Review of the Financial System

External Dispute Resolution Framework:

(Ramsay Review)

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1. This submission is written from the perspective of victims of white collar crime related to multi-lenders and multi-products placed in through one firm. We are not lawyers, economists or professionally skilled in the financial services industry. This material may be made public. We have endeavoured to do our best within the short time, and other, constraints to provide comments within our scope. We welcome any opportunity to clarify or extend our ideas and suggestions.

Introduction

2. We wish to underscore our sincere thanks to the **EDR Independent Panel Review** for the invitation to meet on 21st September 2016, and also to make a written submission to this desperately needed review. We are very grateful to the panel, Professor Ian Ramsay, Ms Julie Abramson and Mr Alan Kirkland for providing this opportunity to participate and be heard.

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

4. Award-winning journalist, Adele Ferguson, describes victims of white collar crime as '*The Forgotten People*.' Typical of corruption or failures to address abuse of power it seems that persistence from enough victims, advocates, whistleblowers, media and others is necessary before power structures are prepared to listen or act. In general there is limited understanding of the type of unconscionable conduct to which we were subjected or its harrowing repercussions and impacts.

5. Victims are actively rendered invisible, largely thwarted from speaking out, penalized for taking a stand, threatened, intimidated and blamed. This protects offenders. It provides the illusion of safety and control for those who struggle to face the reality that any one of us can be rendered powerless. Intelligence, personal responsibility, integrity or expertise in other areas cannot protect someone from being targeted by those with financial sophistication and willingness to deceive. Victims of the crimes to which we have been subjected were not naïve, gullible, irresponsible – or complicit. Nor were we high-risk takers who are disgruntled.

6. Industry conduct was recently referred to as "*banking bastardry*" by Warren Entsch, MP. Given that the corporate watchdog issued figures for the year to June 30, 2016 showing more than $200 million in compensation was clawed back for customers and investors suffering losses due to such "*bastardry*" as noted by Adele Ferguson (SMH, 28 September 2016) and that *no-one* in HNAB-AG has been included in these figures given the refusal of banks to take responsibility, this is a gargantuan understatement of the actual cost and losses. Of course, there are other action groups not included. Our understanding is that compensation is typically a small percentage of the real loss. Consequently, these figures are the tip of the ice-berg.

7. The complexity of some unconscionable conduct and a bank's ability to hide behind distancing itself from an external adviser (with whom it accepted engagement as an *'authorized representative'*) or finance company, having abdicated its ultimate responsibility to perform due diligence and fingering its own in-house advisers or staff, reflects a serious issue as there is no real avenue available to investigate.

8. Certain types of corruption in the financial services industry and banks must be recognized as a form of terrorism, holding people and their families to ransom and devastating innocent people's lives. The spectrum ranges from mild loss through to apocalyptic impacts on all aspects of life, well beyond the ordeal of financial devastation - through no fault of one's own.

9. As indeed they should, banks invest vast resources into monitoring credit card fraud 24/7, following up unusual activity for confirmation with a direct phone call to the customer within minutes. The reason for this exemplary effort is that lenders are responsible for losses incurred to a victim. Similarly, if banks do not safeguard against cybercrime and cover losses of accounts which are hacked, people will be much less likely to utilize on-line banking facilities. However, money can be effectively stolen by a criminal operating within the industry enabled by inadequate procedures and safeguards. These are the lenders responsibility yet there is no expectation or requirement that an innocent victim's losses are reinstated. The regulatory system and successive governments also bear responsibility for permitting this to occur.

10. In our view, the root of the problem is an industry rotten to the core, driven by incentives to promote greed and profit. It is no longer a service marked by professionalism in which the public can trust. Ultimately, this may have been compounded by successive governments unduly influenced by industry 'donations,' from those vested in certain outcomes. Hence, there has been a failure to focus on practical, cheap, ethical measures to safeguard the public, industry and national economy. The moral compass, integrity and humanity necessary to enhance professionalism and build trust has been cast aside for inordinately short-sighted, profit-driven economic outcome which cannot be sustained. This undermines society and ultimately, the economy. Over the past few years, we have offered to assist CBA, ANZ, NAB and BT Margin Lending (Westpac) in developing simple informed consent and checklist measures to safeguard against deceptive practice and ensure suitable and serviceable product placement: not one has taken it up.

11. Banks refer to negligence, deception, fraud and corruption as *'poor customer outcomes'* and efforts to thwart taking responsibility for it as *'poor customer service.'* It is easy for lenders to claim they are concerned, learning from mistakes and changing their ways with seeming contrition in apologies. Let's be clear: this is what alcoholics and substance abusers do. Words and gestures do not address the root problem or make amends or remedy. Whether it is a few hundred dollars, or thousands, or hundreds of thousands of dollars, the banks and industry must be held fully accountable to provide restitution as well as compensation for the (often immense) suffering and incalculable impacts.

12. The amount of *'compensation'* which a bank reports providing is not relevant: the pertinent issue is the impact on victims' lives in all regards and the *amount that has*

not been returned and from which the lender and industry continue to profit. These are proceeds of crime effectively. It is evident the banks are not learning. On the rare occasions they meet with victims it is about PR rather than an open willingness to collaborate to change the culture and make genuine amends.

13. We believe a Royal Commission is necessary; however, there are immediate steps which can be taken to address, efficiently and ethically, the grave impacts on victims. A new competent one-stop-shop designed along lines we propose would achieve this objective. However, it is imperative that a Royal Commission also occur to expose what has been happening, how and why, in order to hold offenders accountable, ensure measures for safeguards are recognized as well as to hear and dignify victims. The government has inferred this route would be a threat to the national economy. There has been no collapse of the many religions and other organizations exposed in the *Royal Commission into Institutional Responses to Sexual Abuse*: there is no reason scrutiny of the finance sector and banks would bring down Australia economically. There is every reason to expect it would improve national and international confidence by conveying the government will not tolerate, or enable, corruption to fester in the shadows and underbelly of white collar crime.

14. Legislative reform is necessary. However, decency and ethics cannot be legislated for: this avenue is not the primary channel to change industry culture. Equally, it is disturbing the prime minister believes the *'humiliation'* of appearing before an annual review is a driver for cultural change yet major exposes have not.

15. Examination of issues related to victims of other crimes of betrayal by power structures, such as family violence or sexual abuse, which result in devastating life-altering impacts, demonstrates the need to actively consult and collaborate with victim representatives and victim advisory services, as well as expert therapists and counsellors in this area who have specialized trauma-informed training and experience. (See appendix B: Table – Parallels of institutional responses to sexual abuses: financial, sexual and family violence.)

16. We hope inclusion of victims (i.e. people who are targeted) and the creation of a funded advisory service run by former victims will become a standard part of consultation in the future where their experience, perspective, insights and suggestions inform meaningful change and improvements.

