to consider**:

(i) **Limited access to, or possession of, relevant documents**:

a) Documentation is frequently withheld by advisors, banks or product issuers. HNAB-AG has been assured by an employee of a secure storage facility protecting financial and legal documents that access to someone's records is possible within a week. Despite this, people have been outright denied their documents or given material in dribs and drabs only after persistent and determined efforts over many months or even much longer. Sometimes support, by way of assistance from rare parliamentarians willing to actively follow through, has eventually resulted in documents being provided.

b) Victims may have thrown away some, or all, of any documentation they were provided with, as part of trying to put it behind them; deny its occurrence; be practical by reducing belongings if forced into selling their home and relocation has been involved whether to a room at a friend's or family, or move to a cheaper suburb or town etc. Some have been required to live in caravans, tents or couch-surf hence they have limited, if any, space.

c) A ritual burning or throwing out of documents is often encouraged by friends, family or well-meaning but misguided mental health professionals or others to purge the victim of the burden or trauma and / or *'accept reality'* and the injustice of lack of redress.

d) Related to this, some victims have disposed of documents of their own volition for the same reason: to mark the end of trying to pursue redress when forced into a settlement by a lender or liquidator etc. This is similar to burning or destroying wedding photos or other reminders of a partner after divorce or a significant betrayal. Likewise, removal of documents or items connected to someone who dies is a normal part of the grief process.

e) We are also aware of an instance where a major law firm lost the entire box of documents. Unfortunately, as is often the case, these were the originals. In the distress which necessitated seeking legal help, the couple did not think to make copies (far less secure the originals and provide only copies to lawyers).

f) In scenarios where the WCC is discovered many years later, and well after 7 years in which people are required to keep documents for tax, the relevant documents may no longer be in existence because there was no perceived necessity for retention. This is particularly the case where the loan / product has finished and did not collapse to draw attention to it.

g) All documents must be subject to discovery (as occurs in a legal process). If the industry organization or member cannot provide these (and the victim does not have copies or originals) and other information provides circumstantial evidence for the WCC/misconduct, then the case should be heard and not dismissed. (See Table 11.)

(ii) **Recognition of the power imbalance in the relationship between the victim and offender:** The parameters outlined under the *Trade Practices Act* would seem a reasonable way to

assess whether an industry member engaged in unconscionable conduct or abused his or her position of power.

(iii) **Impact of under-resourced and overloaded parliamentarians on determining outcomes and recommendations of inquiries etc**. In addition to comments made by Senator Whish-Wilson (in Question 13):

a) The workload of parliamentarians and lack of time to be adequately informed means outcomes from senate inquiries and parliamentary committees or reviews do not always address key issues due to lack of consultation with, or seeking adequate ongoing feedback about a matter from, the victims.

b) It must also be recognized that self-interest and / or party pressures result in some parliamentarians being substantially less willing to meet with and listen to victims far less actively consult to understand or undertake a commitment to act providing meaningful or adequate assistance.

c) Pressures from industry on parliamentarians may also impact interpretations or their focus in formulating a response. Power structures inevitably also influence matters from behind the scenes: this may help or hinder.

d) Disturbingly, there have been instances about which we are aware where victims have been treated poorly with the threat implied of withdrawal of assistance from politicians and / or advisors who perhaps wished to back out of commitments for whatever reasons. (This is not merely the victim's perspective but relates to written material and is the opinion of independent people with qualification such as those who have worked in politics.)

(iv) **Further comments on issues acknowledged by the Panel**:

1. **Reactivation of trauma / PTSD triggered**:

a) Perhaps the most important factor to consider in order to ensure measures are designed to avoid failing those most in need of retrospective redress, is appreciation that the debilitating impact of the original emergence of WCC is compounded by the failure of the system over many years exacerbating personal as well as financial impacts. This renders many victims severely disadvantaged beyond the original shock and trauma and often less able, or willing, to revisit the ordeal.

b) Involvement of professionals experienced in trauma (preferably with expertise related to WCC) as well as victim representatives / consumer advocates, who have been exposed to a range of victims, is necessary to ensure the factor of compounded debilitation and trauma symptom re-activation is appreciated. Offenders take advantage of *stress* that is *post-traumatic* (after the threat or ordeal is over) and/or *peri-traumatic* (during the threat or ordeal). An individual may be experiencing both where some aspects are over yet others are ongoing. It is used by some power structures from industry to politicians to ignore, minimize, discredit and deny victims' concerns and circumstances.

Table 7: **Peri and Post-traumatic stress** – these can occur concurrently

Peri-traumatic stress *(during threat)*	**Post-traumatic stress *(after threat)***
Discovery of loss, risk incurred and / or benefit gained at victim's potential or actual expense / disadvantage	The threat of further loss financially and / or personally is over
Dealing with minimizing further loss	A basic level of safety in the new condition occurs once certainty is achieved even if not justice
Adjusting to forced financial and related personal consequences of WCC	Redress may or may not occur and may or may not be adjusted to – the person has been changed forever
Seeking accountability for conduct and redress	
Consequent safety (physically and psychologically) is literally, or at times perceived to be, under threat	
Pursuit of redress, protections for others in the future, accountability of offenders and enablers, and assistance for impacts including acknowledgement of what caused the trauma and need for community support and understanding	

c) We attempt to outline here that many people experience extended peri-traumatic stress over years as the threat is ongoing and new events propel them into rolling powerlessness, overwhelm and distress. At the same time they can also be experiencing post-traumatic stress for other aspects of the impact of WCC. Once it is over (at best with proper redress, offenders and enablers held accountable and changes implemented to protect others) it does not mean the trauma is resolved. It just means the threat is over. The trauma may require professional help. The brain, body and mind are impacted and changed.

d) Trauma symptoms such as anxiety, depression, insomnia etc. are common where WCC has had significant personal impacts that are usually, but not always, the case in correlation to the financial repercussions. While critically relevant practically, it is not the amount of money lost that is the most important factor. It is the loss of a sense of safety and trust. Being forced into bankruptcy and / or losing one's home or having to refinance and / or take on extra work even well into your 70s or older, to meet demands for misconduct-related debt, is devastating beyond the actual amount of money involved. The impact on life-style, plans, dreams, worldview and sense of self is immense. The betrayal by those who directly caused the situation, and authorities, who enabled it to occur and failed to act swiftly and responsibly after the fact, is profound. The failure to remedy what has occurred in terms of abandonment by authorities, typically, is greater than the original trauma. The impact is beyond words.

e) People who never feared opening mail, reading documents or trying to understand new subjects or aspects of something beyond their experience become hyper-vigilant anxious, avoidant or collapse in despair. People can also become agitated, enraged, struggle with tolerance and over-react.

f) Post-Traumatic Stress is more likely in cases where people have been most severely impacted financially and/or personally. If a couple did not lose their home or even a large amount of money, or placement in deceptive debt was not ruinous or did not cause financial hardship - but the discovery of the WCC caused significant personal stress resulting in one spouse leaving the relationship, the remaining partner can be devastated. The leaving spouse may also be devastated and depart feeling unsafe and horrified at facing what occurred that may have been even worse (i.e. not simply actual occurrence of financial annihilation). Dreams being built or about to be embarked upon (such as parenthood, career plans or retirement) are ripped apart. The betrayal of trust by the offender/s, institutions, regulatory system and successive governments can be projected onto, associated with, or blamed upon, the partner. This occurs because it creates the illusion of control and successfully avoids the psychologically much more challenging task of dealing with the emotions of terror, rage, despair and grief related to being confronted with being, or potentially, rendered powerless and at the mercy of others in terms of survival and safety.

g) Given the above, it is apparent that a scheme designed for redress would fail if practical assistance from trained professionals was not offered both in terms of compiling or preparing information for presentation to be considered. It would mean those most personally affected, and those least able to prepare and lodge their case, would again be disadvantaged.

h) Failure to address this may encourage offenders to create the greatest financial and personal impact if they knew these scenarios were the least likely to come to attention and receive assistance.

2. **Expiry of Statute of Limitations**:

a) The Statute of Limitations may have run out resulting in industry having destroyed (or claimed to) the relevant documents – in this case it may be difficult to assess a case based only on correspondence which the victim has retained as documents could be disputed by the offender/s. Further, file-cleansing or adulteration is reported by whistleblowers.

b) We suggest that in retrospective cases where there is evidence of complaint (e.g. to lawyers, ASIC etc.) which is beyond the Statute of Limitations, and the offender has had complaints made which have been acknowledged or accepted by ASIC, FOS or courts this be considered as lending crucial support of authenticity.

c) Where a pattern of misconduct, negligence or WCC has been described by a group of people since a distant or past case first emerged this should also lend support for the authenticity of the case.

3. **Lack of financial sophistication to understand or explain, far less present, a case for assessment and redress**:

a) On a purely pragmatic level most people HNAB-AG has spoken with would not have the financial sophistication to compile their situation for determination. It seems the issue is magnified in complex multi-lender/ product cases. It places people in this situation at a seriously disadvantage.

b) Some victims had not *realized the existence* of the WCC, accepting excuses (e.g. the GFC) from the offender/s involved for losses that were unexpected. They continued to seek and pay for services years later. They only queried their situation on hearing about, or by chance meeting with other, victims of the same offender/s or beginning to question matters as a result of scandals hitting the media.

266. Denial of responsibility and aggressive efforts to intimidate and / or ignore victims by lenders, products and liquidators has prevented access to redress. Forcing people to pay demands, including exorbitant penalty interest or settle, including through so-called *'hardship programs'* means people are further victimized with no access to justice or redress.

267. The court system and class actions can fail victims on many levels: apart from inadequate consumer protections and accountability of offenders, class actions deal with general themes deemed winnable under the parameters of the law and not necessarily the relevant specifics of an individual's case or even themes in cases related to the same offender. Of course, the protracted and stressful adversarial aspects work against victims.

268. The issue of the level of trauma, particularly where a dispute has been protracted over months or certainly many years, with multiple or key personal impacts, means that many people would not be able to take on the challenge of pursuing redress or submitting their case for determination of redress. Even with professional assistance available the task may be too much, particularly if uncertainty of fair outcome and/or fear of an adversarial or insensitive process, was not addressed in promoting and, of course, actually operating the scheme.

35. What evidence is there about the extent to which lack of access to redress for past disputes is a major problem?

269. In terms of the members of HNAB-AG and known numbers of clients related to [redacted] firm, a minimum of 500 people and their families have been affected financially with ripples extending to all aspects of their lives to varying degrees. This translates to hundreds of millions of dollars at least. We are aware of only 2 people who were able to obtain a determination from FOS based on aspects of their case. To be considered by FOS they could only present what fell under the cap. Neither has been paid the determination awarded in their favour. The overwhelming majority could not get this far for various reasons outlined.

270. People have been forced into bankruptcy, had to sell homes or re-finance these incurring huge mortgages, lost their life-savings and retirements or had these substantially reduced. It has necessitated people having to relocate to different cheaper suburbs or even towns or cities hours from their former home, community, friends, family and place or type of work. Children are impacted in countless ways as a result of parental distress and consequent emotional and/or physical unavailability. Intergenerational impacts have been documented. Family violence, sexual abuse and other forms of trauma increase in situations of severe stress: financial problems are known to be a factor. Families can fracture. High levels of trauma symptoms are reported.

Suicide attempts have been made and we are aware of completions related to WCC/misconduct.

271. The consequences of lack of access to redress are apparent in the devastation of lives. Trauma symptoms are generally recognized and understood these days in returned veterans of war, victims of family or sexual violence, torture, terrorism and disaster. There is a vast body of literature in the trauma field which attests to the impacts of unresolved trauma. Powerlessness to influence safety and adequate certainty is toxic.

272. The damage is most severe where people have been deliberately taken advantage of and, their reasonable trust, betrayed. It is compounded, and typically experienced as much worse than the initial discovery, where there is a failure of power structures to provide support and assistance. This is the experience of people in HNAB-AG: the failure of successive governments, the regulatory and legal system or industry to help victims has been equal to, and for many, even more devastating than what [redacted] lenders and product issuers did to cause the need for financial redress.

273. There is incontrovertible evidence supported by industry members and whistle-blowers such as Jeff Morris who are aware of the extent of the problem. Countless senate inquiries, parliamentary committees and media exposés such as by Fairfax and 4 Corners have highlighted an industry, rotten to the core, enabled by inadequate legislation and regulation with dire impacts for victims.

274. A royal commission or commission of inquiry would uproot the corruption and buried rot. In addition to exposing what requires significant reform and audit, it would leave no-one in any doubt that the lack of access to redress could not be more serious. A commission of this nature would galvanize the public thus influencing political will to bring about meaningful change.

Approaches to providing access to redress for past matters

36. Which features of other approaches established to resolve past disputes outside of the courts (whether initiated by industry or government) might provide useful models when considering options for providing access to redress for past disputes in the financial system?

275. Below is a summary of information regarding other schemes (and brief comment about disturbing decisions):

Government and / or Funder	Window for applications for compensation
REPARATIONS FOR ABORIGINAL PEOPLE WHOSE WAGES, ALLOWANCES & PENSIONS WERE 'HELD IN TRUST' BY NSW GOVERNMENT BETWEEN 1900 – 1969 BUT NEVER PAID OUT:	No window noted

NSW – established Aboriginal Trust Fund Repayment Scheme (ATFRS)	(Est. 2004)
REPARATIONS FOR ABORIGINAL PEOPLE UNDERPAID ON RESERVES: **QLD** – Underpayment of Award Wages process paid one-off payments of $7000 to workers on Aboriginal reserves - Indigenous Wages and Savings Reparations Offer paid $2000 or $4000 depending on DOB of the worker	(Est. 1999) (Est. 2002)
REPARATIONS FOR MEMBERS OF STOLEN GENERATIONS: Report 1997 recommended monetary compensation in recognition of pain and suffering: **Tasmania** – where deemed eligible, ex gratia payments of $58,333.33 made to 84 people; $5,000 or $4,000 paid to 22 children of deceased members	6 month window (Est. 2006)
South Australia – paid *"up to"* (not clear) $50,000 to members via ex gratia payments	12 month window (Est. Mar. 2016)
NSW – paid *"up to"* (not clear) $75,000 per claimant "without the need for lengthy and arduous legal process" – expected to operate separate to Aboriginal Trust Fund Repayment Scheme (ATFRS)	(Est. Dec. 2016) Window not determined: Program expected to commence 1 July 2017
FORDE FOUNDATION: RESPONSE TO 1999 COMMISSION OF INQUIRY INTO ABUSE OF CHILDREN IN QLD INSTITUTIONS: **QLD** - government contributed $4.15million to FF which uses income generated from investing to distribute grants (to be used within 6 months) to both individuals and certain non-government organizations – to relieve poverty, advance education, training or development, personal and social support, relief of sickness, suffering distress, general enhancement of social and economic well-being or any other purposes beneficial to people who had been wards of the State or under guardianship or resident in Qld institution	No window noted (Est. 2000)
ASBESTOS INJURIES COMPENSATION FUND (AICF) - ('THE JAMES HARDIE FUND'): - James Hardie provided funding in accordance with agreement entered into with NSW Government – former subsidiaries of James Hardie Group are insolvent and are under NSW administered winding up - AICF receives and assesses claims against former subsidiaries and pays these using company funds or AICF trust funds amongst other activities in managing and administering the role of trustee - JH paid initial $184.3 million into AICF and makes annual contributions. Total contributions to 1/7/15 are $799.238 million. AICF received 577 claims in 2015/6 paying out $146.749 million and 665 in 2014/5 paying out $142.014 million. [Typical payout (if exists) not clear.]	No window noted (Est. Feb 2007)

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE – REDRESS SCHEME: - 'Redress and civil litigation' report in 2015 states monetary payments as a tangible means of recognizing wrongs suffered is 1 element of redress; as is funding counselling and psychological care throughout survivors' lives – payments should be based on severity and impact of abuse - tangible recognition of seriousness of hurt and injury - such *'recognition'* is deemed to translate to cover redress between $10,000 - $200,000 and be an 'average' of $65,000 (HNAB-AG comment: this amount would not cover therapy for sexual abuse its consequences as it can span years for many. The seriousness of pain and suffering is estimated at a wholly inadequate amount (at average or its maximum) and does not include indirect or incalculable financial impacts – nor does it result in meaningful penalty or impact on the institutions involved: thus it is a small price to pay for devastating and indeed - ending many - lives) - recommends a single national scheme established by Government but funded by institutions alleged to be involved with federal and state / territory governments being 'funders of last resort' - **Commonwealth Government** announced it will establish a Commonwealth Redress Scheme for people sexually abused in Commonwealth institutions - it will pay "up to" $150,000 based on severity and impact of abuse - survivors will also be able to access psychological counselling (HNAB-AG comment in addition to above – it is unclear if this means people will be funded to continue to see existing or pre-existing counsellor / therapist or if they will not be permitted choice of provider which would be a major limitation; it is also disturbing the *no window recommendation was ignored*: apart from fear, shame, humiliation, stopping people seeking help, dissociative amnesia and repression of trauma memories is well researched – people may not recall it for years or feel able to make a claim until well into therapy)	***RC recommended***: no window and applicants not be subject to usual limitation periods BUT – May 2017 **Government decided to enforce a window** of 10 years (1 Jul 2018 – 30 June 2028)

276. In brief, features from other approaches noted above which may be useful models regarding a retrospective redress scheme are:

1) requirements of offending industry firms and organizations as well as individual industry members to contribute to a fund via:
   (i) initial lump sum
   (ii) annual contributions
2) federal, state and territory governments also to make contributions
3) no window for lodging claims
4) recognition of need for counselling and payment for this (should include related counselling paid to date, and required in the future, and other physical health impacts due to the distress)

5) recognition of a wide range of impacts across all aspects of life for a victim of trauma
6) prioritize cases to be heard related to severity of impacts (personal and / or financial)
7) recognition of financial impacts (for *restitution*) and personal (includes family, social, work, health etc. for *compensation*)
8) need for an independent, special purpose vehicles to provide financial redress
9) ensure subsidiaries are included in cases and required to contribute (e.g. [redacted] is a subsidiary of CBA; otherwise this could be used as another degree of separation to avoid being required to contribute funds or pay for redress unless the scheme stipulates that subsidiaries are not exempt and should be covered by the umbrella organization)
10) require firms which have been pheonixed after entering insolvency to be required to contribute e.g. [redacted] firm has had various incarnations and companies related to it such as (at a minimum), Holt Norman Ashman Baker Pty Ltd: Holt Norman & Co. Pty Ltd; HNC Financial Pty Ltd; Holt Baker Munari Pty Ltd; Marble Arch Pty Ltd; Holt Baker Pty Ltd; etc.
11) possibility of ex gratia payments for swift assistance
12) victims of the same offender/s or type of trauma can be treated as a group
13) need to circumvent a lengthy and arduous, re-traumatizing, process in obtaining compensation for a claimant
14) the right of children, including of deceased victims.

277. While there may be no legal responsibility for government to provide financial redress for victims of banks / lenders (major and subsidiaries) and the financial services sector there is a clear ethical, and direct, responsibility of successive governments. Government oversees the regulatory and legal systems. Serious issues in the industry are not new. Further, these could have been anticipated. Moreover, victims and industry members reported concerns to ASIC long before the GFC exposed concerns. Numerous rolling scandals have since come to light.

278. Fine-tuning as a result of misconduct is one thing but gross failure to reasonably anticipate and act pre-emptively regarding likely concerns is unacceptable. Basic requirements have not been put in place far less best-practice standards based on ethical practice and in recognition of the power imbalance between industry and consumers in general. Meaningful safeguards and consumer protections should not require catastrophe to prompt these to be retrospectively formulated.

279. Consequently, the role of successive governments in addition to industry, in failing to provide even basic protections means both have a moral and ethical responsibility to provide restitution and compensation despite the lack of appropriate legislation to impel it.

280. **DISCRETIONARY PAYMENTS** by governments via ex gratia payments, act of grace payments, statutory redress schemes or other mechanisms to remedy individual circumstances seem warranted where anyone will fall through unforeseen cracks or the design of a last resort scheme.

281. We recognize that some people who are not affected, or who may be but experience limited impact proportional to their circumstances, may not appreciate the gravity or urgency for proper and timely redress including retrospective cases which have endured years of impacts.

282. The focus for a scheme, retrospectively, should also be restitution and compensation. Working back from this position is acceptable only if there are genuine funding limitations with real, sincere, negative impacts on other innocent people. We are not convinced of this given the gargantuan profits of lenders and organizations. Those linked to insolvent advisers who have been able to hide behind degrees of separation and legislation and who have repeatedly engaged in enabling similar misconduct should be required to fund retrospective redress.

283. However, should there be reasonable concerns about funding constraints there are other avenues of assisting victims - as outlined elsewhere in this submission - until such time as the amount owed is repaid in full. It should include paying interest (at the same level of penalty rate as lenders and liquidators have applied to defaults) on the amount, or balance owed, of restitution and compensation.

284. **EX GRATIA PAYMENTS** could be made to a group of people of a known offender. Where concern has been identified by ASIC and disciplinary action imposed, redress should not be limited to the aspect ASIC has ruled on (whether via ex gratia payments or a scheme of last resort etc.).

285. For instance, ASIC's investigation of [redacted] was limited to a few cases only. Moreover, the disciplinary decision is well below its own criteria for a 10 year or Life Ban which [redacted] conduct meets. (This is based on ASIC's July 2012, Regulatory Guide 98, *Licensing Administrative Action Against Financial Services Providers*). The 3-year Ban was based on only a few cases where accountants or others sent in a complaint (often unbeknown to the client).

286. ASIC did not use material HNAB-AG representatives provided, or offered, at the first 3-hour meeting in 2011 or subsequently. Nor did ASIC take up our offer to provide access to material from over 120 people in HNAB-AG, or survey data we had compiled, in our last meeting with the regulator in 2015 when, eventually, pressure resulted in consideration of pursuing fraud charges against [redacted] This was not pursued as according to ASIC the (small amount of) material it examined did to meet evidentiary requirements for court. (See Appendix A for concerns related to ASIC's performance).

287. Despite the extensive material ASIC could have examined, on considering only a few cases, ASIC banned [redacted] for 3 years in September 2012 on the basis of having:
    1) failed to have a reasonable basis for the advice he gave to retail clients
    2) failed to meet his disclosure obligations because he failed to disclose the cost and benefits that may be lost in switching clients' superannuation; and
    3) failed to ensure that Holt Norman & Co Pty Ltd maintained professional indemnity insurance.

288. Parliamentarians have recognized the misconduct related to [redacted] firm and collaboration with MIS. Senator Sam Dastyari noted [redacted] was a fraudster. Independent industry professionals very kindly assisted HNAB-AG (pro bono) in 2014 by examining loan documents and material regarding Timbercorp for presentation to a special senate hearing. They also assisted victims to meet with parliamentarians across various political parties. Former renowned parliamentarian, Greg Combet, also kindly assisted.

289. Parliamentary response then led to pressure on KordaMentha to alleviate demands for repayment of misconduct-related debt via establishment of a *hardship program*: regrettably, the hope for this to provide flexibility to treat victims 'more fairly' (if not fairly) was very quickly dashed once active involvement and interest of Senator Dastyari and parliamentarians ceased in early 2015.

290. Renowned award-winning journalist Adele Ferguson and other reputable colleagues such as Ruth Williams, Georgia Wilkins and Sarah Danckert have written in Fairfax about [redacted] conduct. ABC's *7.30 Report* and *Lateline* ran television programs in 2014.

291. Electronic survey of our members in relation to the conduct of both [redacted] margin lending and numerous MIS through [redacted] firm also indicates the same patterns typically emerge. These were reported to lawyers, new accountants and other industry members including ASIC long before HNAB-AG was formed (in January 2011). FOS made determinations against Mr [redacted] in relation to MIS concerns of 2 former clients who applied for part of their losses which fell under the cap. Hence, concerns about concocting the same story can be readily proven to be unfounded. This would be true for other groups.

292. There is a great deal of understanding that [redacted] and his collaboration with industry resulted in significant WCC/misconduct. A **GROUP TREATMENT** has financial cost benefits in terms of focusing on establishing the amount of redress due rather than first expending greater cost and time in verifying existence of misconduct for each individual (e.g. regarding MIS and margin lending etc. with [redacted] victims). Groups like HNAB-AG could provide existing summaries and

data compiled to date for senate hearings and so forth. Paying for at least 500 people related to Mr [redacted] firm to independently reconfirm the misconduct for each case is a waste of money and would prolong and compound the ordeal for people unduly and unnecessarily.

293. Utilizing an **EX GRATIA PAYMENT MODEL should not be an excuse for reducing the redress amount** to avoid paying restitution and compensation that is fair. It must not be a sum of money that is effectively a token award. This would add insult to injury.

294. **GROUP EX GRATIA PAYMENTS** would greatly assist victims such as those in HNAB-AG who have endured almost 9 years to date of severe financial and personal impacts for many. Some victims of this firm existed prior to the GFC. (We have mentioned to the Panel an elderly couple who reported [redacted] to ASIC but received no interest. Further, had ASIC responded it would have protected at least 500 others from this firm who were left to financial slaughter as a result.)

295. The elderly couple mentioned endeavoured to seek redress at the turn of the century. They had to leave their hard-earned comfortable home and move to a caravan park on the edge of Melbourne. The wife had fled Poland as a child after Nazi occupation: her family lost their home and possessions as a result. This adds to the weight of distress for her husband who has sought to provide safety and security for her their entire married life of some 50 years. Groups - and individuals like this couple - could be treated compassionately by having redress delivered quickly.

296. A problem would occur if victims were required to wait for the new one-body (AFCA) to assess their cases and / or establishment of a retrospective last resort financial redress scheme if this is some way off. Consideration of dealing with groups or individuals already recognized to have suffered misconduct via ex gratia payments makes sense from a compassionate perspective.

297. **ESTABLISHING A SPECIAL FUND** such as for James Hardie Asbestos Injuries, Institutional Responses to Sexual Abuse, the Aboriginal Trust Fund Repayment Scheme, the Forde Foundation regarding Abuse of Children in Queensland Institutions and schemes for the Stolen Generations may be helpful.

298. However, the distinction between victims of these appalling misconduct scenarios and those of WCC and financial misconduct is that the issue for the latter stems from corruption and misconduct related to people's money and assets. Unlike the other distressing situations, the central matter of finances can be restored in full. While their actual homes cannot be given back, people can be provided with redress to purchase a similar valued home in the same location (factoring in often substantial increase in property values up to and over double to date).

299. We strongly suggest *restitution* for related indirect and compounding financial losses is relevant to victims of other scenarios although this may be difficult to calculate but not impossible. We are appalled at the paltry financial response to members of the Stolen Generations in particular. It is an immeasurable shame and disgrace for Australia.

300. We wonder - Have people in roles of authority within power structures making these decisions not even seen the film *Rabbit-Proof Fence*? Do they not speak with indigenous people or at least those who work in their communities to appreciate what happened? Would the same authorities, determining these amounts of compensation, think it appropriate reparation if they had been forcibly removed – or if their own children had been from them? We doubt it.

301. Further there is no valid reason children of the Stolen Generations should not receive the same reparation as their parents would have received if not deceased. The trauma is trans-generational. Moreover, they would have inherited financially from their parents.

302. In the case of institutional responses to child sexual abuse, the notion a maximum of only "up to" $150,000 (with access to counselling covered but undefined) adequately provides *tangible recognition of the seriousness of the hurt and injury suffered by survivors* is disturbing in light of the extensive research and clinical evidence of the impacts. This includes the impact on learning, and hence work and career and earning capacity. Moreover, the fundamentally important impact on attachment, affect regulation and future relationships, and also on mental health, is substantial. The compensation would not cover the costs of counselling for many of these survivors.

303. It is profoundly alarming that the dire impact of betrayal of trust by authorities in institutions entrusted to care for vulnerable children is costed so staggeringly low. This is particularly so at the hands of those promoting themselves to represent God and all that is good, kind and caring – who, effectively, are bought off at today's equivalent of 6 pieces of silver.

304. Science shows trauma causes not only epigenetic impacts (where a gene is modified i.e. turned on or off) but also that it has trans-generational genetic impacts, in additional to psychological. The legacy of trauma is manifold and profound.

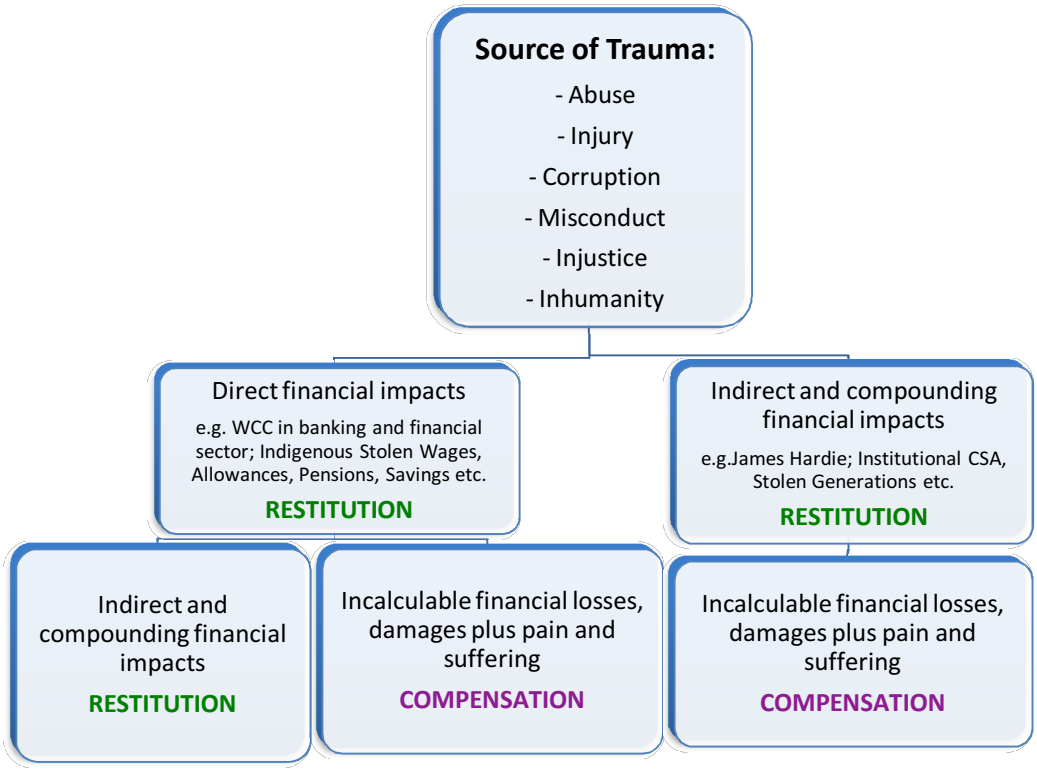
305. The response of Australian Governments to major acts of cruelty, inhumanity, negligence, gross injustice and lack of dignity is not one about which we can be proud. It does not reflect values based on integrity, compassion, responsibility or justice - or the notion of democracy, civilization and humanity. The world needs leadership in these matters. Greed, corruption and lack of compassion for those impacted by such conduct must not be rewarded: victims must not

suffer further. They deserve to be restored to the position they have a right to be in and compensated for impacts that can never be undone or repaired or replaced.

306. *'Compensation'* for the related incalculable losses, damages and pain and suffering – applicable to other groups of victims too – is not the *only* financial consideration in WCC/misconduct. Ensuring accountability, making amends and taking responsibility should involve restoring what is at all possible. Re-instatement of direct, indirect and compounding financial losses, is not only possible it, is ethical.

307. The diagram below outlines a model of the aspects that should reasonably be considered for redress. Details for calculating restitution and compensations are outlined in Table 12.

Diagram 2: **Model of Restitution and Compensation**



Evaluation of providing access to redress for past disputes

37. What are the benefits and costs associated with providing access to redress for past disputes?

308. The benefits and costs associated with providing access to redress for past disputes are summarized in brief in Table 8 below:

Table 8:

Costs and Benefits of Providing Access to Past Disputes Retrospectively

Benefits	Costs *Most short-term with long-term benefits*
Provide (albeit delayed and protracted) justice and dignity for victims of WCC / misconduct who have been denied financial redress (they are ethically entitled to) given inadequate regulatory protections and legislation and who have been treated as if they are the criminals or people without rights – this will enable the capacity to go forward with the financial level they deserve having worked for it (as was intended in inheritance) and thus begin to heal from the devastating and traumatic personal impacts	Non-offending industry members and organizations may be required to subsidize the deceptive and negligent practices of others if costs are not restricted to banks and major organizations e.g. insurance companies – however, industry as a whole has long been aware of misconduct and rolling scandals and had the opportunity to rectify standards of conduct and related reform and redress
Demonstrate industry and authorities will be held accountable going forward and for retrospective activities	The ordinary taxpayer could be penalized by banks and other organizations levied by way of costs passed on (despite gargantuan profits and salaries/bonuses to staff and the opportunity to minimize risk since misconduct emerged and rolling scandals escalated) unless they are prevented from so doing with a clear response provided to avert victim-blaming
Send a clear message to industry that in being held financially accountable one way or another, it must therefore substantially reform practices, requirements and safeguards to minimize the risk to innocent people from inadequate protections and deceptive or negligent conduct	Funding of highly trained, competent, trauma-informed industry professionals to assist in compiling and preparing a case for assessment and determination of restitution (direct, indirect or compounding losses) and compensation (incalculable losses, damages and pain and suffering)
Restore trust and confidence also among the wider community in the banking and finance sector and Government, and thus investing in, and strengthening, the national economy	Funding of highly trained, competent, trauma-informed professionals to operate the scheme of last resort and retrospective scheme, review cases for determination and award financial redress in a timely manner (i.e. provision of enough staff for existing backlog) and to audit the scheme for transparency and competence
Signal to international concerns that Australia will not be permitted to be "*a paradise for white collar crime*" or abandon victims and thus can be reliably	Possible effects on a firm's professional indemnity insurance cover including current exclusions and /or inadequate coverage for victims. (*Note - If the scheme*

and safely invested in and traded with	*results in liability for past losses that are difficult for a firm to make provision for it is ultimately its responsibility and that of the regulator and successive governments – the scheme doesn't create the impact, the misconduct did)*
It would highlight the necessity to enforce proper financial accountability of offenders to not only provide a deterrent where penalties imposed are a multiple of loss incurred or risked or benefit gained but also provide a pool of funds for cases where offenders fall through the cracks leaving their victims without recourse to redress and resultant costs to society	
It would also impose pressure on legal reform to make the court system better reflect justice rather than favour those with the deepest pockets and least to lose	
It would underscore that industry cannot continue to operate on the old premise that greed is good and money can buy protection	
Industry cannot rely on contractual relationships with EDR schemes that specify the range of disputes able to be considered or limit eligibility on amount of loss or what is paid in redress or any other parameter that disadvantages people affected and benefits industry offenders	
Innocent consumers and small businesses with limited resources and / or suffering from debilitating distress, particularly where it has been protracted over years, can be heard and helped as should be expected in a democratic society that opposes corruption.	

38. Are there any legal impediments to providing access to redress for past disputes?

309. Beyond what we have noted earlier about people being required under duress to sign deeds of settlement, transfer or assignment, we do not have the expertise or information beyond what we know from the Supplementary Issues paper to comment in an informed manner on whether there are any legal impediments to providing access to redress for past disputes.

310. Regarding any legal impediments there is a moral and ethical duty for parliamentarians to work together to address legislative reform in this regard.

39. What impact would providing access to redress for past disputes have on the operations of financial firms?

311. In our view operations of financial firms would substantially benefit as a result of the impact of access to redress for past disputes. It would create incentive to reduce risk to consumers by developing and ensuring best practice measures to assess a client in terms of circumstances, goals, risk aversion, suitability, serviceability, provision of meaningful informed consent, ensure transparency and accountability via regular clear statements and correspondence as well as endeavour to promote professional, ethical conduct with a focus on consumer satisfaction in relation to a timely and responsible response to misconduct which may occur.

40. What impact would providing access to redress for past disputes have on the professional indemnity insurance of financial firms?

312. This is not an issue we can contribute to from an informed position or speculatively as it is beyond our understanding. It would appear there would need to be substantial reforms for it to cover the real-life risks involved. That includes not just the number of clients a firm services but the amount of their money it handles and for which it has responsibility.

313. ASIC's demand of a mere $20,000 Security Bond for [redacted] was patently ludicrous. Equally, it is an indictment of ASIC's ineptitude and lack of adequate awareness or concern for consumer protection that the regulator permitted Mr [redacted] to hold only $2million PI insurance for at least 500 clients while managing many multi-millions of dollars.