Background of HNAB-AG

17. Our comments are based on the experience of extensive white collar crime of approximately 140 people. It was exposed by the GFC in 2008/9 at the hands of a firm of accountants and financial advisers of which Peter Raymond Holt was the principal. It was (and still is) based in Melbourne. It has seen various name changes with more than one company running concurrently. He was a CPA, held a financial services licence and was a former auditor at the ATO. Several accountants and financial advisers worked with Mr Holt as well as other staff. Mr Holt only was banned by ASIC in 2012 for 3 years from holding a financial services licence. His conduct met ASIC's criteria for a *10 year – life ban*.

18. The HNAB-AG formed in January 2011 when a handful of victims met through an invitation to attend a creditor's meeting by the Trustee for Peter Holt's

business insolvency. After media and parliamentary support in mid-2014, word spread and the vast bulk of our members made contact prior to the first senate inquiry in which we were involved. Since then we still find new people only learning of us and making contact. We have a website: **www.halttosafeguardyourfinances.com** and meet every few weeks or so in Melbourne. Information and updates are circulated via email to members. Support is provided over the phone and via email too.

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

20. In brief, deceptive, fraudulent and unconscionable conduct related to misinformation (or lack, entirely, of *any* information), placement in, and management of:

(i) a range of agribusinesses (e.g. Timbercorp, FEA Plantations, Rewards, ITC Pulpwood, TFS, Huntley etc.)
(ii) BT Margin Lending
(iii) Self-Managed-Super-Funds
(iv) Investment loans
(v) related aspects such as Macquarie Cash Management Accounts (MCMA).

21. The unconscionable conduct included incomplete or blank loan applications; false information; witnesses not present and never met; misrepresentation and false claims about law and the meaning of industry and legal jargon (e.g. 'endorsed'); deceptive acquisition and / or execution of POA; unauthorized use of access to money in MCMA and / or dividends from investments; non-disclosure of commissions / trailing fees / conflicted remuneration; failure to obtain and/or honour financial goals and objectives, plans, circumstances, risk tolerance, product suitability, capacity to meet loan obligations and so forth.

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

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

24. We respond to each question raised in the Issues Paper released on 9 September 2016 to the best of our ability.

PRINCIPLES GUIDING THE REVIEW

Question 1:

25. **Categories of users that should be considered as part of the review** – There are additional significant difficulties for victims of multi-lender/product white collar crime in comparison with single lender/product cases. It does not appear to have been recognized much in reporting or discussions in the media or by parliamentarians. We believe it is critically important concerns related to the advice given to, and management of, financial affairs of people who are vulnerable through being ill or elderly are able to be presented by an advocate or representative or family member. This should include emergence of concern after death including related to being a beneficiary of insurance or conduct related to any financial advice or product.

26. In multi-lender/product cases the situation is highly complex and convoluted. It is often beyond the scope (or interest or willingness to address) of existing avenues for disputes. Victims are typically referred from one port of call to the next as they pass the buck (see Appendix C). One independent financial adviser who kindly reviewed documents, pro bono, for the numerous agribusinesses in which one person had been placed (only a half of the losses she was subjected to which caused financial decimation), described it as *"an abyss"* and that she had been *"totally stitched up."*

27. It was many months after discovery before glimpses of understanding of what had occurred were possible for most people. For many it was years later. Recently, HNAB-AG heard from a woman who had continued to use Mr Holt's services eight years later, having no inkling he had been instrumental in her losing her home and being forced into bankruptcy. This is not unusual. The fact we know (data from KordaMentha) of at least 500 people existing in Mr Holt's last batch of victims, but only 140 have made contact with HNAB-AG, speaks volumes about the trauma and/or the lack of awareness of the causes of their plight and/or confidence that there is any hope for remedy. Some will blame themselves, holding on to the illusion that they 'should have' known, or done, something differently: this offers the solace of avoiding overwhelming despair, grief and rage that they could be so betrayed by someone with a power advantage (particularly given trust in a professional context).

28. Lawyers tended to focus on only Mr Holt's behaviour. They dismissed the possibility of taking on the banks or considering the lender's ultimate responsibility

for much of what occurred. FOS did not clarify that the various projects or 'investments' could have been presented individually where they came under its cap of $150,000 (at the time). ASIC was entirely disinterested – despite the fact Mr Holt has been reported by at least one law firm (Maurice Blackburn) and also, in the past by earlier victims and industry members. People were encouraged to *"move on"* or *"start over"* and warned against wasting their time, energy and money. It required concerted effort once we formed HNAB-AG to get ASIC to even meet with us.

Question 2:

29. **Principles defined as guiding the review**

We agree with the following principles and outcomes outlined by the panel as to what will guide them:

- **Efficiency**: schemes should have adequate coverage, powers and remedies for complaints to be resolved in a timely manner;
- **Complexity**: schemes should be easy to use for users;
- **Transparency**: decisions and processes of the schemes should be easily observable;
- **Accountability**: schemes' final determinations and complaints information should be publicly available, detailed information about schemes should be publicly available, and schemes have a role in reporting systemic issues and misconduct;
- **Comparability of outcomes:** users who have similar complaints (for example, in relation to similar financial products) should receive similar outcomes.

30. We disagree with the following principles:

- **Regulatory costs**: the framework governing the schemes should impose the minimum amount of necessary costs to ensure effective user outcomes.
- **Equity**: users should face minimal cost barriers and be able to easily access the system;

We believe the cost should be borne by the user only if the complaint is determined to be unfounded without any doubt. Where it is upheld, the respondent should cover the costs (as part of the penalty imposed). Costs in risking further financial loss can be a substantial barrier for someone who has been financially decimated.

31. We recommend inclusion of:

- **Competence:** staff must be thoroughly trained in the role they undertake. This must include a level of trauma-informed-training to appreciate why normally reasonable requests and expectations may prevent difficulty for the complainant. Those assessing a case as a forensic accountant, financial adviser or lawyer must be familiar with the product in question. Where multiple products/lenders are at issue, further professionals with relevant expertise are required. (Further detail is noted later.)

- **Preparatory assistance**: a forensic accountant or adviser must be available to assist people to prepare their material for presentation for consideration of the complaint. Victims of white collar crime, major deception and unconscionable conduct are in the predicament because they did not have financial sophistication. Without genuine, empathic and expert professional assistance to prepare a case, victims will not be likely to subject themselves to further trauma as has been the case with more than 99% of HNAB-AG.

- **Ethics and integrity:** Staff must be highly trained and not in a position of having a conflict of interests. This should include retrospective redress for people for whom the inadequacies of the regulatory and legal systems to date have failed regarding unconscionable conduct resulting in loss of home, and / or life-savings, and / or superannuation, forced payment of deceptive debt (including by liquidators), bankruptcy, as well as other impacts to relationships, families, work or career, health etc.

- **Responsibility for cultural change and safeguards**: there is little point in merely expecting to *'humiliate'* or reprimand offenders with fines which are a drop in the ocean and no skin off their personal nose. Reporting or publicity does not appear to result in real change in industry culture in view of substantial publicity. The incidence and extent of unconscionable conduct must be radically reduced. It must involve meaningful penalties (a multiple of loss incurred or risk taken) with measures to create adequate informed consent checks and procedures. Responses should be practical with a meaningful focus on victims: not tokenism.