Design issues for providing access to redress for past disputes

42. What are the strengths and weaknesses of the Westpac proposal?

314. Comments regarding Westpac's proposal:

Table 9:
Westpac's proposal for access to redress for past disputes:

Strengths	Weaknesses
At least Westpac is now concerned enough about the issue gathering attention to bother to input…!	Westpac's proposal reflects self-interest, bias and / or lack of consultation with the industry's victims or concern for impacts on these people.
Structure / governance: It recognizes the necessity for an expert panel to consider disputes not merely one individual professional (HNAB-AG comment: an individual only leaves	It incorrectly assumes experts who have knowledge and experience of the product/s or aspects involved in a dispute under consideration are highly competent, ethical

decisions more prone to human error or limitation or a possible conflict of interest or failure to understand aspects of a case beyond a particular skill set or unconscious bias).	and trauma-informed.
It proposes the expert panel would have commercial and legal capability and extended jurisdiction i.e. the power to enforce its determination and award to a proper conclusion.	
Remit: It recognizes the involvement of white-collar crime related to banks and lending maladministration and the necessity for redress for victims. (HNAB-AG comment: WCC is grossly minimized in Westpac referring to it simply as *'poor'* financial advice and maladministration)	It seeks to avoid, minimize and deny responsibility of those collaborating with independent financial advisors / planners or accountants and others by limiting remit to *"bank-related allegations relating to poor financial advice or maladministration in lending."* This ignores far wider-ranging activities of white-collar crime, impacts of deception and fraud as well as the related direct and indirect or incalculable losses plus pain and suffering.
Funding: Proposes an industry-funded levy for banks.	Funding should also be provided from other industry organizations e.g. insurance companies and product issuers as well as government as successive governments and regulators enabled the situation to exist and flourish.
Proposes a user-pays element for firms who have determinations made against them.	It does not consider the need for deterrents and accountability to be linked by way of imposing fines which are a multiple of the loss incurred, risked or benefit gained. This would also cover redress for victims from firms who are not able to pay, or which design strategies to avoid paying redress. This penalty could contribute to the running cost of the scheme and to reimburse industry members levied who had no direct responsibility for misconduct.
Eligibility criteria: Westpac acknowledges that criteria are useful.	Westpac's proposed criteria illustrate it is [redacted] and the wide-ranging impacts of WCC (especially multi-lender/product WCC) and/or it seeks to minimize these and avoid responsibility. For instance, most victims of [redacted] may not have discovered the deception and negligence had the GFC not occurred. Many of us discovered further activities well after the initial stage blew open e.g. existence of loans (margin and MIS) that were never authorized or even known about. This has

	occurred well outside the statute of limitations (6 years). Further, while liquidators are able to extend SOL (e.g. KordaMentha), victims do not appear to have this privilege or it is not common knowledge as possible.
Westpac notes the need for disputes that have not been heard to be addressed.	Westpac assumes disputes which have been heard e.g. by FOS or a court have been adequately and fairly determined. We understand some victims report this not to be true. For instance, even when FOS awarded financial redress in their favour it has suggested the victims had, or may have had, partial responsibility despite this being illogical and not supported by a thorough examination of documents, or lack thereof. We are also painfully aware that many court scenarios result in a greatly diminished settlement of losses and impacts given the excruciating duress of a protracted ordeal or the fear of one. Further, cases that may be won may also be achieved on only a portion of the actual range of misconduct and / or impact considerations. In complex multi-lender/product cases people sometimes present only 1 small part of their case to try to simplify it for the lawyers, magistrate/judge as well as themselves as something back is better than nothing. However, this is not acceptable: where is the *fair go*?
Westpac acknowledges claims exceeding an EDR cap or monetary limit or other terms of reference have not been heard.	For the same reasons as noted above, there is a gross injustice in limiting eligibility to disputes outside the terms of reference of the EDR body e.g. where the claim exceeded FOS's monetary limit / cap.
Westpac notes larger business customers may be affected and although it does not note this may have resulted in genuine insolvency (i.e. not strategic fake-debt scenarios) it does recognize this level of outcome may occur.	For the same reasons as noted above it is unreasonable that 'larger business' customers (not defined or clear) should be required to proceed to court. Most people recognize the law is not always justice. Perhaps in cases where there is equal financial power with the banks it may be reasonable however, we are not confident the legal system typically understands the issues or impacts. In brief, industry is favoured as it has far deeper pockets, lack of personal skin in the game and availability of delay and other tactics to thwart justice and responsibility to pressure people into a settlement, or to give up and acquiesce to demands. Protraction of distress and the threat of further loss through lengthy

	appeals processes work against the industry's victims. It is truly a David and Goliath battle of epic proportions for most victims.
Payment of compensation: Westpac accepts banks would pay determinations made in favour of the customer by the expert panel.	Westpac entirely ignores that banks are heavily protected under existing inadequate legislation from their responsibility and liability for loans and products arranged in collaboration with independent financial advisers/planners, accountants, brokers etc. through carefully constructed degrees of separation. This is unconscionable and unacceptable. Westpac seeks to minimize the impact on lenders for the full range of the banks' deceptive and negligent activities. It also omits the issue of WCC loan repayment forced by liquidators and related deeds of settlement (or assignment or transfer etc.). These losses must be recouped and impacts compensated. It must include the unscrupulous and inhumane treatment by liquidators who, despite acknowledging misconduct, refuse to exercise discretionary power under statutory obligations to waive debt in full: - under $100,000 - to seek creditors' approval or make the case to a court for over $100,000 - or for *any* amount agreed in setting up a *hardship program.* For years KordaMentha has [redacted] In February 2015, ANZ informed HNAB-AG it guided KordaMentha to treat [redacted] victims *"as swiftly as possible… very generously… and incredibly compassionately*." ***The reverse has occurred***. In August 2015, [redacted] gave testimony committing to treat this acknowledged sub-group with as much empathy as they could under the law (which equates to full waiver as noted above and is confirmed by independent liquidators). Further, in 2016 ANZ testified to a parliamentary review of the 4 major banks that [redacted] victims ***should not be pursued***. In addition to KordaMentha's conduct, ANZ has ignored communication from HNAB-AG requesting it reimburse the demands made by the liquidator in view of this. [redacted]

	[redacted] shut down HNAB-AG from speaking at the 2016 ANZ AGM. (This is the tip of the iceberg across senior executives through to [redacted] See Appendices D-G)
Appeals: Westpac accepts the possibility of an appeal process for the 'customer' and the 'bank' (HNAB-AG comment: other industry participants are not referred to).	Regrettably, Westpac's idea that an appeal to the Supreme or Federal Court would reliably and confidently produce justice is doubtful. Moreover, this would fail a key purpose of such a scheme of last resort: it seems likely an appeal process would favour the bank / industry firm given their financial resources and motivation to extend, thwart and protract resolution to wear victims down, facilitating greater likelihood of those who have been subjected to misconduct giving up or accepting a lesser settlement. This may increase the number of, or result in an automatic appeal by, industry offenders taking the situation back to square one. An appeals process must not be via court. An independent review panel with strong audit controls would provide greater assurances. Human error is possible particularly if determined by an individual and not a panel - or where a panel abdicates responsibility to one participant. Should founded appeals not be rare this should alert concern about the competence and professionalism of the scheme's panel. It underscores the need for transparency and audit via frequent random, genuinely independent professionals.
Disputes within scope of proposal: Westpac acknowledges victims can lack resources and may fall outside an EDR's terms of reference and not have received determinations.	Westpac excludes any case that is not a direct (entirely in-house) bank-related dispute. It expresses no moral or ethical concern to include those victims unfortunate enough to have received a determination that has not been paid and is *deemed* not bank-related. Nor does the bank consider those whose specific circumstances have not been addressed in class actions (such as MIS in which people were deceptively placed and which was revealed only by its collapse or the GFC) or able (financially or personally) to take their case to court. Lenders are, in fact, related to MIS and margin loan misconduct but have distanced themselves from their responsibility through degrees of separation under existing inadequate law that protects them. Lenders such as ANZ which were not

	initially involved in a product but which bought the loan book are also responsible as their due diligence, if actually done, failed to detect concerns related to hundreds, if not thousands, of people in Timbercorp.

43. What range of parties should be provided with access to redress for past disputes? Should all of the circumstances described in paragraphs 133-144 be included?

315. All the circumstances outlined in paragraphs 133-144 of the Supplementary Issues paper should be included in access to retrospective financial redress i.e. insolvency of the firm or otherwise unable to pay, monetary value of the dispute, time limits and other reasons such as complexity of a case.

316. We note no limits apply to superannuation disputes.

317. In brief, all parties should be provided with access to redress. This includes those directly affected and representatives of those who are ill, incapacitated or deceased. It should include people who:

a) fall outside existing EDR framework
b) never lodged a dispute because of EDR's limitations
c) attempted to lodge a dispute but were refused by an EDR due to exceeding monetary limits
d) were not eligible due to time limits
e) hoped to pursue the dispute after the 2 year limit of receiving an IDR response from a firm (e.g. after hoping legal action would be possible to commence – lawyers typically were not interested once it is determined there is no access to money – i.e. from the victim or the offender)
f) lacked knowledge about EDR processes
g) perceived and/or experienced complexity or difficulty or costs
h) did not know there was a time limit to lodge a dispute
i) experienced concerns related to multi-lenders/products through a firm
j) required competent, professional assistance in order to compile, prepare and lodge a dispute which was unaffordable and/or too difficult to trust and/ or too re-activating given the severity of distress and consequences
k) were informed by an EDR on the phone but have no hard proof, or via correspondence, they were advised they were not eligible (e.g. exceeded cap)

l) cannot prove they first became aware of the concern within 6 years of lodging a dispute
m) were prevented by circumstances from acting earlier (e.g. due to the level of resultant distress and personal repercussions; caring for a sick loved one; acting on behalf of an elderly parent or incapacitated person or having to wait until deceased due to risk of being prevented from seeing loved one by Guardian of Enduring POA about whom concerns exist).

44. What mechanism should be used to resolve the dispute and what criteria should be used to determine which disputes can be brought forward?

318. The mechanism to resolve disputes should entail, in brief:

1) Easy access and clear, simple steps regarding how to lodge a complaint pending

2) Easy to access and understand steps of options for how to obtain professional assistance to compile, prepare, lodge and, if necessary, present in person to address any queries by the scheme designed to confirm misconduct and calculations for the determination for financial redress:

(a) The option for assistance could be provided by designated staff of the scheme or chosen by the complainant from a known, recommended or trusted enough, accountant or industry member or from a list provided by the scheme of approved, genuinely independent and properly audited professionals.

(b) There must be measures to ensure there is no conflict of interest if assistance is provided by the scheme and not someone independent of it, or of the products related to the dispute, or associations with related alleged offenders (i.e. motivation to reduce the amount of financial redress to be paid by minimizing loss calculations or denying misconduct).

(c) If assistance to prepare the case regarding outlining the misconduct, calculate the loss and itemize other impacts is dependent on the scheme for income this could result in providing an assessment in favour of any scheme that may seek to minimize redress for whatever reason. We have seen this occur in relation to a liquidator and its so-called *'independent hardship advocate'* subcontracted to assess what amount of debt could be extracted for a collapsed MIS scheme. This is despite other industry members, parliamentarians and its largest creditor,

recognizing – and the liquidator acknowledging - people were victims of deception by [redacted] and his collaboration with the product and its lenders. Serious concerns resulted.

(d) In brief, KordaMentha hired 2 former consumer advocates (with links to CALC) who, in part, appear to have been significantly limited by the liquidator's hardship program parameters and capacity to override their assessment of cases. The second advocate, [redacted] has not defended cases about which [redacted] eventually took a stand. It has been at considerable financial and personal expense for many of those whom these advocates were supposedly 'independently advocating.' While the first, [redacted] eventually resigned in June 2016 citing concerns about a *"significant minority"* of cases this occurred only after Senator Xenophon became involved in December 2015 and our spokesperson announced running for the senate. It was long after HNAB-AG suggested it was necessary given concerns arising from very early in 2015. Concerns also extended to her own conduct including:

1. treatment of people suffering serious mental health impacts including suicidality e.g. in one case her priority was pursuit of a man who had attempted suicide to accept an emailed writ rather than advocate for the case to be concluded in a couple of days [redacted] claimed would occur in such circumstances (instead cases have been many months, even well over a year or longer). In this man's case it extended well into replacement advocate, [redacted] time (eventually settled at a demand far greater than [redacted] assessment; it was extracted under considerable distress and duress);

2. critical time sensitive delay in seeking, and then denying, ANZ's position on the treatment of [redacted] victims despite knowing of, and being offered access to, the electronic recording to confirm it;

3. not adjusting down financial demand in rare cases able to be discovered (due to lack of transparency) where she had made errors (in 2 cases, of tens of thousands of dollars) in favour of the liquidator on financial calculations from which settlement was calculated;

4. failure to ensure the Deed of Settlement which people were required to sign provided closure, certainty and did not contain errors in statement of fact;

5. collaboration in the selection, and acceptance, of lawyers hired by KordaMentha to merely reiterate its position or *"explain"* the Deed by lawyers erroneously titled as providing *"free independent legal advice"* knowing it was not based in the individual's best interests;

6. misunderstanding, despite repeated clarifications in writing, or misrepresentation, of [redacted] Timbercorp victims e.g. claiming they confused the hardship program with a scheme of redress;

7. increasingly apparent disingenuous engagement with representatives of HNAB-AG or lack of response.

Note - The lack of ongoing involvement from Senator Dastyari (whose efforts were highly commendable before November 2014) or response from the senate committee to feedback about the hardship program since and throughout 2015, appeared to signal that victims would be ignored. Her replacement, [redacted] has stated *he cannot see a circumstance in which he would resign* which suggests he is willing to ignore issues or impose higher demands. Concerns about his conduct include imposing duress and pressure including omitting clarity of facts. An inquiry is warranted into treatment of [redacted] victims and the program.

3) Regular, thorough and meaningful mechanisms to audit decisions and staff, seek and receive feedback from complainants and industry utilizing a last resort service should be available. Victims are not voiceless; they are simply not listened to or provided meaningful engagement opportunities. Often they are not just ignored but misrepresented, discredited and silenced. This includes gag / confidentially and 'disparagement' clauses. We have been warned that the truth does not prevent an offender from claiming disparagement or defamation in order to use the court system to punish victims from speaking and to keep facts and reality under wrap. Most people are terrified of retaliation: we have ample evidence of our members who would testify to doing everything not to get on *'the wrong side'* of the liquidator or his advocates.

4) Utilization of highly trained, competent, trauma-informed panels (rather than individuals) to reduce human error, increase accountability and understanding of the issues and circumstances should be engaged to make a determination and award restitution and compensation. The panel should be composed of a competent:

   (i) non-industry professional skilled in ethical conduct

(ii) accountant or industry professional able to check calculations;
(iii) industry member well-versed in the product/s in question;
(iv) consumer advocate well-versed in the product/s in question;
(v) former victim of the product/s;
(vi) and ideally a trauma counsellor who can assist the panel to understand the complainant's emotional and mental state where queries about the material presented arise and guide as to how best to engage with, as well as provide support to, the complainant if interviewing him/her.
This could be provided where the complainant requests it and / or where the panel determine he or she is struggling to provide or explain information. Certainly trauma-counsellors with considerable experience of complex WCC and former victims are necessary to consult with, train and standardly advise the scheme.

5) The opportunity for the panel to interview the complainant to clarify matters. This must include the chance to respond to 'explanations' and denial proffered by the firm/s involved. This is likely best done in person (with a trauma counsellor and / or trusted support including any independent professional who assisted in preparing the case). Those people living in the country or remote areas could be offered Skype or teleconference. The option to be funded to attend the city in which the panel operates must be available. Difficulties for some e.g. for farmers to leave their properties and commitments are real constraints particularly at certain times of the year. Hence if a teleconference is not possible at least one panel member (preferably all) should visit the person. Regional and remote Australians or those elsewhere constrained by significant personal circumstances (e.g. a parent who cannot easily leave children; people with disability or severe ill-health) must not be disadvantaged.

6) The process and outcome must not be tokenism. It must provide dignity, compassion and ethical consideration of the real and substantive impacts. It must be as swift as possible – preferably 6 weeks and certainly no more than 3 months after a dispute is lodged, including actual payment of restitution and compensation as defined in this submission.

7) The criteria to determine which disputes can be brought forward should be, in essence, any that have been or are failed by inadequate regulation, legislation and consumer protections.

8) Ethically, all types of claims deserve to be covered. The following table outlines the categories of WCC, regardless of it stemming from single or multiple lender/product scenarios. It recognizes financial losses extend from those about which the person has no awareness (regardless of the amount involved which is due) to the most extreme consequences creating complete ruin and compounding impacts over years or decades. The financial impacts are separate from, although often relate to, the degree along the spectrum of personal impacts. As outlined in detail in the previous submission, these range across various degrees of impacts on relationship, family, social-life, career, work and can have severe psychological and physical health impacts – this includes resulting in fatalities. The numbers of suicides and deaths related to WCC stress-related diseases are not recorded to our knowledge.

319. The table below would be a useful guide, particularly amongst retrospective cases, to determine:

1) Prioritization of cases according to severity of:

1. personal impacts
2. then financial impacts (adversity due to loss).

2) Consideration of whether some categories of cases fall into a particular group and can better be addressed as a collective in terms of reducing costs to confirm the existence of misconduct thus only requiring costs to confirm the losses lodged for each case.

Table 10:
Spectrum of financial and personal impacts across range of categories of victims of misconduct / WCC for prioritizing cases

Category of WCC		Consequences	
Single lender / product	**Multiple lenders / products**	**Awareness of Financial impacts**	**Personal impacts** (well-being, relationships, family, social, career, work, health – physical / psychological, world view)
• Isolated individual • Individuals impacted through same member and / or lender(s) and / or product(s) but not known to each other before discovery of WCC		No awareness of impact (minor or major) i.e. it has not emerged / been identified ↓ Discover WCC: financial impacts minor ↓ Discover WCC: financial impacts moderate ↓ Discover WCC: financial impacts substantial	No awareness of impact (minor or major) i.e. it has not been felt / recognized as such or experienced ↓ Personal impacts minor ↓ Personal impacts moderate ↓ Personal impacts substantial ↓

• Group of people impacted through same member and / or lender(s) and / or product(s) who were known to each or were advised collectively (e.g. in a meeting or at an event) • Dependent, ill or incapacitated individual or a loved one of a deceased individual or couple	⬇ Discover WCC: financial impacts devastating / cataclysmic / life-altering ⬇ Compounding impacts over years Examples: Loss of home, equity, life-savings, retirement, superannuation, investments; placement in misconduct related debt; devastating hardship or financial annihilation or bankruptcy; Declined, or inadequate payment of, insurance or other entitlements to assist with life adjustments or health concerns or die with dignity and affairs in order	Personal impacts devastating / cataclysmic / life-altering / life-ending ⬇ Compounding impacts over years in some, or all, aspects of life. While people may adjust with trauma counselling and / or supports from loved ones and may thrive through hard work, help and / or luck – it does not excuse or annul or lessen the unacceptability of WCC / misconduct

320. All cases related to the banking and financial services sector should have the right to redress. However, those most affected personally (not necessarily suffering the greatest loss financially) should be prioritised through to those least affected on both parameters.