Question 3:

32. **Findings and recommendations of other inquiries of value to this review -** There are suggested recommendations submitted in other inquiries which, in our view, should be taken into account. This includes concerns Senate Inquiries into the *Performance of ASIC; Forestry Managed Investment Schemes, Scrutiny of Financial Advice; Civil Administrative and Criminal Penalties for White Collar Crime* (the latter inquiry was regrettably disbanded with the Double Dissolution – in our view it is paramount that inquiry be reinstated to support our contentions along with others about the value of meaningful penalties). We will endeavour to cover in this submission key comments we have made elsewhere.

33. The submission to the *Senate Inquiry into Civil Administrative and Criminal Penalties for White Collar Crime* is available direct through HNAB-AG. We are unsure how it can be obtained via the senate economic references committees as the inquiry was disbanded due to the double dissolution. It is a very brief, concise, outline of our ideas about penalties and the rationale.

Question 4:

34. **Measures to effectively ascertain outcomes meeting users needs**: To determine whether a scheme effectively meets the needs of users, outcomes should be defined and measured in terms of:

(i) **Data as to whether potential users do not commence proceeding** – determining whether people refrain from commencing to utilize a scheme would suggest serious concerns. This could reflect many things e.g. a lack of understanding of the often overwhelming shock and trauma on discovery of a concern; feeling unable to take the necessary steps due to not understanding what or how misconduct occurred (or if it is, in fact, misconduct – predators or culprits are skilled at denying their responsibility and know the clients do not have the sophistication to understand what has occurred). Victims will be focused on trying to stop the financial bleed, salvage what they can, increase income and deal with intimidating demands for loan repayments given the current limitations of a halt on action until a case is assessed. The focus is, thus, also on having to refinance or sell their home, find accommodation amongst numerous other first stage matters. Time to understand what happened is not a priority in the immediate aftermath of misconduct being revealed.

(ii) **Data on why people who make contact do not proceed or withdraw at some point is vital** - unfortunately, unless there is a one-stop shop which is heavily advertised and becomes as well known amongst the community as the ATO, it will be almost impossible to know how many people are too distraught and/or lack confidence in justice prevailing to pursue the traumatic route of seeking redress. Of course, trust in its role is crucial: knowing about it will make no difference otherwise.

(iii) **Provision of assistance to prepare material for presentation** - an analogy of the circumstances in which a victim has been placed, once able to try to focus on redress over deceptive debt, is akin to being in a foreign prison for a crime you did not commit and do not understand, without access to representation, where you do not speak the language or understand the laws and culture, and there is no help provided from the Australian embassy or government or even apparent awareness or concern about your plight. Indeed, the view of government is that nothing is amiss and it fails to respond to requests to meet.

(iv) **Reinstatement of the complainant to the financial position he or she would be in at the time of the resolution had the misconduct not occurred or been identified plus compensation for the suffering and incalculable related impacts** – if it is continued to be accepted as reasonable that no, or grossly inadequate, '*compensation*' (i.e. merely a percentage of the loss inflicted or risked) is permitted from lenders, product issuers and advisers / accountants, there will be no or little accountability or incentive for industry to review behaviour or engage in radical overhaul of procedures to avert, or identify, misconduct - far less to act on those perpetrating white collar crime.

(v) **Facility for (genuinely) independent and anonymous audit of:**

a. Competency, expertise, suitability (i.e. integrity with respect to, or independence from, past or current association professionally or personally with the industry member or organization in dispute) of individual staff assessing cases

b. Case examinations and outcomes by auditors (i.e. integrity with respect to, or independence from, past or current association professionally or personally with the industry member or organization in dispute).

Audits should be transparent and available to all parties concerned in language the general public can understand.

(vi) **Request independent review or appeal for fairness of outcome** – this may still be necessary but should not be common if assessing panels are utilized along the design we suggest in the submission elsewhere.

(vii) **Significant reduction of, and eventual rarely made, complaints lodged in respect to a given product that has been the subject of a complaint** – if part of the process is to ensure cultural change, radical reduction in complaints about a product which has been the subject of a case entered into after the lender / product issuers has been required to implement changes, would suggest the process is working. Until the gap is closed between those already in the product (and thus at risk), and those newly entering it after an informed consent (I.C.) checklist is implemented, there will be more complaints. However, the industry (or at least that product issuers or lender) could be required to inform existing customers of the I.C. checklist to enable problems to be detected and remedied as soon as possible. This would reflect the system is working at the macro level in changing the culture which is essential, and necessary, for a regulatory scheme to achieve.

(viii) **Consideration of provision of meaningful written informed consent given to the complainant**. We propose a format which covers 1-2 pages of clear questions or statements to ascertain understanding pertaining to the key obligations, terms, suitability, risk and potential gain or loss, requiring a response of Yes, No or Unsure. If No or Unsure is selected for any question, the prospective investor or borrower is not suitable for the product. The IC questionnaire would state this and advise against continuing. It must be signed and dated by the client and the accountant / adviser / authorized representative and also an independent witness in the presence of each other. Two signed documents at least must exist – one retained by the client and one by the industry member (perhaps also the witness). Photocopies should not suffice. Electronic record of an original which has been shared amongst the parties within 7 days and not questioned as falsified or altered at that time, is reasonable to use in the event of loss of an original printed document.

(ix) **The timeframe in which a case is resolved should be no more than 3 months at the extreme -** given the impact on people and their families, disruption and ramifications of chronic trauma (personally and long-term to the economy) – this requires adequate numbers of panels with expertise and experience in the area. It should also incur meaningful fines if financial institutions or members delay proceedings and/or do not produce requested documents and/or proceed in favour of complainant. This timeframe should include the following:

(i) Assistance by a forensic accountant to help the victim understand and prepare material for a panel to assess – or to take the task on solely where the complainant is unable.

(ii) Assessment by a competent, panel with expertise in the specific area/s involved, who had undergone trauma-informed training in order to respond humanely and appropriately, with an appreciation of how the functioning of a normally intelligent and competent individual may be affected.

(x) **Feedback about the conduct and competence of the assessing panel** - Panels should compromise:

1. a forensic accountant (separate to the person who prepared the information)

2. a financial adviser (with expertise in the area of the product/s (this may require 2 or more for different products)

3. a former victim of the product/s (particularly with complex cases and multi-product/lenders involved)

4. a trauma counselor to support the victim/complainant through the process and reduce escalating distress

5. a lawyer (operating in the spirit of the law where ethics prevail over legal loopholes and technicalities as these favour industry and deny the victim a fair investigation)

6. a chair to manage the panel and write the determination.

(xi) **Consideration as substantiating evidence where pattern/s of misconduct by the same industry member/organization have been reported independently before victims met each other** - currently this is dismissed at law despite tens, or hundreds, or thousands, of people reporting being subjected to the same predatory grooming, negligence or unconscionable conduct.

(xii) **Consequences for offenders which reflect genuinely being held accountable and which will drive change in industry culture** – restitution and compensation is not the only aim for victims. Accountability should include appropriate fines and jail sentences. The amount paid in fines – which should be 3-10 times the amount of the loss inflicted or risked, would be a greater deterrent. It would cover provision for restitution and compensation to the victim and contribute to the industry for both a safety fund (for victims where offenders have secured their assets beyond reach of a creditor) and towards the cost of a new regulatory body designed to assess cases, award victims and hold offenders accountable. While certain legislative changes are vital, legislation is not the solution to the bulk of concerns: changing the culture is the key. There are several aspects to this: requirements of written financial goals, provision of monthly statements of financial position, informed consent, retention of original documents for each party. Changes would be swift if there was not

only removal of conflicted remuneration but salaries and 'performance' bonuses of senior executives and CEO were inversely correlated to:

a. the number of complaints made and

b. the amount of losses incurred by the victim

(xiii) **Restorative Justice-style participation** – there needs to be opportunity for a Victim Impact Statement to be presented at the very least, with a response from the offender/s. Executives and CEOs of offending organizations should be required to participate in these forums on a regular basis to remain in touch with the human outcomes of their culture and procedure failures.

DISPUTE RESOLUTION

Question 5:

35. **Awareness of Internal Dispute Resolution (IDR) processes** – Consumer awareness relies on the integrity and willingness of the member to comply with industry standards or the financial sophistication of the client. IDR processes are not easy to find out about. It requires being given a financial services guide (FSG) and being alerted to the need to read it and/or being told of the avenue. Financial services may also feel content they have the upper hand particularly when it is the client's accountant or adviser or bank.

36. Once a client is aware of an IDR, they have to feel ready enough to pursue a complaint. They also have to have the documents to be able to do so. This is often not the case. Of course, when you do not know you even have, or had, a loan for a product you cannot initiate an IDR. When you know you do not understand what has occurred you are also less likely to initiate an IDR (or EDR as the system stands).

37. Victims may be discouraged at the outset or thwarted on seeking documentation from the accountant / adviser or the lender or product issuer. Errors, deliberate or otherwise, are difficult to identify when you do not know what you are looking for. They may be impossible to prove. Failure of the industry member to seek or have recorded information, or 'find' documentation that does exist, complicates matters. The industry member has a significant advantage and upper hand. BT margin lending, various agribusinesses, the Big Four banks and their subsidiaries, along with private firms like that of Peter Holt, are all prime examples. In relation to Peter Holt, FOS provided the name of James Xenedis to make an IDR. Many never heard from him. They did not know a timeframe existed. Some contacted the 'compliance officer' Sera McGuiness and others Peter Holt directly. Sometimes complaint letters were sent on to John Voiton, Peter Holt's lawyer. Nothing happened. In recent years we later discovered Mr Voiton has been in Federal Court for allegations of being part of a fake-debt fraud ring. People gave up thwarted.

38. An unknown Bankers Trust (BT) Margin Loan emerged in 2016, some 7 years after it had been deceptively taken out with no knowledge of the person. It had been placed in a company name which Mr Holt had set up for the home. The company was deregistered in 2004 after he informed the person that laws had changed and

there was no advantage to having the home in a company and arranged to remove it. It seems this was driven by the motivation to access the substantial equity in the home after significant renovations as it provided massive commissions for him in margin lending. BT margin lending claimed documentation did not exist when it did. They took countless months to provide it and only after persistence of the victim. They denied existence of a loan. They provided inaccurate and incomplete information about this and another loan which was known about but has been grossly misrepresented. They even refuted the victim's claim, before it was actually formulated or lodged: it was denied with the provision of the final documents which had taken months on end.

39. The HNAB-AG lodged a group complaint to BT based on the results of an electronic survey of our members. Concerns were not addressed. A dismissive response, replete with irrelevant comments and red herrings to distract and avoid, was provided. BT specified no negotiation would be entered into. Disingenuously, we were directed to FOS despite the current cap of $500,000 meaning many would be excluded. In addition, from prior experience, the complexity of the matter and number of complainants would also likely have resulted in FOS being unwilling to take it on. Issues with KordaMentha and Timbercorp were, and still are, the priority due to the immediate and urgent threat of legal action and mounting exorbitant penalty interest (loans at Timbercorp's collapse have now doubled or trebled). Homes are at risk. Bankruptcy is a threat. It is all-consuming. Other important issues have taken a back-seat as a result.

40. The CBA and other banks have similarly taken a hostile and intimidating approach. Most people have not even tried to go through IDRs (or FOS). It is recognized to be too traumatic, futile, a waste of time and money – essentially, all but entirely hopeless.

41. The situation could be improved by having tighter requirements of IDR schemes and being able to by-pass them when fair response is unlikely (as in cases of deception or fraud). They operate in favour of the member and are not independent or fair. Despite the rhetoric and carefully designed brochures they appear to be largely spin and do not translate to positive outcomes. This is true for much of the material given to clients. IDRs are wholly dependent on the integrity of the service. If the service has failed in substantial ways it is unlikely to be helpful. IDRs are not designed to be ethical, fair, reasonable, and humane or genuinely resolve disputes in a way that does not disadvantage the victim. Accountability could be assisted by requiring a written response from the member within 28 days - not 45. It could be used to escalate the matter to an EDR in demonstrating the attitude and conduct of the member.

Question 6:

42. **Barriers to lodging a complaint** – barriers extend well beyond the actual scheme and its distinct limitations and design. Beyond the fundamental barrier of not knowing an IDR process exists there are numerous barriers to overcome (or which prevent action at all) prior to attempting to even lodge the complaint. This is true also for EDRs.

(1) **The first barrier is the shock and unfolding trauma** on discovery of the conduct particularly where there is overwhelming financial repercussions. Betrayal by a trusted professional, with whom people have often had a long professional association (and some a personal or family connection) or an organization they believed was reputable, is devastating. At the outset, most people are in no state of mind to act on complaints on discovery of being placed in a highly precarious situation or having been wiped out.

It is not possible to do justice to this impact in a brief summary. However, the neuropsychobiological impact of extreme stress and trauma is well documented. Cognition is impacted as parts of the brain and nervous system operate under the stress response (fight, flight, freeze or submit). Concentration, memory, decision making and thought processes are affected. Regulation of emotions is impacted by neurochemistry alterations. Mood, tolerance level, and ability to handle overwhelming feelings of anxiety, grief, rage, terror, hopelessness, and powerlessness result in turmoil: serotonin and cortisol levels are thrown out of whack and even reversed. Consequent reactive depression, anxiety and insomnia exacerbate the problem: the cycle magnifies and compounds resulting in various symptoms which in turn drives a vicious cycle.