321. We support the establishment of a scheme that utilizes panels of the highest calibre of competent and ethical staff to assess cases and determine redress. Meaningful audits of panels and cases are essential to ensure the highest standard. The same design for cases going forward should apply to retrospective cases unless these can be dealt with more humanely, swiftly and efficiently via other mechanisms.

322. If it is deemed useful, or too difficult to ensure swift redress without it, an intermediate mechanism could be established whereby the victim's (new) accountant or a related industry member or competent lawyer could be funded by the scheme to compile, assess and prepare a case. It could then be presented to a panel within the retrospective scheme to verify, approve and pay the restitution and compensation determined.

323. We also believe the option, whereby an independent industry professional is funded by the scheme to assist in compiling a case for a panel, could be utilized going forward in the future if it reduced the time period for a case to be confirmed and financial redress paid.

324. We have updated the suggestion outlined in our previous submission prior to the amended terms of reference as to how to assess cases in

terms of identifying WCC and also establishing the direct, indirect and incalculable losses as well as pain and suffering.

Identification of WCC / dispute:

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

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

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

    c) **Lender** - to perform due diligence and provide honest and accurate information to enable a prospective borrower to make a genuinely informed decision, including suitability, understanding the risks involved and consequences, ensure he or she is aware of, and able to meet, obligations to service the loan and has been assessed by the lender itself in this regard (including credit checks)

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

326. Further to the above, those working in the industry must demonstrate their conduct centred around servicing the best interests of the consumer/client, adhered to reasonable ethical expectations, did not breach or neglect formal duty of care requirements or did not take advantage of the imbalance of power, knowledge, sophistication and trust of the weaker party who reasonably sought professional expertise. Failures of these expectations, amounts to engaging in unconscionable conduct, negligence, deception or fraud.

327. White-collar crime and corruption in the banking and financial services sector must be addressed by holding offenders accountable, via meaningful penalties (fines much greater than benefit to offender or loss to victim; zero tolerance where unable to pay redress and/or significant negative impacts are inflicted, if not always); developing meaningful informed consent and warnings for consumers with mechanisms for proper and swift restitution and compensation.

328. The following outlines typical key aspects of what constitutes clear and substantiating evidence in our experience:

Table 11:
Guide to identification of white-collar crime (WCC)

Evidence	√
Lack of clear written and signed client financial situation, goals, investment product preferences, level of risk aversion and data required to best advise required by advisor – *filled in by the client* on a form provided spanning key data	
Lack of clear, understandable and accurate statement of financial position provided to the client regularly (i.e. monthly or quarterly) or on request	
Lack of written key points for signed informed consent in simple, clear, language without legalese and industry jargon in summary (i.e. 1-2 pages)	
Lack of confirmation that a PDS has been provided, explained and understood	
Lack of confirmation that a SOA has been provided, explained and understood	
Lack of counter-part original documents (where all parties sign and retain an original of the same document)	
Document includes witness/es who have not met the client or are staff/associates of the industry firm	
Incomplete documents e.g. assets and liabilities on loan applications missing or partially completed or overstated etc.	
False information on documents provided by industry member	
False information about, or related to, documents, products etc. given to client	
Client expected to sign blank documents, without provision of full documents or awareness of these, often under pressure and no encouragement to seek independent legal advice with assurances it is part of the service engaged	
Evidence industry member encouraged borrowing more than necessary or at a maximum placing person at risk and driven by conflicted remuneration	
Lack of due diligence performed by lender to ensure borrower is aware of the loan's existence, the terms and conditions and that he/she can service it and it is suitable given circumstances	
Lack of due diligence performed by product issuer to ensure client / investor is aware of the product's existence, risk and terms and conditions and that a loan is involved and can be serviced and is suitable given circumstances	
Correspondence or contact from the client requesting information not provided and/or assurances provided by the industry member which the client could expect to trust and would not know was inaccurate or misleading	
Correspondence or contact from the client expressing concern or asking a question with responses provided by the industry member which the client could expect to trust and would not know was inaccurate or misleading	
Lack of confirmation the client was adequately informed or understood commissions or conflicted remuneration was paid and / or evidence it influenced advice given and / or of arrangements made on behalf of the client which were not in his or her best interests in terms of risk, serviceability, or stated plans and goals or circumstances	
Documentation, or lack thereof, which demonstrates similar patterns of behaviour in handling multiple clients	
Mismatch of client level of financial sophistication with product/s and risk	
Liabilities listed as assets (and interpreted to client as such e.g. MIS projects)	
Inaccurate listing of financial information by industry member	
No documentation of client being informed of, or declining, the option of implementing safety measures (e.g. a stop-loss order for margin loan)	
Leveraging so liabilities are greater than assets and/or informed to the client	

Portfolio represented as diversified to client but not (e.g. merely numerous MIS)	
Liabilities exceed client's realizable assets	
Whistle-blower witness accounts with proof; including earlier reports to ASIC	
Substantiating evidence – particularly in scenarios of multiple victims	
Reports by more than 1 client prior to meeting / hearing of others' experiences of the same or similar activities and given to unrelated people (lawyers, industry members, journalists, medicos, counsellors, friends or other credible sources)	
Affidavit or sworn testimony of other credible people known before concerns emerged in respect of what he or she recounted being told about advice and/or assurances given by the industry member to the victim	
Statements of other credible people who met with the industry professional in considering his/her services but may have chosen not to proceed for other reasons not related to identifying it as deceptive, misleading and inaccurate	
Associates or former staff who departed from working with the industry member on the basis of concern about activities – even if not reporting to ASIC	
Whistle-blower account of witnessing activities (without proof)	
Associates, former or current staff or colleagues who express cause to be concerned about the industry member's conduct (including in confidence)	
Consideration of recognition of the inherent trust implied and imbalance of power which can be wielded against a client / consumer to his or her marked detriment and disadvantage e.g. (under the *Trade Practices Act*) factors deemed unconscionable in the selling or supplying of goods and services to a customer, or to the supplying or acquiring of goods or services to or from a business, include: - the relative bargaining strength of the parties - whether any conditions were imposed on the weaker party that were not reasonably necessary to protect the legitimate interests of the stronger party - whether the weaker party could understand the documentation used - the use of undue influence, pressure or unfair tactics by the stronger party - the requirements of applicable industry codes - the willingness of the stronger party to negotiate - the extent to which the parties acted in good faith	

Establishing financial and personal losses to determine restitution and compensation:

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

330. Redress (including retrospectively) which is ethical and fair would cover restitution for the **direct losses** from the deceptive advice or

fraudulent or negligent conduct and its consequences, as well as the **indirect financial losses** incurred in endeavouring to salvage the situation or limit further loss after discovery. This includes **compounding losses**. Some impacts would be complicated, but not impossible, to assess.

331. For instance, the loss of increased value of the former home from when it had to be sold or was foreclosed on to the time of resolution of the case should be calculated. Where its peak value in the intervening years may have been higher, that value should be covered in redress as the person has been prevented from the option to sell or benefit from the increased equity (as well as reduced interest rates). This relates to the fact redress should include being forced out of the property market for that time and consequent increased difficulty or impossibility of getting back in to a similar home in a similar location**.**

332. **Incalculable impacts** such as other related financial losses that cannot be quantified as well as pain and suffering: family breakdown, psychological distress to self/partner/children/elderly parents/key relationships and effect on work (colleagues, business partner/s, clients) as well as career or capacity to work etc. are immeasurable. Relocation and disconnection from community and previous supports can be marked. It includes significant impacts on health (physical and emotional / mental).

333. The following is predicated on failures to date of the regulatory and legal system to protect a victim of gross white-collar crime. It notes categories for consideration in calculating restitution and compensation and covers major examples from the experience of victims of [redacted] firm and its collaboration with numerous lenders and products. It is not comprehensive. Inadequate consumer protections forced payments in which misconduct is related.

Table 12:
Calculating restitution and compensation for victim of banking or finance sector

1. RESTITUTION	
a) Direct losses:	**$**
Money paid to products / loans before discovery of negligence, deception or fraud and/ or due to unauthorized or unethical execution of loopholes in contract	
Money paid in related costs: insurance, maintenance, other fees etc.	
Money paid in loan repayments since discovery to avoid litigation	
Money paid in settlements with lenders or liquidators to avoid litigation or bankruptcy due to inadequate protections for victims	
Money paid to industry member for services (e.g. direct or where the annual accountancy fee with tax return was understood to cover these)	
Money paid in penalty interest where repayment was not / could not be paid including on advice of lawyers	
Money extracted by lenders / product issuers for misconduct-related loans; liquidation of share portfolio	

Money lost on shares owned outright but placed in deceptively or negligently or mismanagement including lack of informed consent	
Money lost on margin loans for placement in shares deceptively or negligently and mismanagement including lack of informed consent	
Money lost in superannuation MIS and/or mismanaged	
Money utilized without informed consent including from cash accounts e.g. Macquarie Cash Management accounts and from which fees were also debited for advisor's services	
Lost income due to efforts to salvage situation, seek redress etc.	
b) Indirect and compounding losses:	**$**
Income, savings, refinancing home, borrowings and/or inheritance used to reduce or eliminate deceptive debt	
Reduced equity in home increasing mortgage and related impacts e.g. option to benefit from unusually low home interest rates since	
Foreclosure on or necessity to sell home and/or assets to reduce or eliminate deceptive debt (including cost to sell: e.g. real estate agents, auctioneer, lawyers)	
Necessity for quick sale forcing acceptance of offer/bid lower than lowest in the range quoted by real estate agent (and also, cost of misconduct by REA unable to be pursued due to larger situation)	
Lost money in rental accommodation having had to sell the home	
Cost of buying a cheaper home e.g. broker, stamp duty, conveyance etc.	
Cost of relocation (removalist; storage; etc.): may be multiple times	
Exclusion from property market: inability to buy / sell in same time; lost benefit of significantly reduced interest rates; loss of increased value of property from time of loss to resolution of dispute or its peak meantime	
Furniture and other items given away or sold at fraction of value to reduce or avoid storage and/or not fitting into resultant living situation	
Loss of value in home (refinanced or not) due to being unable to afford repairs or do planned renovations because of servicing deceptively-incurred debt or hardship having paid it out	
Loss of, or reduced, income due to impacted capacity to work	
Compounding losses due to loss of, or reduced, earnings re work impact	
Fees for legal advice and / or action	
Fees for financial assistance to assess or rectify circumstances	
Fees for counselling due to related trauma and distress	
Medical costs for stress-related illness or disease or escalation of pre-existing condition	
Financial ramifications of divorce or separation	
Reduced, or no, money for superannuation contributions post-discovery	
Limited, or insufficient, money contributed to superannuation on advice before discovery and / or loss of superannuation	
Expenses in pursuing assistance from industry and parliamentarians etc. to seek redress (time off work; travel for rural or relocated victims etc.)	
Miscellaneous (e.g. atypical for the individual such as depression-related significant weight loss and/or gain which required purchasing clothes)	
Inheritance: diminished or eliminated estate (and distress where Testator cannot provide for spouse, children and others as expected)	
Retirement capacity lost or severely constrained	
2. COMPENSATION – incalculable financial loss, damages, pain and suffering:	**$**
Pain and suffering	
Time to resolution / payment of restitution: lost years - anguish / distress	

Thwarted efforts to seek resolution by power structures	
Impact on family (including extended) and key relationships	
Impact on pets and animals (e.g. had to give away where rentals disallow) – can be deeply painful and distressing, *including* for the pet	
Impact on career; capacity to work; energy and focus; opportunities etc.	
Impact financially and personally on business partners, staff, colleagues, and some categories of clients	
Reduced or no financial position / security due to advice actively, or indirectly, against preferred investing e.g. investment in property; cash shares etc.	
Impact due to treatment by industry (banks, liquidators, advocates) or others (parliamentarians, industry) who do not respond to help sought, or seek to understand, or abandon commitments, or accept misleading and inaccurate statements of industry resulting in a lack of dignity, respect, compassion and action	
Thwarted pursuit of payment of income protection / life / health insurance claim including aggravating, or failing to assist, reason for claim	
Impact on health – physical and /or emotional / mental health	
Suicide: attempted and completed	

334. Research shows the median dwelling increased by 85% in Melbourne and 90% in Sydney, almost doubling, since the GFC (listed as 2009). This means victims of white-collar crime who lost their home at that time and could not afford to buy another cheaper one, have lost that increase in value as well in addition to other benefits listed elsewhere. Other reports note certain areas in which property values have easily doubled.

335. Moreover, victims in this situation are even less able to buy a home again. Economist, Jeff Oughton at ME Bank told Money editor Jackson Stiles on 7 February 2017 that not only are house prices rising faster than you can save in Sydney and Melbourne but that for 25% of Australians their incomes are falling. Research was cited in the previous submission that for people over age 45 (which includes many victims of financial misconduct) they have almost no hope of owning a home if they do not have one they are paying off by that age. The rolling impacts for victims of WCC are immense. This also impacts those who were forced to refinance homes that had already been paid off or which had considerable equity.

336. The issue of restitution and compensation must include the marked distress. This includes where many elderly people feel humiliated, and failures as parents, in not being able to leave anything they worked for and built over their lives to their children and grandchildren.

337. Children of deceased victims of white-collar crime are also victims having intended inheritance impacted. We are aware of a 15 year old boy whose father died of cancer. [redacted] The liquidator

claimed *"rigour."* The man died, unnecessarily distressed by the uncertainty of not knowing if his son's financial future would be secure. The child had been relocated to the USA to be raised by his aunt: his entire life is impacted in losing his father.

[redacted]

339. Quite literally [redacted] has also sought to factor in the *potential* financial flesh of a relative not yet dead. It has been reported to HNAB-AG that KordaMentha has required anticipated inheritance be part of assessing hardship settlements (including *before* a terminally ill parent was even dead). The liquidator knows if someone wins Tattslotto the day after signing a deed it is the person's good fortune and KordaMentha has no right to pursue it. A 'windfall' via an inheritance, especially related to the stress of a terminally-ill or sick parent should be viewed in the same vein even though it is hardly 'good fortune.'

340. An elderly couple have been forced to live in a caravan. They worked hard their entire lives and are deeply affected in perceiving they have failed their children by being unable to provide an inheritance due to being subjected to WCC and having almost nothing: it is the psychological meaning or symbolism far more than the financial legacy. Several victims also had to use inheritance to pay misconduct-related debt or had it effectively gambled by the industry and Mr [redacted]

341. We also know of elderly people (often estranged from family and/or isolated from friends and community) around whom serious questions have arisen related to accountants / financial advisers having power of attorney and guardianship. In one case the husband is now deceased and the wife has Alzheimer's and is a resident in a nursing home. The adviser could block access to the mother if the adult children tried to take action to examine his actions. This means it is necessary to wait until her death to avoid upsetting her or risk being unable to visit as he holds the legal power to enforce it. There is no avenue that is reliable and not costly (in financial and emotional terms). Concerns about his *'advice,'* conduct and role are significant.

342. This highlights concern that cases must also be able to obtain redress and impose penalties after a victim's death. Deception may only emerge when documents are accessed after death.

343. 'Money' editor Jackson Stiles, wrote on 1 February 2017, that Dr Patrick McConnell at Macquarie University - a banking regulation expert who advised firms in the US, Europe and Australia for 30 years - said *"The ABA are addressing some of the major issues, but from the*

perspective of what's best for the banks to cover their arses, not what's best for the consumer, the banking environment and the economy. They've got a very vested interest and they're pushing it… I don't criticise them for doing it - I criticise ASIC for letting them. ASIC…. has ceded the field to the banking lobby…."

344. Whistle-blower Jeff Morris who spearheaded exposing misconduct at the CBA has repeatedly outlined his serious concerns about ASIC. He has appeared at various senate inquiries including contributing to the *Senate Inquiry into the Performance of ASIC*. His submission to the Joint *Parliamentary Inquiry into Whistleblowing* is important reading for insights into the reality of how ASIC responds as well as industry when confronted with someone not prepared to cover-up these financial crimes.

345. Dr McConnell fears the new bank consumer advocates will be used to keep complaints internal, away from regulators and media rather than have them dealt with by an externally independent body. HNAB-AG can attest to concerns of the utmost gravity regarding in-house responses of lenders, some liquidators and insurance companies. We also strongly concur with Dr McConnell's contention a consumer advocate should be proactively heading off problems in terms of examining a new product. This is not occurring as a standard practice if at all.

346. We strongly suggest the title *"advocate"* or anything implying consumer *"assistance"* or *"independent"* should not be able to be used unless the professional is given the power to provide independent help and advice in the best interests of the victim or consumer.

347. Where such a service is employed or subcontracted by the lender / product or liquidator in question, in any in-house or hardship program or scheme, to verify misconduct or determine repayment, power to fulfil the role without fear of impact on employment or reputation is essential. Further, it should require signed informed consent by the consumer of being aware of the option, if dissatisfied with the outcome, to take it to the Australian Financial Complaints Authority or retrospectively to a scheme of financial redress of last resort.

348. We are acutely aware – and have evidence - that despite efforts of lenders and some liquidators to present as if they are being responsible it is not occurring. It is an understatement there is insufficient engagement in necessary change in culture, safeguards and ethics.

349. The recent experience related to ANZ's newly appointed *"Fairness Officer"* (the position commenced January 2017) is a perfect example. Platitudes, apologies and corporate spin abound. Despite the optics in commitments made to Fairfax in December 2016 by [redacted]

350. Further, [redacted] Deputy CEO gave testimony to the First Annual Bank Review in October 2016 regarding ANZ's view victims of [redacted] should not be pursued for debt (see Appendices E, F, G). Alarmingly but unsurprisingly, he touted a different view (and without noting he was contradicting his earlier statement) at the second review in March 2017. This occurred after HNAB-AG wrote to Mr Neave regarding concerns including a request the bank honour its position regarding [redacted] victims by reimbursing settlements acquired by [redacted]

351. The bank is profiting from the liquidator's refusal to be guided by ANZ as the largest creditor (which would carrying the weight in any vote about treatment of Timbercorp victims). To our knowledge the other creditors, a small group the liquidator describes as *'mum and dad debenture holders'* have also long recouped at least 80% of their losses due to the collapse of Timbercorp (in what has emerged as effectively a Ponzi-scheme). Moreover, these creditors are unlikely to be in anything like the position of hardship suffered by hundreds of, unknowingly, unsecured victims whose lives have been painfully impacted.

352. The criteria to determine which cases should be put forward first is addressed earlier and reflected in Table 10. In brief, impact personally and on life-style should be a greater priority than financial amounts as these will not always correlate.

45. What time limits should apply?

353. We see no valid ethical reason for applying a time limit to past cases being eligible for a retrospective redress scheme. Indeed there are many reasons why imposing a limited would disadvantage people, including those most severely impacted. Comments have been made earlier and in our original submission prior to the amended terms of reference.

354. In brief, this relates to reasons why WCC may not be discovered for years or recognized by a victim; difficulty coping with the trauma of it compounded to substantial degrees by the failure of the system for many years or longer and consequent ill-health physically, emotionally and mentally. It may take a victim a very long time, a great deal of support from family, friends or a mental health professional to be able to consider opening up the nightmare even though, and especially when, they are seriously financially and personally impacted by their circumstances.

355. A concerted public awareness campaign would be required if a time limit were to be imposed and must include consideration of special circumstances. A campaign could operate through the ATO in conjunction with responding to tax returns, accountancy firms, all

lenders and products, television, radio and mail. This creates an additional expense.

356. However, as noted, those most in need of the information may not read educational material or may 'tune-out' and avoid it due to the significant re-activation of distress and trauma symptoms. Many victims, even who are not in severe hardship, having never behaved like this prior to the WCC, report years later still avoiding paying bills or reading anything to do with financial services because it is too triggering. Even TV, radio and print advertising can be distressing.

357. Should a time limit be recommended for a reason we cannot imagine as valid, we suggest 14 years with provision for special circumstances beyond that. As noted earlier, this would preclude the authors from lodging a complaint about aspects of their cases along with earlier victims of [redacted] [redacted] firm and its collaboration with lenders and products.

358. Further, the elderly couple referred to who were much earlier victims of [redacted] [redacted] discovered the misconduct themselves. The husband was a highly competent professional and had meticulous records. He attempted to pursue their complaint with Mr [redacted] through the legal system. However, a major law firm protected itself from legal action and reputational impact after grossly mismanaging the case: the lawyers knew the couple's dire financial situation so proposed to waive their exorbitant legal fees (totalling many tens of thousands of dollars) if the couple dropped the case and accepted a gag. They had no real choice given their circumstances and experience of the legal system.

359. The firm knew the extreme physical and mental health impacts the couple were experiencing and that they did not have trust in lawyers to take action against the firm. This elderly couple were utterly bereft having been further victimized by the system's failure to provide redress and further advantage taken of them. They lost almost everything including their home.

360. The loss of dignity and subsequent ongoing physical and mental health impacts for the couple are substantial despite their valiant efforts to live positively and enjoy all they can. While they have kept documents many people will dispose of them for reasons outlined elsewhere when confronted with lack of redress, and concerns about this, for so many years from industry and successive governments.

46. Should any mechanism for dealing with past disputes be integrated into the new Australian Financial Complaints Authority (once established) or should it be independent of that body?

361. Fragmentation of existing EDR's and mechanisms for dealing with disputes is part of the problem. It makes it easier for discrepancies, buck-passing and lack of transparency. However, while any

mechanism for dealing with past disputes should be integrated into the new Australian Financial Complaints Authority once established it should:

1) not be delayed until then
2) be subject to regular, meaningful, thorough, independent audit
3) be subject to a process for complainants – both consumers / victims and industry to provide feedback about concerns or dissatisfaction as well as what contributed to a positive and fair experience
4) ensure outcomes inform consumer protections for society.

362. It may be the fairest, most expedient and practical solution is to commence the design and implementation of a financial redress scheme of last resort – and in particular a retrospective one – as soon as possible, then integrate it once AFCA is established formally.

363. We have also noted it would be useful to fine-tune design of the scheme by running a type of pilot study to identify potential issues not recognized, addressed or covered to date. It could use a number of real cases both retrospective and current.

364. HNAB-AG could assist with a 'trial run' both with:

a). providing individual cases and
b). looking at minimizing costs in utilizing a group treatment of people related to the same industry member or organization or product who are making similar complaints i.e. where the theme or pattern is reported across many.

47. Who should be responsible for funding redress for past disputes? Is there a role for an ex gratia payment scheme (that is, payment by the Government)?

365. While lenders and product issuers are responsible for unconscionable conduct including negligence, deception and fraud and have failed to design and implement genuine and meaningful consumer protections an avenues of redress, ultimately regulators and successive governments have enabled and perpetuated this situation even after years of intense scrutiny by reputable media and efforts from victims to seek help.

366. Consequently, parliamentarians have responsibility to support the Government to offer and devise any forums for proper redress. Any existing avenues to assist those victims who have been failed by the system should be utilized. As **ex gratia payments** can be made by the Australian Government (and states and territories) this could be a way of swiftly and compassionately addressing such cases. It may be helpful particularly for a group of people subjected to the same experience and suffering similar impacts or those who have endured years or decades of consequences.

367. It may best assist cases of particular long-term lack of redress and thus, subsequent suffering personally as well as financially. Elderly people, those who have been forced into bankruptcy, or to sell their home, or suffering other severe financial impact and / or consequent physical and / or emotional / mental health impacts due to the trauma (of the WCC and - the protracted often more traumatic - lack of redress) could be more compassionately assisted if ex gratia payments can be made swiftly on determination of the amount for restitution and compensation where misconduct is known to have occurred.

368. However, the amount of an ex gratia payment would need to be determined according to restitution and compensation rather than used as a means to pay a reduced amount. It should not operate to pressure people to accept a token amount to avoid the distress of proceeding through a scheme for proper and fair calculation of their losses and the impacts.

369. We also note that the Commonwealth can make **act of grace payments** to an individual "*in special circumstances, where the decision-maker determines that the Commonwealth has a direct moral responsibility to provide recompense.*" We would argue strongly that it is apparent successive governments have a direct moral responsibility for failing to protect consumers or properly respond to concerns about misconduct. Hence, act of grace payments are another appropriate mechanism providing that the financial redress is not tokenism but fairly provides restitution and compensation as defined here (Diagrams 1 and 2; Table 12).

48. Should there be any monetary limits? If so, should the monetary limits that apply be the EDR scheme monetary limits?

370. Ethically there is no rationale for monetary limits i.e. capping redress for reasons outlined elsewhere. Accountability of offenders and enablers (superiors, regulatory and legal systems, and successive governments) and responsibility for redress for innocent victims including whose lives are devastated financially and personally (or literally lost) requires a civilized democratic approach based on compassion, integrity, justice and responsibility. To our utmost regret, that is not a given in Australia.

371. Consequently, if power structures refuse to consider or accept the ethics involved, or their responsibility to ensure the provision of full redress and insist on a cap, we believe:

(i) it must be no less than $2million each, for restitution and also, for compensation

(ii) that the following are essential components of any scheme (going forward or retrospectively) toward accountability and fair, respectful treatment of victims of WCC:

A. If a cap (which we oppose) is imposed a case should be dealt with in 2 parts:

(1) **Payment of restitution and compensation up to the cap amount** (of no less than $2million for each) and

(2) **Where restitution and compensation exceeds a cap, apply measures to off-set the balance – plus interest - until these are recouped**. This would be ethical, fair and hold industry and government responsible. Example measures which could be utilized in lieu of a cap preventing proper redress are:

a) halt payment to ATO of income tax assessed as due (for self-employed) or return amount retained (on behalf of employees) for as long as necessary up to the amount of direct and indirect losses not restored and compensation not paid (and interest for further delay)

b) provision of an interest-free loan provided by the particular lender/s involved in a case until restitution and compensation is finalized for the victim (e.g. to purchase a home to the value of the original at its peak since loss; for investing or retirement etc.)

c) provision to conclude payment of outstanding balance (and interest on it) as money becomes available from a pool established from penalties charged at a multiple of losses incurred or risked or benefit gained, from other cases which are processed – interest for the delay on these cases should be a percentage of the loss and higher than the return if it had been invested in superannuation or a savings account)

d) ensure people who have been listed by industry on the Personal Properties Securities Register (PPSR) or negatively on any credit rating list as a result of WCC are removed from it immediately

e) make provisions (for all victims of WCC over age of 45 at least) to be able to contribute more to superannuation than is currently permitted without penalization given the impact of reduced capacity, or impossibility to contribute, in the period since the WCC emerged and financial redress occurred – particularly in the case of self-employed people where tax is not withheld on their behalf

f) assistance by any other means to help the victim restore his or her life, plus that of family affected, to where it should be financially had the misconduct / WCC not occurred and given the benefits to the rest of the community in the

intervening period (e.g. very low interest rates for mortgages; increased property values etc.)

B. **Priority of cases addressed if a Cap is imposed:**

1) HNAB-AG is keen to assist in designing a screening tool to aid a scheme in assessing priority of cases. Not only have we been subjected to WCC / misconduct and in contact with a wide variety of others in this situation but two members are experienced trauma counsellors with strong relationships with colleagues at the forefront of research and clinical expertise nationally and internationally. A self-report measure could ask people to rate the degree of overall distress since being subjected to WCC/misconduct as well as select and rate specific trauma symptoms. We suspect many will understate their suffering rather than exaggerate it for various reasons (even with a list of symptoms to rate). It should include the perspective of family / loved ones and also an independent statement from a treating counsellor or psychologist or medical doctor (without duress or invading privacy or confidentially as referred to earlier; dignity must be uppermost.)

2) It is essential to prioritize victims who have suffered the greatest personal impact (not necessarily the largest financial amount involved): e.g. who are suffering severe depression, anxiety, insomnia, Post-Traumatic Stress or traumatic stress-related physical health concerns impacting family, parenting, relating, capacity to work, career etc. - or whose spouse / partner or children are significantly impacted by the victim's personal anguish and circumstances, or who in some way were forced to radically alter their life-style and where aspects may continue to have a debilitating or limiting impact beyond their control.

3) See Table 10 for an outline of the spectrum of financial and personal impacts across the range of categories of victims of misconduct / WCC. This would help in prioritizing how to assess which cases should be addressed first. Regardless of a cap being imposed or not, priority to provide financial redress should be approached regardless of category or type of white-collar crime i.e. single versus multi-lenders/products, using a focus on the consequences in terms of impacts.

4) In other words, people should be prioritized according to the *personal suffering and/or adverse alteration due to financial impacts on the person or family*. The amount of financial loss on its own should not give a victim priority (as he or she may not have been significantly impacted in terms of life-style, options or aspects of life beyond a person's control etc.). People with the good fortune via assistance in some form (luck or ability) to have since forged a new life that provides dignity, security, a home, similar or

better income etc. without undue financial impacts – should not be prioritized before those not so fortunate once the scheme reaches the point of assessing people according to amount of loss.

5) However, anyone in either of these categories who is experiencing marked or significant health impacts (physically or mentally/psychologically) or whose family is – either as a consequence of the WCC or other trauma – should be given priority.

6) After those in significant suffering or adverse circumstances, the next level of priority should be given to those not suffering personally so markedly but who are in serious financial hardship (e.g. being forced into bankruptcy or who have lost their home, life-savings, retirement (unless young enough to rebuild this) or who had to refinance their home, borrow money from friends or family or lenders or use inheritance to reduce misconduct-related debt.

7) Moderate financial hardship cases where less serious personal impacts are experienced or where good fortune or ability has significantly reduced or reversed or exceeded the losses incurred should then be processed. Again this should not mean these people receive less than they are due related to their losses.

8) Those experiencing minor impacts personally or financially should then be assisted.

9) Finally the last to be addressed should be those people who have been taken advantage of but experienced imperceptible impacts (i.e. too little to be noticed or proportionally minuscule losses).

49. Should consumers and small businesses whose dispute falls within the new (higher) monetary limits of the proposed Australian Financial Complaints Authority but was outside the previous limits be able to apply to have their dispute considered? Should access to redress for past disputes be provided through a transition period whereby the higher monetary limits are applied for a defined period retrospectively? If so, what would be an appropriate transition period?

372. The notion that a monetary limit is inevitable must not be accepted without sincere questioning and genuine debate. Nor should people who have been subjected to WCC / misconduct be excluded on any parameter, particularly related to arbitrary limitations. We vehemently oppose the assumption or imposition of a cap for reasons outlined. However, assuming power structures and industry are – yet again - able to minimize responsibility and further betray and impact its victims, we make the following comments below.

373. Certainly people and small businesses who have been further victimized by lack of restitution and appropriate compensation due to inadequate monetary limits after being subjected to white-collar crime should be able to apply to have their dispute considered if a new higher limit is imposed (or proper redress accepted) by the Australian Financial Complaints Authority. If a limit is imposed, the off-set compensatory measures outlined earlier in this submission should also be available to these victims until full restitution and compensation is concluded. The principles of dignity, democracy, justice and integrity should apply.

374. Victims should be able to put their case forward for consideration regardless of a cap. It would be deeply disturbing should industry or government exclude those cases whose loss was outside previous cap limits but falls within any new monetary limit imposed. This highlights the significant problem of caps or monetary limits. It would mean that yet again, those most severely affected financially - and also likely suffering personally – would continue to have no avenue of redress. All cases should be heard including where losses exceed the cap of redress that is awarded. As noted, compensatory measures could be applied until the balance of restitution and / or compensation is concluded.

375. We are at a loss to ascertain a reasonable rationale for a defined period of access to redress retrospectively i.e. for past disputes through a transition period whereby the higher monetary limits are applied for a defined period. In our view, there is no rationale that would reflect the principles of this review for retrospective cases to be further disadvantaged or receive anything less than proper restitution and compensation.

376. Should there be lack of willingness of government or authorities to proceed from an ethical and just standpoint regarding retrospective cases, we underscore that the discrepancy between financial redress provided, and calculation of loss and compensation for pain and suffering, and what cannot be calculated financially, should be offset with measures mentioned until fairly concluded.

50. If it is not possible to fully compensate all claimants, should a 'rationing' mechanism be used to determine the amounts of compensation which are awarded? Should such mechanism be based on hardship or on some other measure?

377. It must be held in mind that whether or not industry has the financial means, along with regulators and successive governments, it is responsible for the type of WCC to which members of HNAB-AG were subjected. The view of many within industry is that banks and major organizations have the capacity to pay redress. There are other means of funding redress as outlined earlier.

378. It is imperative offenders and those who have enabled it are held accountable for full financial redress. Victims of white-collar crime should not be required or expected to effectively subsidize the industry, or government, for unwillingness or lack of motivation to provide ethical and proper restitution and compensation. This would be yet a further victimization and compound trauma and adverse financial impacts.

379. A 'rationing' mechanism to determine amounts of compensation (as defined above) is not just or responsible. However, we recognize it may be imposed.

380. If a cap is imposed, a **'rationing' or sliding cap**, is warranted on the basis of life-limiting or adverse impact: The issue of a cap must consider the two aspects of financial redress:
    a) restitution and
    b) compensation.

381. Our view is that fair and equitable restitution should be 100% (i.e. no cap). If a cap is imposed on the compensation component (separate to restitution) it should be a percentage of the direct, indirect and compounding financial loss as well as proportional to the incalculable loss, damages, pain and suffering.

382. A one-size fits-all cap is patently unjust from any rational or ethical perspective. It would mean those least affected would recoup all losses, which while completely fair to them, means those most affected financially, remain the most disadvantaged. This would obviously be unfair. It may be easier to administer and require less careful attention or effort but this would be at the expense of those already most impacted. Lack of care and attention to detail from power structures has created the problem. There is a responsibility not to repeat this approach.

383. Further, proportioning a certain percentage of redress across the board is also a failure to comprehend the impacts or apply a civilized, humane and appropriate response.

384. Nor would a cap of a set amount or percentage of loss hold those responsible or send a message to victims, the community, industry (domestically and internationally) that authorities can be trusted or that the industry will not be permitted to get away with gross white-collar crime and the impacts on innocent people.

385. Cataclysmic impacts should be restored, urgently, in full. The impact of losing one's home and not being able to buy another resulting in relying on the kindness of family and friends or having to rent or relocate away from supports and community, or couch-surf or live in a caravan, car, tent or garage, is profound. (Rent is also exorbitant - often substantially more than the original mortgage, thus compounding

losses and hardship.) It is exacerbated when it necessitates relocation and dislocation (for which no funding was available despite it being a forced, not a voluntarily chosen, life-style change).

386. From the perspective of dignity, ethics and assisting a victim to recover, it is reasonable he or she receive redress to be able to buy a home of the same standard in the same suburb / town / region as forced out of (minus the mortgage amount owed on their former property which was not a result of the misconduct). This is likely to mean redress would need to allow for substantially increased property values where years of protracted delay in receiving redress have occurred. It is difficult to justify placing a cap on redress that would render people still unable to purchase a home again, of the quality and in the location they previously resided, or even at all.

387. A public, official, apology is warranted. People who have been forced into bankruptcy (declared voluntarily or foreclosed upon) must have these annulled immediately. Their credit rating must also be restored with official documentation provided that the circumstances were due to WCC and not their responsibility. It must not destroy their financial futures or future generations trust in authorities and democracy.

388. While possibly, but by no means inevitably or necessarily, less traumatic are situations where people were able to retain their home but incurred significant debt through having to refinance to pay misconduct-related debt. These people also should not be subjected to a cap. If this is imposed, they must at least be considered under a sliding scale cap. The related indirect and compounding financial losses (having to pay more interest and not being able to take advantage of lower interest rates on any mortgage owed before the misconduct) could be assisted through delayed compensatory measures (outlined elsewhere).

389. Any cap imposed on those who were paying a mortgage, or not, at the time of the misconduct and who incurred a significant impact (due to loss of life-savings, or SMSF for retirement, or money paid for deceptive investments with related costs, or borrowed to reduce or pay out misconduct-related debt, or lost through withholding or inadequate payment of entitlements etc.) would be more fairly treated by a percentage, rather than a set blanket cap amount. Redress requires a meaningful level of assistance not a token. Hence we suggest at least 80% for *significant impacts*. It also must allow for redress for the remainder of the losses and impacts through delayed compensatory measures.