It may be helpful to consider from the perspective of what is recognized about the responses of someone in a bush-fire, or terrorist attack, or being raped, or hearing terrible life-altering news. The difference is the event is not over in minutes, hours or days but goes on for months or years upon years before the active, ongoing, threat ends. The threat is not merely financial and material (although the threat of poverty and homelessness is overwhelming). The threat of losing one's normal control and ability to have influence over what you have a right to in terms of your home, possessions, life-style, work, career, relationships with a level of trust in others and the world can result in debilitating anguish and despair.

Physical, mental and emotional trauma or disability can be assisted with good therapy, support systems and the right attitude. Indeed, it can even result in greater ability than so-called able-bodied people (consider para-Olympians) or greater resilience and inspiration (some survivors of the holocaust, bombings, child sex rings, torture, racism, children forced to be soldiers and so on). The human spirit is truly remarkable.

However, severe financial set-back or destitution has very different practical outcomes in general for someone in their 20s or 30s to people in their 40s and certainly people in their 50s, 60s or older. This is especially so for retirees or those approaching it. As the system stands in terms of redress, few older people will be able to live the life they worked for, far less financially recover, due to pragmatics: there is simply significantly reduced time, energy and opportunity. Research also shows that after earning about $70,000.00 income does not correlate to a sense of well-being and happiness. However, under that it certainly does. If your home, life-savings and retirements is effectively stolen from you, and you are on the down-hill run in life, it has significant consequences. Awareness of the black hole one has been thrown into adds to the initial shock: where and how will it end? What next when it ends?

In the case of victims of Holt and his collaboration with multi-lenders and multi-products, almost 8 years later, it has still not ended for some in terms of the end of the threat of bankruptcy or forced payment for deceptive debt or being able to retire ever. Many have been forced to *'settle'* debt in which they have deceptively been placed. They will be paying for it for many years to come, if not the rest of their lives. In these cases the immediate threat of demands is over but the chronic long-term threat of homelessness and destitution remain for many.

(2) **The second barrier is the necessity to prioritize stopping the financial bleed and deal with lenders and products demanding money**. Like vultures, they suddenly emerge - managing to locate the victim to obtain money they deem is owed - but having failed to make any contact as part of due diligence prior to entry into a product.

(3) **The third barrier depends on the extent of the losses and lack of ability or prospects to address the debt** – The greater the complexity and impact, the less able the person is to prioritize focusing on lodging a complaint. The necessity to continue to earn or increase income – or return to work – and scrambling to salvage what is possible and sell assets to reduce the debt takes precedence.

This often involves refinancing to borrow against equity, or having to sell the home. Selling ones home due to predatory, unconscionable and deceptive conduct is immeasurably distressing, soul-destroying and traumatizing. There is physical pain in the heartbreak. It is terrifying to be faced with homelessness and fears of basic survival when you expected to have the future and security you worked for as a productive, responsible, intelligent person – no different to the reader of this submission.

If people are lucky they buy a cheaper home. Many have to relocate – which involves an impact in losing one's community, social supports, and familiar anchor points. It affects children and their schools and friends. Research is required to document these affects and the short and long-term repercussions on all aspects of life, not merely financial.

Many have to rent having thought those days were long over. The shock of what is available for rent in terms of condition and prices (often considerably more than their previous mortgage) for the equivalent of student-type housing is humiliating, degrading and distressing. The loss of dignity in general is immense.

Others have to rely on the kindness of friends or family. While such generosity and empathy restores faith in humanity, in many wonderful and important ways, there are impacts on all parties.

Marriages and relationships typically suffer dreadfully and not uncommonly end: even, unusually, for people in their sixties and beyond. The impact on couples and their dependent children is hard to describe. It even starts at premature birth or participation in a newborn's life. Fathers have lost out on daily parenting as families fracture, breakdown and separate. Elderly parents fret about their adult children's plight. Some try to help financially; others feel

dreadful that they cannot. Yet others are not told of what has occurred and do not understand the sudden change in their adult child who is protecting them from distress over the situation.

All outcomes result in a loss of dignity and respect: there is no rallying of the larger community to offer care, concern and assistance as in other disasters or crises. It is an invisible, private cataclysm appreciated by few and sometimes no-one. Many feel humiliated and ashamed as do victims of other violations of power as these are safer emotions than rage, grief or despair. Humiliation and shame also stem from shock as people slowly but surely discover they literally *are* deeply disempowered and debilitated by the situation and the system's response. It requires considerable resilience which fails most of us at times and many much of the time.

Then there are the health impacts which go from acute to chronic: heart attacks, cancer, migraines, muscular-skeletal pains, depression, anxiety, insomnia and suicidality. Behaviour problems in children are well documented when parents are under severe stress. Pregnancy has also been impacted according to medical opinions resulting in premature birth.

People placed in overwhelming debt say that if they had understood at the outset, before years of trying to seek help and realizing it does not exist, they would not have tried to responsibly address matters but immediately declared bankruptcy. The trouble is decent people do not think strategically within the limitations of the system as it exists. As the system stands, the mistake victims make is to believe that they can, or should, try to deal with what they have been placed in and that culprits will be held accountable for the losses inflicted.

(4) **The forth barrier to pursuit of dispute resolution is the re-activation of trauma and feeling overwhelmed at the lack of understanding** of what occurred or how you explain, far less prove it. It can be paralysing. This skyrockets when multi-lenders/products are involved. It is a sense of an overwhelming maze which rapidly expands into realizing that no-one in a position of power, can or will, help you. Each avenue passes the buck to another in a roundabout maze going nowhere. (See Appendix C.)

(5) **The fifth barrier is not knowing where to go for help** – some people in HNAB-AG did not know an IDR was required to be in place. (Some knew about FOS. We had not heard of CIO or SCT until invited to participate in this review.) If you do not know a police force exists or a hospital you do not seek help. Of course, you do not pursue help if you do not have confidence you will actually receive it either.

(6) **The sixth is that ASIC, FOS, community legal centres, financial counsellors and (other unrelated) industry members discourage you from pursuing a complaint beyond the IDR**. You are warned its too time-consuming, costly, industry members have insurance and/or deep pockets and lenders will drag things out and appeal and have nothing to lose and do not care about their reputations. Repeated scandals reinforce they are all as bad as each other. Customers know they are captive and cannot really vote with their feet.

(7) **The seventh barrier is that even when people recognize the need to seek professional counselling to manage (if not address, whilst trapped in) the trauma, they often cannot afford it or meet inadequate understanding amongst health professionals**. There are not the same avenues, resources, receptivity, research or experience amongst mental health experts as other traumatic betrayals and abuses of power. One well known mental health expert, commentating on television about the need for a royal commission appeared to have no understanding of impacts, jesting that everyone has grievances with banks and calls for a royal commission was a bit of 'bank bashing'. Six months later he has not responded to a request to meet to discuss what is needed to support the mental health issues which result for many victims to varying degrees. Nor has another well-known mental health organization. Yet people, their families, and children suffer immensely as they struggle with the strain, lose their home, have to relocate to cheaper areas with new schools and communities and fracture with the duress. Pets have had to be given away as rentals do not accept these: the repercussions, grief, rage and despair is immense.

Question 7:

43. **Effectiveness of IDR in resolving disputes and issues around time limits, information provision or other barriers –** Mr Holt took advantage of the delay created in having 45 days before having to respond to a complaint under the IDR requirements. Mr Holt did nothing at all for almost all clients who report complaining. We are aware of one man who was able to achieve a small, but grossly inadequate, settlement. He had some industry knowledge. We do not know how many of the (at least) 500 people affected, lodged a complaint within the early months from late 2008 when the deception was first exposed. The fact that there can be a huge group, not merely one or two complaints, adds to the lack of likelihood of any meaningful response occurring.

44. In short, we understand a handful of people were able to obtain some settlement with Mr Holt through his grossly inadequate professional indemnity insurance of $2 million. By all accounts these were a few friends and family whom he advised to get in line quickly. However, along with many clients to whom he provided so-called *'professional services'*, many of his extended family (cousins) and friends were also left in dire straits and sent to the wall. One couple had a disabled child whom Peter Holt knew the parents were concerned to provide for him financially and were not willing to take any risk. He provided reassurance.

45. The key barrier to a successful IDR outcome is the notion that an industry member who is engaging in corrupt and deceptive conduct will seek to reasonably assist a victim. We do not allow rapists or murderers or other perpetrators of crime to engage in a dispute resolution operated by the culprit and associates. It is absurd to imagine that it would work in any scenario where a victim has been targeted, particularly where grooming has been involved over years. Most of Mr Holt's victims suspected gross negligence at first which was exposed by the GFC. It then emerged that deception or fraud was involved and included collaboration with lenders and products who, at best, failed in their due diligence. Had they done their due diligence, they would have stopped Mr Holt in his tracks. He could not have done what he achieved without their involvement or lack of due diligence.

46. An IDR may be useful in instances of human error but it seems fanciful to imagine these will fairly address deliberate targeting or systemic failures or provide proper restitution and compensation. The incentive of profit is far too great.

Question 8:

47. **The strengths and weaknesses of the scheme's relationship with IDR processes** - There may be value in an IDR where there has been a genuine error or mistake resulting in negligence or mishap. There is, almost without exception, no value where deceptive, fraudulent conduct is involved and where multi-lenders/products are involved. This includes banks and private firms.

Question 9:

48. **Ease of escalating a complaint from IDR to EDR schemes and complaints arrangements and to move between them.** In the experience reported by our members there is no ease in escalating a complaint to an EDR scheme. We cannot comment on the ease of moving between EDR schemes as we were not aware of anything beyond FOS and ASIC. Indeed, people report being thwarted at every step. (This presumes they had discovered the existence of IDR and EDR schemes of which, has been noted, many were not aware.)

49. In our experience the option to take a case to an EDR process after an unsatisfactory (or no) outcome of the IDR is next to pointless. FOS was limited by a staggeringly low cap of $150,000 (in 2008/9). Astoundingly, people report FOS expressed willingness to accept Mr Holt's refusal to provide the necessary documentation. FOS then declined to take on further cases early in the piece. Even professional associations are disinterested (despite their code of ethics). CPA Australia was disinterested in our information that conclusions, arrived at in disciplinary action against Mr Holt due to being a bankrupt, were patently false and inaccurate. Our efforts were dismissed at the highest level. CPA Australia merely accepted his testimony and formulated findings on Mr Holt's spin – not on investigated fact.

50. Describing our experience of ASIC as disillusioning or demoralizing would be an understatement. The set-back at all ports of call has been immense. Many fellow victims are amazed that a few HNAB-AG representatives have persisted in the face of years of disillusionment, and concerted efforts to misrepresent, deny or ignore information and thwart exposing the reality. We have countless letters of gratitude and expressions of being inspired. The vast majority of victims, entirely understandably, feel too battered, too overwhelmed and too hopeless.

51. In terms of the response of ASIC, it has been incompetent, disinterested and unwilling to address the concerns or engage in an open and transparent manner. It may have been, and may still be, under-resourced but in our experience this is not the issue. Before $120 million was cut it failed victims of Holt who were willing to provide documents and assist. It only banned Mr Holt for 3 years regarding his financial services licence despite his conduct fitting ASIC's criteria for a *10 year to Life Ban* and warranting criminal charges. He was, and still is, able to operate as an accountant. Most people sought accountancy help and he blurred the distinction between this and financial advice.

52. ASIC reveals its disingenuous stance in that it reported to a parliamentary joint committee that it was engaged in "*consultation*" with HNAB-AG regarding considering the possibility of criminal charges against Peter Holt. ASIC's "*consultation*" involved its fraud squad having one meeting with representatives of HNAB-AG in which we were informed there *would be no consultation*.

53. A summary of our experience of ASIC is included in Appendix A. It illustrates why we have formed the view that there is no confidence in ASIC whatsoever. The changes necessary to create trust and assurance require the establishment of a new, genuinely independent, one-stop shop body designed from scratch and dedicated to address all aspects of cases of unconscionable conduct or white collar crime. Involvement of victims in a meaningful consultative and collaborative process is crucial to success.

EXTERNAL DISPUTE RESOLUTION AND COMPLAINTS ARRANGEMENTS

54. While the aim of EDRs is to complete disputes in a more timely manner and at a lower cost than the adversarial legal system with a focus on 'fairness' and to identify and address systemic issues in an industry, from our experience this is patently not occurring in the financial services sector and banks, at least in terms of the type of multi-product multi-lender debt arranged with external accountants / advisers (permitted to advertise as "*authorized representatives*") such as victims of Mr Holt's firm/s. The literal, and metaphorical, buck is batted around, each industry party claiming compliance with obligations (despite the reality and ethical duty to fairness and the client/customer's best interests), denying any role and laying responsibility with other aspects of the industry - if not directly, or indirectly, engaging in victim-blaming.

55. People do not initiate action for reasons outlined previously or they withdraw for many of these same reasons (similar to victims of rape and family violence who consider pursing redress). It is overwhelming and distressing: normally competent people find themselves struggling to deal with various financial, personal, social, work, family and health impacts. There is little confidence in the system to provide accountability and justice. Adding to the difficulty, it does not adequately recognize or respond to their severe anguish and distress. Protracted uncertainty, being out of one's depth and months turning into years exacerbates the learned helplessness and is reinforced from the outset at every turn.

REGULATORY OVERSIGHT OF THE FINANCIAL SYSTEM EXTERNAL DISPUTE RESOLUTION AND COMPLAINTS FRAMEWORK

56. ASIC's oversight of EDR schemes to ensure they work effectively with consumer complaints is a dismal failure from our perspective. The results of cases pursued, abandoned or not even presented demonstrates there is little confidence it ensures existing approved schemes meet their obligations – or have adequate

obligations in the first instance. Certainly, they are not meeting obligations they should be required to fulfil in a fair and democratic society.