390. Any cap imposed on financial impacts that are *moderate* in personal repercussions may be considered at 65% and needs to allow for redress for the remainder through delayed compensatory measures. The much lower amount reflects that the victim is not severely disadvantaged but also has a right ethically and morally to full redress.

391. Any cap imposed on financial impacts which are *mild* could be considered at 40%. *Negligible* impacts without personal repercussions may be acceptable at 25%. Again it needs to allow for redress for the remainder through delayed compensatory measures. The amount reflects that the victim is not overtly disadvantaged but also has a right ethically and morally to full redress.

392. Insurance cases could be dealt with the same way: with priority given to the personal and financial impacts in determining the initial phase of restitution and compensation with the remainder assisted through delayed measures. (Nor should redress be considered as income this affecting an income protection claim as can occur.)

393. Inheritances that have been lost or diminished due to financial misconduct taking advantage of an elderly, ill or incapacitated person – including performing the role of Enduring POA or Guardian etc. - and where there is limited evidence remaining or emotional resources to take to court, could also be dealt with as above if the industry member cannot be held accountable to provide redress.

51. Are there any other issues that would need to be considered in providing access to redress for past disputes?

394. Significant banking and financial sector misconduct / WCC has irrevocably changed the course, and quality, of lives of people subjected to it such as members of HNAB-AG.

395. Chief Justice Allsop AO at a Forbes Society Lecture on 4 November 2015 cited the following in regard to Roman Law, "*For this by nature is equitable that no one be made richer through another's loss.*"

396. Countless parties in the industry, both individuals and organizations, have been made richer without doubt. The corruption that enabled and protected it must be addressed for the sake of the nation not just the victims. These people who have long been ignored, pushed aside, blamed, abandoned and forgotten. More disturbingly, they have been further victimized by inadequate consumer protections that favour industry and successive governments. Victims of financial corruption or negligence need a "*fair go*" and swiftly: i.e. acknowledgment, apology and financial redress: i.e. restitution and compensation.

397. **Severity of physical, emotional and mental health impacts**: It is close to a decade for victims of the collaboration of lenders and product issuers with [redacted] firm.

398. Beyond Blue has identified that financial stress affects health in the following ways and can affect health if it continues for *more than a few weeks* resulting in anxiety, depression, self-harm or suicide:

- relationships: arguing with those closest
- difficulty sleeping
- feeling angry or fearful
- mood swings
- tiredness
- loss of appetite
- lower sex drive
- withdrawing from others
- feeling apprehensive
- feeling powerless
- insomnia
- anger
- sadness
- guilt.

399. This refers to "*financial stress"* which by itself can be deeply debilitating and profoundly distressing. An added overlay of trauma results where traumatic stress occurs due to *financial abuse, misconduct, corruption or white-collar crime*. This involves betrayal by trusted professionals and the wider sphere of authorities and power structures. The impacts become typical of any type of major betrayal trauma (see Appendix B).

400. While severe long-term trauma impacts can be remedied with competent and effective (often long-term) therapy, they cannot be properly addressed while the threat persists – hence the need to end ongoing loss and/or the threat of further consequences. Financial redress must be as swift as possible. Traumatic stress has marked, debilitating impacts but it can be addressed: as Dr Bessel van der Kolk notes, "*But what can be dealt with are the imprints of the trauma on body, mind, and soul: the crushing sensations in your chest that you may label as anxiety or depression; the fear of losing control; always being on alert for danger or rejection; the self-loathing; the nightmares and flashbacks; the fog that keeps you from staying on task and from engaging fully in what you are doing; being unable to fully open your heart to another human being."*

401. **Create mental health consultation group with trauma experts and victims of WCC**: The scheme (and the new Australian Financial Complaints Authority) must have meaningful training in trauma-informed engagement and access assistance from trauma experts familiar with victims of WCC/misconduct.

402. **The scheme and its panels must include amongst its staff trauma experts and former victims**. This is essential to advise other staff, ensure and implement processes to assist in engagement with victims seeking to have their case heard to minimize, if not avert, unnecessary exacerbation of trauma.

403. **Ethical responsibility of industry and successive governments to ensure accountability**: The link to accountability and deterrents by way of holding industry ethically and practically responsible for restitution and compensation must be considered. We underscore victims must not be further penalized or placed under exacerbating anguish or trauma in obtaining proper financial redress – or a portion.

404. **Refer industry members and firms where evidence exists at a legal standard for criminal prosecution and, at least, impose penalty fines**

that are a multiple of loss, risk or gain: This pertains directly to the value going forward of imposing penalties which are a multiple of loss incurred, risked or benefit gained and funding past disputes via avenues such as a bank levy, ex gratia or act of grace payments and other mechanisms.

405. **Annul bankruptcies victims have been forced to enter**: In addition, redress can only be considered to have included accountability if the scheme is empowered to instruct annulment of bankruptcies victims have been forced into (along with compensation for the wide-ranging impacts of it as well as financial redress).

406. **Operate a pilot or trial-run of a variety of cases processed in the new design**: This will assist on many levels to:

    a. get a clearer idea of costs and time to prepare complex multi-lender/product cases e.g. where professional assistance or involvement is necessary to obtain documents, compile information and prepare for presentation to the scheme
    b. identify aspects which may have been presumed, minimized or fallen through the cracks etc.
    c. obtain feedback from the victims willing to participate as well as those providing professional assistance in preparing the case
    d. ascertain how to use themes and conclusions established pertaining to certain groups (e.g. victims through [redacted] firm) in application to other members thus reducing costs in determining whether a case is valid and limiting costs only to assessment of the actual restitution and compensation
    e. allow for the scheme's staff to identify concerns they may have warranting improvement or implementation in the process.

407. **Ensure accountability and transparency for consumers**: the scheme must also address the issue of industry offenders (individuals, senior executives and organizations) who have gotten away with gross WCC. Unless there is a Commission of Inquiry or a Royal Commission people who have committed, enabled or protected misconduct are not held accountable and profit from their activities. Consequently, there must be an easy to access, clear website listing the names of these people and their firms. Their denial of responsibility or, alternatively, willingness to co-operate with the scheme or voluntary declaration of responsibility and apology, with provision of redress, could be noted for consumers to consider before risking their hard-earned money.

408. **Safeguards for consumers designed around products which come before the scheme**: as outlined in detail elsewhere and in our submission to the review of EDR schemes it is imperative that product issuers for each product which comes before the scheme and is found to have been wanting in protection for consumers, is required to engage with the victim and / or representative to design a 1-2 page meaningful informed consent. This can be tested with consumer

groups to ensure the pertinent information is conveyed enabling genuinely informed participation and one, which is properly authorized and witnessed.

409. **Victims must not be expected to subsidize failures in protection by industry and successive governments**: We underscore that simple, cheap, measures would have protected victims of [redacted] firm's collaboration with lenders and products. Successive governments, gross regulatory and legal system inadequacies and failures in designing or enforcing ethical codes of conduct or meaningful deterrents and penalties by industry itself have resulted in the types of white-collar crime to which these and other victims have been subjected.

410. **Ensure a *Financial Redress Scheme of Last Resort* and a *Retrospective Financial Redress Scheme of Last Resort* does not require victims to subsidize industry profits acquired via misconduct by providing only 'compensation'**: As noted elsewhere in this and our first submission to the Panel, unlike victims of other horrendous and devastating trauma, the source or medium of the loss as well as pain and suffering for people subjected to WCC is their money being misused negligently or acquired deceptively. Industry has profited from the proceeds of its crimes on the backs of their victims. Consequently, it has not merely a responsibility to provide *'compensation'* i.e. incalculable loss, damages and pain and suffering but also, morally and ethically, to include restitution for direct and indirect or compounding losses.

411. **Need to address bogus arguments based in victim-blaming** including that people are disgruntled investors or entered schemes merely for tax credits etc. [redacted] claimed agribusiness MIS was *'endorsed'* (defined as 'backed' – rather than simply a product ruling issued for tax credits without legitimacy being determined) by government because it wanted to attract people as superannuation would be insufficient for their generation. He said these were sustainable, environmentally friendly and that investment supported Australian farmers and the economy. People felt proud to be a part of this type of investing. Further, he said the ATO had an expectation tax credits for MIS would be either used for investment, or in the case of self-employed people, put back into the business. He advised people to place tax credits in Macquarie Cash Management accounts which he managed on their behalf. This allowed him to pay loan repayments or margin calls about which people were not aware. This money was also lost to victims due to Mr [redacted] conduct and not available to the tax department when it may have been.

412. **Recognition that victims fear being blamed or seen as foolish** – even people who are industry members, lawyers and law enforcement have been subjected to WCC such as that perpetrated by [redacted] and his collaboration with lenders and products. A couple of years ago,

HNAB-AG were invited to have 2 members speak about the impacts of WCC at a professional development forum with senior leaders at NAB. One of the authors was one of the speakers. Afterwards, she was approached by one of the participants in the toilet rooms. The woman confided that she had been a client of [redacted] for accountancy services. He had encouraged her to meet to discuss investing but she had been too busy to make the time. Tearfully, she offered her deepest sympathy: she said she was all too aware that *"There by the grace of god go I."* Had she not felt ashamed or fearful of her NAB colleagues' reaction, her story may have helped them to realize how anyone, even in their industry, could potentially end up homeless and penniless due to misconduct.

413. **Dialogue between parliamentarians, other power structures and victims**: Since 2014 representatives and individual members of HNAB-AG have been fortunate to meet with and receive compassionate and practical support from local Federal Members of Parliament and senators across various parties. Stand out, but by no means exclusive, have been representations made on behalf of constituents by Sarah Henderson MP and Jenny Macklin MP in marked contrast to some of their colleagues who were approached for help.

414. Senator Deborah O'Neill's grasp of the emotional devastation and financial repercussions was reflected in her follow-up, and that of her Chief of Staff, Anne Charlton with one of our representatives, and also acting on behalf of HNAB-AG in respect of the saga over payment of ASIC's Security Bond.

415. Leader of the Opposition, Bill Shorten and senior advisors also sought detailed input and met in person without undue time constraints. Senator Katy Gallagher and Senator Peter Whish-Wilson have also continued engagement with HNAB-AG and demonstrated genuine concern and commitment that is much needed and appreciated.

416. Senator Nick Xenophon has provided assurance of his commitment to assist in matters with KordaMentha. His help would not be necessary if the liquidator had been willing to genuinely engage in what has been an inordinately protracted and horrific ordeal, despite ANZ's guidance related to the treatment of victims of Timbercorp's collaboration with [redacted] both in regard to KordaMentha's hardship program and in general. HNAB-AG believes an inquiry is necessary. Without it the truth remains hidden behind corporate spin and protection of each other by those involved. KordaMentha, Timbercorp and ANZ are prime examples of why a commission of inquiry or royal commission is necessary.

417. Prior to the assistance of former parliamentarian, Greg Combet and independent industry members who generously assisted us around the time media interest also began, HNAB-AG had not been able to

meet with, or even obtain a timely, or relevant, response from senior parliamentarians.

418. We assisted the "*coalition of common-sense*" which was able to prevent FOFA reforms being diluted in 2014. However, without proper communication channels being open for genuine dialogue with people most affected, power structures are profoundly limited in appreciation of the issues, impacts and meaningful ways forward.

419. Minister for Finance, Mathias Cormann and his former Parliamentary Secretary, Michael McCormack MP, were exceptionally helpful (without any public accolade) in one case due to kind representations made by a parliamentarian.

420. HNAB-AG hopes our role in assisting parliamentarians in terms of the outcomes related to this submission will be extended to meeting in person with those on the front bench should there be any queries about our proposal or view in considering or adopting the fundamental rationale and recommendations.

421. Finally, we thank the Panel for inviting this submission, and in person dialogue with HNAB-AG. We appreciate the Panel's careful consideration of what we recognize is a lengthy submission. However, given time constraints for HNAB-AG, and also the Panel to report to the Government, it is the best we can do to ensure the rationale behind our suggestions, and illustration of these, is adequate. It is critically important to consider a financial redress scheme of last resort, and a retrospective one for thousands of people who have been failed by the system and abandoned for years. We will provide detail or material that has been cited at the Panel's request. We look forward to the opportunity to speak to any comment or suggestion that would be helpful to the Panel in performing its crucial role.

Appendix A – HNAB-AG's Experience of ASIC

At 16 May 2016

SUMMARY: HNAB-AG's EXPERIENCE OF ASIC

Reinstating funding and beefing up ASIC powers **fails beyond measure to address white collar crime or help victims**.

[redacted]

[redacted]

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

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

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

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

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

2) [redacted]

safeguarding the community. Was it too much effort, incompetence…? Or what…?

3) In January 2011, a few victims met after an invitation to a creditors meeting with [redacted], the liquidator for [redacted] business. HNAB-AG was formed. We immediately set about collating data to take to ASIC from the initial 40 people who could be located. In July 2011 after persisting to meet with ASIC, **data and concerns were summarized** over 3 hours with a PPT presentation. We were accompanied by an elderly couple, from a previous batch of victims, who lost everything and now live in a caravan. Interest in their meticulous documents also was not apparent. No alarm was sounded despite ASIC's claim it took our reports very seriously.

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

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

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

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

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

   KordaMentha finally launched a **Federal Court case** examining [redacted] **personal bankruptcy as a fake-debt scenario** to secure his assets beyond creditors reach. This included $2.46million he

owed to Timbercorp. This was a full 2.5 years *after* HNAB-AG wrote to alert the liquidator, **KordaMentha**, about [redacted] [redacted] no response or action occurred prior.

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

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

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

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

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

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

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

9) It is unknown if the **decision around criminal proceedings blew out from 2 weeks to a year** due to extensive investigation (despite not involving victims with documents offering help) or even if anything serious occurred. [redacted]

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

Regardless of admissible evidence issues, [redacted] nd associated lenders and products. Predatory financial crooks must laugh at inordinately pathetic *'penalties.'* ASIC knows it and enables them.

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

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

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

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

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

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

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

[redacted] loan documents which did not fulfil their own criteria and/or having not done due diligence. The ***"authorised representative"*** title [redacted] advertised, and their close collaboration with him (typically not ever speaking with the 'client'), meant **protection** for them when the crimes emerged. Lenders and products **hide behind legislation designed to protect them and the very rich**, not the public. **Government is responsible** for the legislation.

12) [redacted] he **ATO** has responsibility in this too. Clients were shown articles where government ***'endorsed'*** products. It was never explained as simply meaning product rulings for tax had been issued.

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

[redacted]

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

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

Whistleblowers such as **Jeff Morris** and journalists like **Adele Ferguson** have done more (and without millions of dollars of funding) to expose white

collar crime and demand changes than ASIC. **James Wheeldon**'s exposé in April 2016 of the activities of **Chairman, Greg Medcraft** is nothing short of alarming. In plain sight, **ASIC is as far from the solution as it could be**. The regulator is a sick joke. Denial of the reality insults victims, grinding salt into gaping wounds.

Leadership is needed NOW: it requires genuine consultation with victims

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

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

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

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

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

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

Continued / -

Continued / -

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

Appendix C (i) Informed Consent: [redacted] Margin Lending

SUGGESTED DRAFT - Informed Consent Checklist for Prospective Clients re [redacted]

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

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

1. Have you ascertained - in writing - from your accountant / adviser/ planner that he or she has relevant qualifications, has never been banned by ASIC or disciplined by any industry body (e.g. CPA Australia etc.), found guilty of providing inappropriate or misleading or deceptive advice, negligence or fraud or had allegations of any unconscionable conduct reported (e.g. FOS, ASIC) - and has at least $2 million professional indemnity insurance *per client* (not in total) should you and others need to pursue action? - **Yes / No / Unsure**

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

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

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

   (ii) It is a high risk investment (not low) and is not suitable for cautious, unsophisticated investors even if managed by an expert? - **Yes / No / Unsure**

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

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

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

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

Prospective [redacted] client 1: Prospective [redacted] client 2:

Signed: _____ _____

Continued overleaf/-

Continued

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

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

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

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

Prospective [redacted] client 1: Prospective [redacted] client 2:

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

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

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

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

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

Appendix C (ii)– Informed Consent: Agribusiness

SUGGESTED DRAFT - Informed Consent Checklist for MIS / Agribusinesses

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

I understand that related to agribusiness (specify……):

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

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

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

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

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

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

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

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

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

Continued overleaf/-

Continued/-

Informed Consent Checklist for MIS / Agribusinesses

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

Prospective agribusiness client 1: Prospective agribusiness client 2:

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

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

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

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

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

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

Appendix D – KordaMentha and Timbercorp (In Liq.)

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

March 2015 - Timbercorp and KordaMentha / Liquidator [redacted]

DENIAL OF FACTS & DISREGARD OF MISCONDUCT

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

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

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

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

DURESS TO SETTLE & ACCEPT DEED OF SETTLEMENT WORDING

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

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

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

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

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

DISINGENUOUS ENGAGEMENT – DECEPTION AND LACK OF TRANSPARENCY

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

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

3. [redacted] much is made by KordaMentha that it removed [redacted]. Yet HNAB-AG wrote to KordaMentha on 21 March 2012 requesting it not allow [redacted] to enter a Section 73 Composition to annul his bankruptcy petition given his alleged fake-debt sham bankruptcy involving [redacted] We also alerted the liquidator to [redacted] misconduct. We received no response. The action to raid [redacted] office was not taken until 2.5 years later – after the *Senate Inquiry into Forestry MIS* was called and media attention into Timbercorp and [redacted]

CONFLICT OF INTERESTS: [redacted]

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

CONCERNS RE CREDITORS RESPONSE TO TIMBERCORP MISCONDUCT

- **Note: THE REPLY WAS WRITTEN BY LIQUIDATOR NOT COMMITTEE OF INSPECTION**

Background: After meeting with [redacted] on 8/1/15 they arranged a meeting with 3 victims of Timbercorp's collaboration with [redacted] and the liquidator [redacted] and [redacted] Ryan at [redacted] (held on 13/1/15). On behalf of the HNAB-AG the victims requested, and [redacted] agreed, to forward a submission to the creditors of Timbercorp. [redacted] identified these as ANZ, Perpetual, Trust Company and an 'unencumbered bucket" of creditors.

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

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

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

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

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

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

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

25-3-15

Appendix E – Misleading and Inappropriate Responses

[redacted]

(Updated 27.6.2017) Evidence is available for the following brief examples:

[redacted]

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

Gerard Brown, Group General Manager of Corporate Affairs

- Date: 18/12/14 An impromptu meeting after the 2014 AGM was held in response to a protest prior, and comments made at the AGM. [redacted] coaxed HNAB-AG to agree to a meeting [redacted] so-called *Independent Hardship Advocate* after we had refused (as our concerns are not hardship related per se) by saying that [redacted] would also report fraud and misconduct to ASIC. [redacted] Email confirmed the meeting later that day from ANZ and Susan Henry emailed acceptance and detailed the purpose.