57. As outlined in the Issues Paper, EDR schemes may be required in the Regulatory Guide 139 to be free, meet minimum jurisdiction requirements, independent from industry, sufficiently resourced, have fair decision-making processes and adequate remedies, and be subject to periodic reviews. However, this does not appear to translate to adequate outcomes, at least for certain categories of victims.

58. As we understand it FOS is not entirely free. Certainly, of the 2 of our members who lodged claims, one had to spend tens of thousands of dollars on lawyers to understand what had occurred and prepare material to lodge. Taking considerable time from work, or declining work for those self-employed in order to obtain, understand and prepare material is not feasible for many: the task has taken years for some.

59. FOS is funded by industry members which creates a conflict of interest given we understand it is guided by those members in terms of how money is utilized. There must be equal input from victims, advocates and whistleblowers. There must also be a commitment to restitution as well as compensation where the victim had no responsibility for what occurred and was reliant on the right to trust the professional services he or she sought. This is also inextricably interwoven with the necessity for meaningful penalties with regard to fines which should cover losses incurred or risked and related impacts and suffering.

60. To be sufficiently resourced FOS (or any EDR) would need to deliver competent, swift and fair outcomes with sensitivity (i.e. founded upon treating people with dignity and respect and without unnecessary aggravation of trauma through lack of understanding and empathy). This applies to all victims of unconscionable conduct or white collar crime – not just those who feel able to engage. Consequently, a forensic accountant or financial advisor expert in the product/s is necessary to assist in order to compile and present cases, particularly when it is complex.

61. Refusing to take on cases because they have too many related to an industry member who will not provide the EDR with necessary documents should be cause for serious concern, action and recognition the system is failing. It is staggering FOS accepted it. It should subpoena documents or proceed in favour of the complainant. However, this does not address the discrepancy between the documents and how these were interpreted or presented deceptively.

62. We have no direct experience or understanding of periodic reviews being undertaken. However, victims have been left struggling to address prolonged ordeals in which they have been placed. This exacerbates distress, uncertainty and hopelessness with impacts including suicidal ideation, attempts and completions. It suggests such reviews are inadequate at best. Periodic reviews or audits must provide meaningful accountability and change in the financial system's culture and operation. This does not appear to be occurring or in any effective measure.

63. While schemes may be *required* to report on systemic issues and serious misconduct there is no mechanism to *ensure* reports occur or that ASIC *acts* on them. Mr Holt had been reported to ASIC prior to the GFC which exposed further activities. Some people rang ASIC to check before engaging his services and were told there was no concern. While ASIC is aware of the endless sector and bank scandals these persist.

Question 10:

64. **Appropriate level of regulatory oversight for the EDR and complaints arrangement framework –** in our view, the existing model is inadequate and fails to fulfil its intended purpose. ASIC is not competent. It has too many responsibilities. It is unwieldy and there is no transparency in the process. It seems that simple, cheap, practical mechanisms which should be in focus to safeguard and ensure a customer's welfare is met, are ignored in favour of complex, legal, issues which achieve little in terms of what needs to be at the heart of the matter. In brief, the concern needs to be about the *focus*, not necessarily the level, of oversight (we have no expertise about governance). Trust and confidence have been eroded so thoroughly that new structures, based on radical reform involving former victims, whistleblowers and industry experts, dedicated to dispute resolution and oversight is necessary.

Question 11:

65. **ASIC's oversight role and powers in relation to FOS –** in our opinion ASIC's failures did not relate to funding being cut as these occurred prior to our early experience. Its role and powers should be removed from these types of complaints. A new body designed in collaboration with all stakeholders – not the least victims – is necessary to translate to meaningful outcomes. Whatever body has an oversight role and powers, these should be related to compliance with clearly defined responsibilities in terms of practical measures designed to ensure the public are properly assisted, given accurate information and able to provide informed consent. We have no issue with profit being made: we take issue with this being based on greed and lack of ethics for customers' security.

Question 12:

66. **Consistent regulatory oversight of FOS, CIO and SCT (or any dispute scheme) –** consistent oversight is essential but not within the current framework or functioning of ASIC for the reasons outlined.

Question 13:

67. **Contribution of existing EDR schemes to improvements in the overall legal and regulatory framework and the possibility of enhancing their roles –** our experience does not reflect that existing EDR schemes have assisted or improved the legal and regulatory framework for people in our position i.e. victims left destitute or in high levels of debt due to multi-lender/products placed through an external accountancy / advisory firm. Without doubt the concept has considerable merit and value given the limitations of the law and the ability of an EDR to factor in ethics and reasonable conduct rather than be hamstrung by legal loopholes, limitations, costs and the capacity to appeal, dragging out interminably. The entire system requires

radical reform and restructure. Tinkering around the edges or making cosmetic changes will not address the rot.

APPROVED INDUSTRY SCHEMES: FINANCIAL OMBUDSMAN SERVICE AND CREDIT AND INVESTMENTS OMBUDSMAN

68. While the Issues Paper notes (item 33, page 9) that it is estimated FOS receives around 80 per cent of the banking, investment and insurance disputes in Australia, it must be underscored that these are only *reported* disputes. The number of cases of white collar crime which warrant investigation and resolution is likely to be significant in our experience. This distinction needs careful clarification in discussing data.

69. Only 2 of approximately 140 people in HNAB-AG are known to have lodged a claim with FOS. Further, there are *at least* 500 people who were amongst those in the last batch of Mr Holt's victims (exposed by the GFC – there have been others well prior). KordaMentha has cited 500 victims of Peter Holt placed in Timbercorp debt. Timbercorp was only one of numerous other agribusinesses and BT margin lending in which he routinely placed clients.

70. The cap FOS imposed of $150,000 at 2008/9 precluded many from participation in lodging claims. Had the cap then been $500,000 substantially more cases would have been reported but many would still have been excluded. Those victims who are most extensively affected in terms of ability to address or recover from financial decimation, loss of homes, life-savings and retirements or forced into bankruptcy, are left without real recourse. ASIC and APRA are not meaningful alternatives despite the governments rhetoric and apparent confidence.

71. We suspect most victims of the type of white collar crime related to multi-lenders/products we have experienced have not been able to be heard by FOS. Due to existing inadequate legislation these people are also forced by unscrupulous liquidators and lawyers to pay debt in which they were deceptively placed. Deed of settlements require victims to sign a confidentially or gag clause, not pursue further action related to the debt. KordaMentha's deed is noteworthy for containing false statements, inaccuracies, lack of certainty or closure, providing all rights for the liquidator to merely *"form the view"* of a breach (including impact on its reputation) to reopen a case enabling pursuit of the full original debt at 2009 plus years hence of exorbitant penalty interest) - while demanding the victim relinquish all rights to any defence. Consequently, these victims are captive and silenced from exposing the reality by the machinations of the same system which failed them from the outset.