- Naomi Halpern and Kathleen Marsh noted the purpose in written notes at the meeting. Present were ANZ and representatives of 3 other groups (TGG, AGAG and a group from WA). They groups reported the same recollection as the 9 victims present who are members of HNAB-AG.
- began electronically recording the meeting. decided against it when we accepted recording it on the proviso that we could all have a copy.
- Date: 19/12/14 made a surprise appearance at the meeting arranged (for victims of Timbercorp's collaboration with with KordaMentha's *'Independent Hardship Advocate.'* presence became clear when he introduced the meeting. On being challenged, he outright denied the purpose agreed the day prior (and recorded). He claimed the purpose of the meeting was to discuss hardship. (2 victims left the room in disgust; 1 became suicidal again; all were distressed.) People in dire financial straits and suffering significant anguish had taken (another) day off work for the meeting.
- Date: 8/1/15 In a meeting at with HNAB-AG representatives, confirmed he had said what we understood was the purpose of meeting i.e. reporting to (which, to his and our surprise, he later discovered was not part of her role).
- Date: 31/1/15: On contacting in response to escalating suicidality concerns amongst victims, he emailed, phoned, Susan Henry with the inappropriate advice to get HNAB-AG representatives to encourage people into the hardship program and to contact the 'advocate' at the time. She is not a trauma counsellor. (The highest risk for suicide is actually after a trauma threat has ended. The lack of adequate response is deeply disturbing.)
- Date: 16/12/16: This example is minor in terms of Timbercorp but it reflects the attitude to victims. Recognizing only Mr Brown at the back of the AGM, and as police appeared to have left, and no security for the venue were apparent, Susan Henry asked him to inquire about, and provide, the name of the shareholder who was rude and physically abusive. Her own name had been made public on endeavouring to speak. . However, given previous experience of him she was not confident his agreement could be trusted, and as MCEC's security response was delayed and reluctant, she endeavoured to capture the shareholder's identity by photographing her and then the surrounding witnesses.
- Date: 6 and 14/2/17: responded, despite letter of 31/1/17 being sent to , and noted in Fairfax as related to our concerns. Its purpose was ignored. He cited the senate inquiry recommendation persisting in a further reply to our response to him of 9/2/17 and despite liquidator, letter to victims on 7/2/17.

- receptive response at the initial meeting on 8 January 2015 although certain comments revealed a lack of appreciation of the trauma or for the dignity of victims. However, there was no action we are aware of (4 weeks later) on learning HNAB-AG members were still not being processed individually as a *"specific and special group"* with *"compassion"* (i.e. waiver or a nominal fee), or *"swiftly as possible"* as he had said ANZ had *"strongly encouraged"* the liquidator.
- Date 31/1/15: see information re re response to escalating suicidality.
- March – April 2015: The Independent Hardship Advocate, was first asked to pursue this on 1/3/15 with Weeks later HNAB-AG had to persist with the request. She eventually responded that her understanding was not ours after speaking with Further, she stated she would not treat Holt-victims any differently. Indeed a survey in May 2015 indicated the overwhelming majority did not feel the description of ANZ's encouragement was their experience.

- On 24 August 2015 [redacted] refused to read, hear or discuss the survey data in respect of KordaMentha or concerns about [redacted] (e.g. delays of many months; prioritizing getting people to agree to writs served by email – cheaper and easier for the liquidator - over severe emotional distress including suicidality; pressure to provide personal information beyond financial e.g. psychologist and medical reports; and despite the lack of transparency of the process, at least 2 major errors had been discovered by victims etc.). [redacted] dismissed concerns on the basis of his view that she was *"the best in the business"* which by logical extension insinuated our data was not accurate or worthy of consideration. His bias did not demonstrate respect, fairness or willingness to consider, or act on, the plain truth and facts.
  Note: The 2 cases he looked at that day (as those victims attended the meeting requested with Susan Henry) remain unresolved at *June 2017*.

[redacted] Banks 5 October 2016 and 7 March 2017:

- On 7 March 2017: At the second bank review, Matt Thistlethwaite MP attempted (twice) to raise ANZ's response, to our letter of 31 January 2017 to Mr Neave, in ANZ's new role of *Fairness Officer* (commenced 17 January 2017). As KordaMentha has persisted in refusing to take the bank's guidance, we requested ANZ refund settlements demanded of [redacted] victims, given the bank's position these people should not be pursued as was stated by [redacted] on 5 October 2016 at the first Review of the 4 Major Banks. [redacted], deflecting the issue they knew he attempted to address as if it was about merely receiving correspondence. Not only did [redacted] would be given it and reply (note - no reply to date) but A[redacted] had previously assured HNAB-AG through [redacted]

ANZ's establishment of a Fairness Officer

15 December 2016: **Fairfax journalists, Adele Ferguson and Sarah Danckert** wrote about ANZ's establishment of a *Fairness Officer* and Colin Neave's appointment (to commence 17 January 2017). Given comments made by both Mr Neave and also Shayne Elliott about the role including reviewing older products the journalists noted that victims will hope it includes Timbercorp's hardship program and their plan to attend the upcoming ANZ AGM for the third time over the issue.

> Among other relevant comments, Mr Neave said, *"In many ways looking at the older products would be more important because some have been in place for many years and it could well be timely to look at them, there might have been issues 'put into the too hard basket' and that might be something that would be of very real interest."*

ANZ's response to the resignation of [redacted] advocate for KordaMentha's Timbercorp Hardship Program:

[redacted] Deputy CEO (along with Senator Dastyari agreeing with [redacted] lauded Ms [redacted] as the *"best in the business"* on her appointment to run KordaMentha's hardship program. Yet, ANZ remained silent on her resignation some 18 months later citing

unwillingness to be seen to endorse the program due to concerns regarding a *"significant minority"* of cases. **No eyebrow was raised. No inquiry was launched**.

Appendix F – ANZ and KordaMentha Settlements

SUMMARY OF ARGUMENTS FOR ANZ TO REIMBURSE SETTLEMENTS DEMANDED OF HOLT-TIMBERCORP VICTIMS BY [redacted]

1) **Reason [redacted] resignation as KM's hardship program advocate:** [redacted] resignation in June 2016 supports reports by HNAB-AG that KM's hardship program is not fair and robust as claimed by the bank and liquidator – at least, in her view, in a *"significant minority"* of cases. (We believe cases including errors she made, discovered in rare opportunities given the lack of transparency, and regarding concerns about her handling of some cases also warrant an inquiry.)

2) **Creditor ANZ's position**: [redacted] ANZ (the creditor whose vote would carry for debts over $100,000 had [redacted] not been given unlimited discretion in the parameters of the hardship program) has stated Holt-Timbercorp victims should not be pursued at the 1st Bank Review. (He took a contradictory stand at the 2nd Bank Review *after* HNAB-AG wrote to ANZ asking it reimburse settlements of [redacted] victims given it was profiting from KM's refusal to accept its guidance.)

3) **Creditor ANZ benefits from KM's refusal of guidance**: ANZ's position, stated clearly in October 2016 is relevant as the liquidator collects money for creditors. Thus, even if Mark Korda's testimony is ignored or reframed, ANZ's stance is relevant.

4) **Discretionary powers of the liquidator under statutory obligations**: These provide [redacted] with the authority to compromise (waive or reduce) debt. He can do this, requiring no-one else's approval, for debts under $100,000. Normally, for debts over $100,000 he must seeks the creditors' approval or make the case to a court but the creditors *authorized him to decide on any amount of debt through the hardship program*. The point of discretion is not to pursue *more* debt than a creditor thinks is reasonable but *less than would be required*, in the spirit of ethics and moral conduct where people are failed by the letter of the law or loopholes.

5) [redacted] **inaccurate and misleading testimony**: As recorded in Hansard, he committed to treat [redacted] people *"with as much empathy as we can within the law"* in regard to his acknowledgement Holt-Timbercorp victims experienced fraud or deception and were a subgroup of Timbercorp. [redacted] and its advocates claim ambiguity around the word *"empathy."* Empathy speaks to sensitivity, consideration and assistance through putting yourself in someone else's shoes and understanding their perspective. There is no dispute in our view about what *"as much… as we can"* means: this refers to the maximum, the absolute possible, the greatest amount allowable. *"Within the law"* is also clear as the law allows for discretion to fully or partially compromise a debt by the liquidator under $100,000 or with creditors' approval over that amount. In the case of [redacted] hardship program [redacted] has been given the authority to exercise discretion over any amount whatsoever. People having the means to pay or not has nothing to do with being subjected to fraud and deception. Hence, given [redacted] statement, compromising or waiving the misconduct related debt in full is the maximum possible legal option under discretionary powers. Settlements have been procured under duress with no real option.

ANZ could reimburse people. KM should also be held accountable for not honouring commitments and putting victims through inordinate and unconscionable distress and anguish for months or years in its hardship program to extract a settlement *despite* agreeing they are victims of fraud *and* having the power to end it ethically with humanity, dignity and respect.

Continued/-

RELATED CONCERNS INCLUDING OTHER MISLEADING AND INACCURATE TESTIMONY

6) The numbers or percentage of Holt-Timbercorp victims (or others) accepting settlements must not be construed with success of the program or satisfactory or consistent or reasonable treatment as ANZ and KM and its advocate would like people to believe. It merely reflects lack of appropriate or fair avenues and years of severe stress, duress and anguish. People are captive to settling given inadequate consumer protections laws and no alternative but court (with little or no emotional or financial resources and the knowledge that the law is often not justice) or further victimization in bankruptcy. *Stockholm Syndrome* is a trauma response where people align with their captor or the person wielding power of them in order to survive. This is seen in people being grateful on conclusion of having to pay for misconduct-related debt: they may focus on the fact the threat of court or uncertainty is over, or having to pay less than they might have been forced to pay.

7) [redacted] testified that interest was not an issue in the hardship program. This is also incorrect. People have been demanded to pay doubled and trebled amounts of the original misconduct related debt. Demands extend to 84% which is 1% less than the *"discounted"* amount (85% accepted of people *not deemed in hardship*). Demands are not consistent with people in comparable, or worse, situations.

8) [redacted] did not reply to our letter of 27/8/15 (almost 2 years ago) despite testimony that the liquidator was open to improving the hardship process and to ensure it takes the significant trauma and distress into consideration.

9) [redacted] testimony also claimed there was no limit to the amount of people to be employed to finalize cases yet cases continue to take many months even extending to 2 to 3 years to date. People are not concluded within 2 weeks on obtaining documents far less a couple of days in cases of serious concern / suicidality as he testified. Their often deeply debilitated state is used against people.

10) [redacted] testified that homes will not be sold and people will not be bankrupted and claimed that such *"myths abound"* yet he did not clarify that while the liquidator cannot foreclose on a home, they can, do and have threatened people to sell their home or else they will be bankrupted or taken to court.

11) KM and its new advocate, [redacted] continue to pressure people into settlements with threat of court or bankruptcy. Their claim the number of people entering settlements suggests satisfaction and success of the hardship program is deceptive corporate spin. It is patently lacking in empathy regarding victims of fraud.

12) Mr Korda also testified that people do not have to accept a confidentiality or gag clause if it *"causes grief"* – we are aware of only one case where this occurred (the details had been published in Fairfax beforehand). Cases have been refused where this was requested.

13) [redacted] has stated there are no circumstances in which he can see he would resign. How this impacts handling of cases should be apparent.

IMPORTANT: When [redacted] was appointed to head KordaMentha's Hardship Program, [redacted] (ANZ) and Senator Dastyari lauded her as the ***best in the business***. Yet when she eventually resigned, citing concerns about being seen to endorse the program regarding a *"significant minority"* of cases, no-one amongst power structures raised an eye-brow. **No inquiry was launched**. WHY NOT?
Ms [redacted] and [redacted] were at pains to support each other. A thorough examination would reveal concerns about the liquidator and its so-called 'independent advocate' and team.

Appendix G – Summary of KordaMentha at Dec. 2016

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

6 December 2016

In summary, key points are:

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

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

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

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

8 December 2016

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

Demands for [redacted] victims of anything other than waiver or a nominal amount are unreasonable in light of commitments made to the senate inquiry by [redacted]

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

Key points which might help to progress matters:

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

commitments [redacted] made are not being honoured at all.

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

Establishing the hardship program means creditors have agreed already to [redacted] discretion.

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

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

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

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

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

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

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

A responsible "advocate" would pursue the facts and consult with an independent liquidator if given conflicting info from victims and the

liquidator in question and act in that. Confidence in [redacted] appeared to lead to the senate inquiry last year not taking up critically important info and minimising or dismissing victims' complaints. She may be generally excellent but she let down [redacted] victims severely and [redacted] has followed suit. (We can provide more detail.)

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

[redacted]

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

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

9) **SUMMARY** - this demonstrates that [redacted]

People had lodged information about [redacted] conduct long before then. KM did not act on it when they could have in view of the ethics involved.

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

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

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

Appendix H – [redacted] margin lending: misrepresentation, deflection, spin and separation of responsibility

[redacted]

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

SURVEY RESULTS

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

The limitations of the survey are:

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

(ii) It is apparent that at times questions have been misread in people's distress and anxiety. Other occasions demonstrate the lack of understanding of margin lending. The design of the survey took 4 people several months to develop yet many questions still missed including adequate responses to choose from - particularly for people who did not know that they had been placed in a margin loan. This had not been anticipated. A

question had been included as to whether unknown loans had emerged but related response options were not always included. (As noted earlier, we did not think to ask about FSGs.)

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

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

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

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

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

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

Key Survey Data

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

Whether someone's level of expertise ranges from none to reasonably sophisticated, in seeking the services of an accountant or adviser, much like a car mechanic or builder or neurosurgeon, there is a point at which trust in advice, which appears reasonable, is necessary where the 'professional' has relevant qualifications, is well-connected in the industry to seemingly

reputable institutions, is supported by many staff and no information to question or avenue to check it is provided or readily available.

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

Impact on margin loan portfolios

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

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

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

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

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

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

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

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

9) **Only 20% are sure they are not in debt today due to their margin loan / share portfolio.** 41% are still in debt and another

4% are bankrupt and another 35% only not in debt because they sold their home and / or used savings. [BTQ68]

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

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

12) **During the GFC, 55% of people had dependent children or family members – 57% now have dependents**. Some of these are / were seriously ill children, some are / were disabled and death has occurred since. People or spouses and other family members also had serious diseases, or became terminally ill. [redacted] was aware of those circumstances prior to the GFC and of others about to embark on creating a family or winding down work toward retirement. These added concern to invest safely. [BTQ79-80]

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

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

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

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

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

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

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

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

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

   It is unknown how many believe it was entirely [redacted] responsibility or successive governments' failure to provide adequate regulatory requirement or their own.

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

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

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

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

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

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

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

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

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

9) **Only 31% have asked [redacted] for a full and complete copy of their file (including statements, correspondence and all related documentation) with most reporting what was sent was not complete**. This reflects how people feel about trying to obtain it, it making any difference and / or being up to engaging with or understanding the material. No-one reports confidence in having received a full and complete copy with the vast majority sure it is not. 9 cases received documents from [redacted] within 6 weeks with 4 cases still waiting after 8 weeks (this includes still waiting many months later and radically inaccurate information provided). [BTQ87-88-90]

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

[redacted] and his firm's responsibility

1) **71% of advice about [redacted] margin loans was primarily provided by [redacted]** was involved in 16% and [redacted] 13%. [BTQ3]

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

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

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

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

5) **No-one both filled in the application form and signed it - and 11% did not know about the application or sign it**. 70%

did not complete the [redacted] application themselves but signed on with 19% being unsure. Typically people signed the document presented understanding [redacted] had assessed their suitability and provided information to [redacted] to confirm. People did not see the usual sort of loan form from a bank. [BTQ8]

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

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

8) **Only 1 person reports being given a PDS and SOA prior to [redacted] having them sign the application**. 6% were given either the PDS or the SOA but not both. 46% were given neither. 37% are unsure. Typically people understood that given his expertise, [redacted] role was to explain these documents which they did not understand. [BTQ11]

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

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

11) **Prior to the GFC only 20% of people knew what a margin call was**. (Note - this is separate to what people were told about [redacted] strategy of ensuring no risk could ever occur.) Neither [redacted] nor [redacted] ensured people knew what a margin call was, or ways to mitigate risk. [BTQ16]

12) **81% of people were told shares would be safe because of [redacted] low borrowing ratio against shares such that it could not get into a negative situation**. 11% (only 6 people) were not told this with 7% unsure. [BTQ17]

13) **69% of people were told [redacted] designed a buffer much higher than the banks required to protect their portfolio in all eventualities** (the buffer reported is typically 20-30%). 22% were not told this and 9% are unsure. It seems that depending on your degree of financial literacy, information was withheld or you were misinformed. This was also unrelated to what actually occurred that a client asked for or to which he or she agreed. [BTQ18]

14) **In 74% of cases, [redacted] provided graphs and spreadsheets to demonstrate his strategy was safe and sound based on history and his expertise**. 9% were unsure if he did this regarding margin loans. In 17% of cases he did not use this strategy. [BTQ19]

15) **When discussing a margin loan with [redacted] only 1 person reports being aware of the credit limit to which he/she was exposed**. 5 people thought they did but were misinformed. 80% were not aware and 9% are unsure. [BTQ20]

16) [redacted] **statements were not received by 17% of people, with another 15% unsure if they received these**. [redacted] did not explain how to read these or that people should know how to. People believed [redacted] was being paid to manage their shares having expertise that they did not. 68% did receive statements.[BTQ13-14]

17) **Only 11% (6 people) report that the advice [redacted] gave them about shares and margin lending was correct**. 74% people report it was not true and 15% are unsure. [BTQ23]

18) **83% of people were told their [redacted] margin loan portfolio would be managed by professional staff and, no matter what happened in the market, they were not at risk because of how [redacted] set up the margin loan**. 9% are unsure if told this and 7% were not told this. [redacted] told 20% of respondents the shares would be selected by external brokers, 61% were not told this and 19% do not recall. [BTQ24-25]

19) **85% were told shares would be safe and conservative blue chip and 44% report they were not**. 28% are unsure with only 28% reporting they were blue chip shares.[BTQ26-27]

20) **9% report [redacted] advised to buy 'options' i.e. the right to buy or sell a product at a stipulated price in a specific timeframe to safeguard their portfolio**. 63% were not told this and 28% do not recall. [BTQ28]

21) **93% did not know they could be at risk of a margin call – [redacted] explicitly told 24% they would not be and 69% were never informed of margin calls** but only of fluctuations from which there was no real risk. 7% were unsure if margin calls were mentioned. [BTQ29]

22) **36% of people were required to sign a Third Party authority (effectively a POA) for [redacted] to access their Macquarie Cash Management Account to manage their**

shares / [redacted] margin loan portfolio. It was presented as a necessary requirement. Only 21% were not required to do so. 43% are unsure. [BTQ30]

23) **[redacted] told 51% of people that dividends from investments deposited in their Macquarie Cash Management Account would be used to pay back the margin loan and other loans/fees**. 15% are unsure and 34% were not told. 59% of people were told by [redacted] that dividends would be used to pay other loans too (MIS and related fees; home loan). 30% were not told this and 11% do not recall. [BTQ31-33]

24) **[redacted] used dividends from shares to pay margin calls in 30% of cases with another 28% unsure**. 36% report it did not occur and 6% said it was not applicable. [BTQ32-33]

25) **In 51% of cases [redacted] used money in the Macquarie Cash Management Account for margin calls, other loan repayments or fees which he knew was to be used for other purposes**. 19% are unsure. Only 30% did not experience this. [BTQ34]

26) **[redacted] told 45% of people dividends in Macquarie would be used to purchase more shares**. 21% do not recall and 34% were not told. [BTQ35]

27) **Only 2 cases knew [redacted] would use dividends in Macquarie to pay margin calls with most not expecting the event would not ever occur**. It is unclear when these 2 people were informed – it may have been after margin calls commenced rather than on considering entering [redacted] [BTQ36]

28) **Once the market went into decline [redacted] told only 8% (4 cases) that dividends from Macquarie would be used to pay margin calls**. 11% are unsure if he told them and 81% were not told. [BTQ37]

29) **51% are unsure what [redacted] said the margin lending ratio would be.** [BTQ38]

30) **51% were told their [redacted] margin loan would not be allowed to exceed the lending ratio margin (of approx. 50%) and only 2 cases did not experience this**. 26% were not told this and 23% do not recall. 75% experienced this with 20% unsure if they did. Only 4% (2 cases) did not experience this.[BTQ39-40]

31) **12% of people cannot work out how much their margin loan was at its peak**. It is reported to range from $25,000 - $1,559,751.72. It is possible this is inaccurate (over or understated) given the lack of understanding many people have. [BTQ41]

32) **45% of people do not know how much money was used to pay margin calls with 4% unsure**. 51% reported this in the range of $7,000 - $150,000. However, since completing the survey one person discovered $340,000 of margin calls (which [redacted] recorded as $34,000). 2 cases report no margin call was made. It

is possible the amounts listed are inaccurate (over or understated) given the lack of understanding many people have. [BTQ42]

33) **69% are unsure how much money [redacted] used without authorization to pay margin calls**. Only 8% could specify an amount. 24% said it was not applicable to them. [BTQ43]

34) **On discussing taking a margin loan 86% of people were not told [redacted] could liquidate their share portfolio**. 3 cases (6%) were told it could occur and 8% do not recall. [BTQ48]

35) **Once the market was in decline [redacted] still did not tell 86% of people that not only would their portfolio value decline but could be liquidated by [redacted] to pay back the margin loan**. 1 case does not recall. Only 6 were informed. It is not clear at what point these people were told (i.e. imminent liquidation or earlier).[BTQ49]

36) **8 cases instructed [redacted] about the management of their portfolio** with the remaining 84% believing he had the expertise and was managing it on their behalf given their lack of understanding. [BTQ50]

37) **Only 1 person reported [redacted] initiated contact to discuss the management of their share portfolio and change his plan to alleviate the person's concerns about risk**. As some clients are known to be family and friends, it is possible this sole pro-active intervention was related to his personal connection. It is also possible this is a 'rogue' response given we are aware he did not intervene with other friends and family who he had set up with [redacted]

    94% of people were not contacted by [redacted] to discuss managing, what should have been apparent to him was, extraordinarily increasing risk and loss of their money. 4% (2 people) do not recall if he contacted them (such was the level of chaos and distress and the consequences on lives since). [BTQ51]

38) **12% (6 people) report [redacted] initiated contact to discuss management of their portfolio but dismissed their concerns and gave reassurances based on his expertise**. 2 do not recall (see above) and 84% were not contacted. [BTQ52]

39) **71% contacted [redacted] or raised in a meeting being worried about their portfolio and expressed a desire to sell their shares**. 1 does not recall. 27% did not and it has been reported at an HNAB-AG meeting that this was due to believing [redacted] was in control and given his explanations about what was occurring. [redacted] sold shares as instructed by the client in only 3 cases. In 59% of cases [redacted] reassured clients that shares should not be sold. 35% did not raise the matter. [BTQ53-54]

40) **In only 4 cases (8%) did [redacted] actually respond to emails or return phone calls about share portfolios**. 61% of people did not get a response (at critical times as the GFC began to expose

concerns). 18% do not recall. 14% did not make contact. [BTQ55]

41) **Only 6% (3 cases) report always being contacted by [redacted] office or [redacted] when they were in margin call during the GFC**. The responses did not provide distinction between [redacted] or [redacted] 35% were contacted sometimes. 20% were after the fact. 18% never were. 16% are unsure if they were always contacted or sometimes. 6% report this question is not applicable to them suggesting they were not in margin call.

    Note - without diarized personal notes and the 'Client Notes' from [redacted] and all their statements and relevant documents (and providing they could understand these) people would have difficulty knowing whether they had been in margin call, how often or if they had in fact been informed beforehand or afterwards. [BTQ56]

42) [redacted] **advised 35% of people to borrow money to pay margin calls during the GFC including 18% of people who, it should have been apparent to him, had to sell their home to cover [redacted] debt and also another 14% related to other debt, as well as [redacted] in which he placed them**. 18% do not recall whether he advised them to borrow money. He did not suggest it to 41% (with no capacity to borrow and/or no contact). The rest (3 cases) were not margin called. Of those advised to borrow money, 27% did, 55% did not, 8% do not recall. The rest not margin called. [BTQ59-60-61]

43) **Other assets (e.g. investment property, car, etc.) had to be sold to pay the investment loan and/or margin calls related solely to [redacted] in 12% of cases** with another 14% were required to do so because of other debt [redacted] had placed them in. [BTQ62]

44) **65% were advised to provide money from other sources to pay a margin call/s** with 1 case unsure and 27% not advised to do this. The remaining (3 cases) were not margin called. [BTQ63]

45) [redacted] **used money in Macquarie (or other) accounts to pay margin calls without people's knowledge, this occurred in 18% of cases**. 33% are unsure if he did this. Only 43% believe he did not do this and the rest were not margin called. [BTQ64]

46) **No-one is able to ascertain how much of their money in other account/s [redacted] used without their knowledge**. One case selected 'Yes' which indicated they knew the amount but recorded they had *"no idea and were denied access to our Macquarie account for a while"* – it is clear that like most, given the complexity to work out even where documents are available, it is beyond their ability.[BTQ65]

47) [redacted] **office arranged an investment loan to buy share portfolios separate to the [redacted] margin loan in 49% of cases**. Another 6% are unsure if he did this. 45% said he did not do this. [BTQ91]

48) **Investment loans to buy shares were arranged by [redacted] office through all the major banks (as well as others) including** with the CBA and through SMSF sharing equal highest numbers. One couple arranged the loan themselves (with NAB). [BTQ92]

49) **In about half the cases, a "mobile lender" from a bank met with or spoke directly with people about an investment loan [redacted] recommended with the other cases dealing solely with [redacted] office. 2 cases were unsure if they spoke with a representative of the bank**. [redacted] ossibly as he was used as an example in the survey so the name was triggered). Interestingly, in one case the CBA would not let him borrow against his home but [redacted] arranged other options. It is not clear if this was through another CBA rep.

Many could not recall the bank representative's name. Ron [redacted]

50) **In 8% of cases the (investment loan) bank's representative sought confirmation about the person's circumstances from them, gave them all the information necessary and accepted information given by [redacted] about their level of income on the basis of the client being told future income was not relevant**. This did not occur in 39% of cases and was not applicable in 35% with 18% being unsure. [BTQ94].

51) **Only 1 person believes [redacted] genuinely tried to help related to the GFC.** 1 case is unsure. 96% believing he did not try to assist them. It is likely the person confident [redacted] tried to assist, is a friend or relative (although many of these were not treated any differently) so it is possible this is a 'rogue' answer. (Note - many did not realize he was not helping them at the time until much later.) [BTQ95]

52) **25% of cases are unsure how much money [redacted] used to set up their share portfolio**. Those who knew, or think they knew, report in the range from $30,000 - $750,000 being used to set up their margin loan share portfolio. (One response '180' is likely to be an error or refer to 180K.) [BTQ97]

53) **In 43% of cases, 100% of the money to set up the share portfolio was borrowed from another source e.g. investment loan** (not in SMSF) but it may be higher as 14% are unsure. 22% report 50% of the money was borrowed with only 1 case each reporting 25%, and 75%, of it being borrowed. [BTQ98]

54) **Of those who had to sell their home to pay for [redacted] loans the percentage of that money ranged from 25–100% in 11 cases**. [BTQ99]

55) **Of those who had to sell other assets for [redacted] the money used ranged between 50–100%.** [BTQ100]

56) **Most people reported that margin loans were not in Self Managed Super Funds. Almost all cases with [redacted] margin loans in SMSF had 1 loan. 1 case had 3 and 1 reports 10.** 76% did not have a SMSF margin loan.[BTQ101] ***Please see Appendix No.1***

57) [redacted] **used in the range of $118,000 - $220,000 from SMSF to purchase share portfolios**. [BTQ102]

58) [redacted] **advised almost half of people with SMSF margin loans to borrow other money to purchase shares in SMSF**. One case is unsure. [BTQ103]

59) **Of those whose SMSF was set up prior to 1999, [redacted] did not advise anyone about the grandfather clause and the related tax rulings**. 5 cases are unsure. [BTQ104]

60) **Most people were not sure of what the margin loan lending ratio on their SMSF margin loan was with 2 reporting it was 50 and 1 that it was 60**. [BTQ105]

61) **Half of those report their margin loan exceeded this ratio on their SMSF margin Loan** and the other half are unsure. No-one reported that it did not exceed this ratio. [BTQ106]

62) **Those with SMSF margin loan report that at its peak it was in the range of $85** (this may be an error or mean $85,000) **through to $575,857**. Most cannot calculate it. [BTQ107]

63) **41% of people reported that the options to select an answer did not adequately cover their situation**. The survey was worked on over a couple of months by 4 people with varying degrees of limited understanding of margin lending and not anticipating the consequences of certain scenarios hence this was expected but not for nearly as many. It was also trialled on a few people which did not reveal these remaining limitations. Occasionally the electronic survey would not allow entry of figures. (Some details about the limitations have been noted and it is also likely that at times people have misread or misunderstood given their distress.) The list of comments is included in the Appendix. [BTQ108]

64) **Comments reported reflecting the experience of [redacted] office and / or [redacted]**

i. Assurance homes would never be at risk
ii. Assurance buffer zone [redacted] created was higher than required
iii. Everything was under control with their expertise
iv. [redacted] generally unavailable
v. Told [redacted] only allowed clients into margin loans through their authorized representatives (suggesting careful selection and assessment)
vi. [redacted] / staff incompetent, negligent, deceptive and unable to manage margin loans

vii. [redacted] abdicated responsibility entirely and was negligent at best
viii. [redacted] errors indicate serious concern regarding procedures and competency or possible deliberate misinformation
ix. Sense of being low on or at bottom of [redacted] priority list
x. [redacted] claimed people would not lose even 1 cent or have to contribute out of direct income
xi. [redacted] said he only made money when a client made money (indicating his commissions were paid on harvest / rising value)
xii. [redacted] claimed investments were conservative, safe and secure
xiii. [redacted] dismissed desire to sell shares as GFC began claiming this was the worst action to take and that people were protected and margin calls would not occur (if aware of the possibility).
xiv. People felt abandoned to try to work out what to do over investments they had no understanding of hence having [redacted] 'manage'.
xv. Neither [redacted] nor [redacted] could be trusted. [redacted] actively took advantage and [redacted] made no effort to ensure people were not being deceived.
xvi. Lies, mismanagement abound.
xvii. [redacted] claimed he was preparing legal action against [redacted] for their failure to act as agreed with his office.
xviii. [redacted] groomed people for many years doing their tax before suggesting investments which ultimately were inappropriate and created financial ruin as well as destroyed relationships and families.
xix. [redacted] response to questions reinforced we did not understand and he took advantage of this.
xx. Documents were not signed by clients and transfer of shares was not consented to either which is illegal.
xxi. I agreed to a high risk portfolio after [redacted] said I would not make money otherwise.
xxii. No information about risks was provided and was dismissed when inquired with explanations, graphs etc.
xxiii. The monthly service fee ($137) was for nothing.
xxiv. [redacted] never contacted us to confirm serviceability of the loan.
xxv. [redacted] never contacted us to ensure we knew of a loan.
xxvi. [redacted] did not implement its safeguards and was far from helpful after the GFC hit.
xxvii. No stop was put on loans assured would occur and no calls by [redacted] or banks to ensure we knew where loans or margin calls may end up.
xxviii. Don't really understand [redacted] statements.
[BTQ109]

65) **A list of [redacted] client codes and / or client names** who participated in the survey plus 3 whose experience was typical and who were unable to fill it in but wish to be part of the group complaint, is provided in the **Appendix.** [BTQ110]

11 March 2016

Appendix I - Contribute to fund restitution and compensation: hold multinational tax dodgers accountable

https://theconversation.com/multinational-tax-dodgers-are-the-real-leaners-73672

Multinational tax dodgers are the real leaners

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Partners

Nowhere is the impotence of politicians and regulators more costly than in their failure to stand up to multinational corporations dodging tax.

The Tax Office now publishes an annual list of Australia's 1,900 largest companies, which shows their revenue, profit and tax expense. Only 600 of the entities on this list actually pay income tax at the statutory rate of 30% (bear in mind, these include trusts such as Sydney Airport whose members incur the tax liability).

More than 600 of the entities on the list pay no tax at all. That's zero tax on A$330 billion worth of income: these are Australia's real leaners, not our lifters.

The list is a good thing; transparency is a good thing. Yet there are serious deficiencies with this ATO data. The key cause of these deficiencies is the failure of companies to lodge proper financial statements.

To demonstrate this, we selected a couple of companies from the list at random and analysed their financial statements. These entities, the local offshoot of Wall Street banking giant Goldman Sachs and the nation's biggest brewer SABMiller, show an income tax rate of 0% over the past two years.

Goldman Sachs Holdings ANZ Pty Ltd generated A$634 million in annual total income. This holding company displays the usual signs of a tax-dodging multinational including:

- ownership through Hong Kong
- a subsidiary in the Cayman islands

- the creation of a new holding company at the top of the group followed by a mega-million-dollar return of capital
- related party transactions and balances with next to no disclosure of their financial effects
- misleading financial statements and disclosures provided to the corporate regulator, the Australian Securities and Investments Commission (ASIC).

For its part, SABMiller in Australia is six times the size of Goldman Sachs. It rakes in A$3.5 billion in total income via its surefire business model of selling beer to Australians, one of the world's pre-eminent beer-drinking populations.

When we called SABMiller to ask if the company felt it was pulling its societal weight, we received this response:

In F2015, our total tax contribution in Australia exceeded A$1.4 billion. This included both our own taxes and those we collected on behalf of the Australian government, such as excise and customs duty, goods and services tax and employment-related taxes.

Points to SABMiller for actually responding. Goldmans didn't return calls. However, lumping in taxes collected for governments – beer excise, GST, payroll tax and so forth – is obfuscation when the subject of the story is corporate income tax.

How do they do it?

One of the tools of trade of the multinational tax avoider is keeping a low profile and keeping stakeholders, including the Tax Office, in the dark while maintaining the pretence that everything is kosher.

The financial statements of the holding companies of both Goldman Sachs and SABMiller in Australia are frankly useless. While claiming to follow the accounting standards, they conceal the true state of the financial affairs of the group.

Dozens of companies that formerly lodged proper "general purpose" financial statements quietly switched to the inadequate "special purpose" accounting regime in recent years. These "special purpose" accounts are a favoured device of the Big Four accounting firms.

With these financial statements, Goldman Sachs and SABMiller, and their auditor PwC, take the implausible view that a holding company that controls billions of dollars in assets is unaccountable to the public for the activities of the group, including its subsidiaries.

Both holding companies – and bear in mind eBay and a host of other multinationals do the same – have deliberately chosen not to file audited consolidated financial statements with ASIC.

The decision not to consolidate means there is no audit or assurance of accounting balances, which the Tax Office might otherwise rely upon in its enforcement activities.

In filing special purpose accounts, the directors of these holding companies are claiming that nobody other than their masters in the US and the UK are entitled to access audited financial information.

It is a hollow claim, but one ordained by the Big Four accounting firms, EY, Deloitte, KPMG and PwC. PWC, the auditor of SABMiller Australia, opines:

Our [2016 audit] report is intended solely for the members of SABMIller Australia Pty Ltd and should not be distributed to or used by parties other than SABMIller Australia Pty Ltd and the members.
If this is so, why does Australian law require that the financial report and audit report be made available for public consumption on ASIC's database? Can PwC not be relied upon to conduct a statutory audit?

"It's all legal," is the catchcry. Yet Australia's company law supposedly put a stop to non-consolidation by holding companies in the early 1990s following the corporate crash of Adelaide Steamships.

Nonetheless, the accounting firms have brought back the non-consolidation ruse for their billion-dollar multinational tax-avoiding clients. So it is now up to the government to change the law to make it clear: no loopholes, so Australian holding companies of multinationals with billions in assets or income must prepare and lodge audited consolidated financial statements.

Section 297 of the Corporations Act requires that financial statements give a true and fair view. SABMiller Australia reported income of A$0.0001 billion in its statutory accounts for 2015 but A$3.5 billion to the Tax Office. The difference is largely attributable to non-consolidation of subsidiaries in the financial statements lodged with ASIC.

ASIC could rule on this today and enforce the present laws by insisting on proper financial reporting. Or if amendments were required, legislation would be a simple process. All it requires is political courage in the face of powerful vested interests striving to conceal their true financial state of affairs.

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