72. Consequently, this data from FOS is grossly inadequate and effectively meaningless when it comes to those suffering the worst financial impacts. It is a significant factor in the invisibility of victims rendering them "*The Forgotten People.*"

Approach to dispute resolution

73. We recognize that the current intention is for Ombudsman schemes to choose the appropriate dispute resolution process for each matter and utilise a range of referral and case management techniques with the objective of providing fair and timely outcomes for consumers and scheme members. We have commented on the problem of an IDR in the case of private accountants / advisers' like Mr Holt or within banks. Consequently, it significantly aggravates distress and wastes time for many victims to encourage the scheme member to resolve the dispute directly with the consumer particularly where the consumer has already been through the member's IDR process or has cause to suspect it will be futile. Typically, lenders issue terse and intimidating communications referring the person to FOS (even when they know the loss exceeds FOS's cap limitation – and perhaps only because they are obliged to make the referral). They are masters of spin: it is cruel and insulting. It is galling to listen to the comments of bank CEOs made to media and parliamentary committees when you know from experience it is outright incorrect, untrue or a stretch or omission of facts.

74. It would be encouraging if *"In determining a matter, including the extent of loss or damage suffered by a complainant or disputant, the schemes have regard not only to the relevant legal principles but also to the concept of fairness and to relevant industry best practice"* as is noted in the Issues Paper (item 45, page 11).

Jurisdiction and monetary limits

75. Schemes designed to operate a monetary limit with a maximum compensation cap create a fundamental problem. The Issues Paper notes the maximum value per claim under a dispute that can be considered by FOS is $500,000 and the maximum compensation that may be awarded is $309,000 per claim for most disputes. While it is noted monetary limits may have increased over time after public consultation processes, and commencing in 2012, schemes must adjust the compensation cap every three years, the concept of a cap reflects a core part of the problem. It feeds lack of accountability and unfair outcomes. Money is the issue in question: it is not a crime unrelated to hard-earned income or right to retirement or insurance and so forth. Our home and related life-style acquisitions and choices have a monetary value and are impacted by white collar crime. Money is directly relevant.

76. Unconscionable financial conduct is not like murder or rape or glassing or a coward punch or grievous bodily harm or racism or crimes where no amount of money can return the lost or damaged or annihilation outcome. In those cases, money can only be *compensation* to assist humanely in going forward and address costs incurred. If someone abducts your child, you want that particular child back: it is not adequate to have it suggested that you can always conceive another one, or substitute by accepting another child. You may not ever be able to get your child back. Horrendous scenarios like this occur. However, money to the amount stolen, lost, risked with consequent costs and impacts incurred, can be calculated and replaced. Ethically, it should be replaced as part of the penalty imposed on the offender/s. The industry is responsible also for not having safeguarded the community in developing its own ethical standards of conduct and requirements. Ultimately, successive governments are responsible for permitting inadequate mechanisms and legislation.

Certainly full restitution of money does not compensate for the various aspects of life which are typically devastating, particularly for those whose cases have fallen through the gaping chasms in the existing system - many years later. They also deserve compensation.

77. We note in the Issues Paper (footnote 25, page 11) with interest, and dismay, that we had not been aware that "*schemes have some provisions for considering disputes exceeding this amount*". However, the condition that all parties must agree seems spurious as we sincerely doubt Mr Holt would have agreed to it, or the lenders involved – particularly when hundreds experienced the same complaints e.g. BT margin lending; numerous forestry and horticultural agribusinesses and management of SMSFs.

78. If culprits were fined 3-10 times the amount of the loss incurred – or risked - at their hands, and this was used to provide full restitution, plus compensation for the suffering and incalculable ramifications, as well as to contribute to a safety net fund for instances where the industry member had secured assets beyond reach of his or her victim/s, this would add significant pressure to bring about much needed change of culture in the industry. It is unlikely to be enough, however.

79. Zero tolerance of deception and fraud i.e. ban from the industry entirely (not merely loss of job with that organization which would effectively parallel moving paedophile clergy around districts), criminal charges, victim-informed design of proper informed consent for the products/loans involved, and participation in a Restorative Justice-style program by the offender, and related staff (including attendance of senior executives through to the CEO of the organization for 1 in 4 complaints) with executive salaries inversely linked to the number of cases and amount of losses incurred (rather than profit and shareholder benefits), would see the culture alter swiftly and substantially.

80. Immediate short-term increased costs would be expected to result in markedly reduced long-term costs as it would radically reduce the amount of certain major aspects of unconscionable conduct.

81. Exclusions to an EDR's jurisdiction should not involve the complaint exceeding an arbitrarily chosen monetary limit. This allows for the most serious and extensive financial crimes to occur. The legal system cannot be relied upon to provide justice: it is about debating, posturing, intimidating, loophole technicalities and game-playing. It can be drawn out with appeals and caters to the party with the deepest pockets, least emotional investment and most sophistication with the issue at hand: this is not the victim. Typically, those with the greatest resources and/or capacity to influence are more likely to succeed: it favours industry – thus protecting offenders.

82. Issues over the statute of limitations have been alluded to in terms of the barriers. Critically, the more sophisticated the deceit, the greater the number of products andlenders, the more overwhelming it is on a financial level. The amount of money does not always equate to the level of financial impact: the relative proportion threatening security is key. The more tectonic the financial and personal impacts (including initial response to pursue redress proving futile aggravating resultant physical and mental health impacts) the less likely misconduct will be pursued.

83. As touched on earlier, one of the authors discovered a margin loan had been taken out in 1999 in a company name set up by Mr Holt to *'safeguard'* her home. Another agribusiness loan, about which she also had no knowledge of whatsoever, had also been taken out in 1999 in that same company name. As she had no knowledge of these, when Mr Holt said she should take her home out of the company in 2004 as "*laws had changed*" claiming it provided no protection or benefit, she agreed for it to be altered and the company deregistered. (His motivation to remove the home later emerged as to access the substantial equity in order for him to obtain commissions in margin lending – which he falsely assured was a conservative, safe, blue-chip investment strategy). It is not known whether he forgot about these 2 loans he arranged in the company name of the home or hoped that deregistering it would hide their existence.

84. In addition, the victim had no knowledge that dividends had been paid into that company which she now cannot access as it is deregistered (the cost and energy to resurrect it pales in comparison with the priorities related to other aspects of the white collar crime to which she was subjected). The relevant point here is that these fell outside the statute of limitations. Even had they not, eight years of going backwards financially with the threat of bankruptcy continuing to persist, no help from the regulatory system, and only having begun to be able to try to understand the margin lending debt in the previous couple of years, means that it was not reasonably a path she could pursue.

85. Even if an expert in margin lending was able to take it on, the necessity to explain to yet another person how grooming occurred, the context and complexity of the larger picture is exceedingly and overwhelmingly daunting at best.

86. It may be helpful to parallel the plight with a soldier who has been fighting on the frontline in a war for 8 years (with no end in sight) and is suffering a peri-traumatic condition (due to the threat being ongoing, as the war is not over, it is not post-traumatic/PTSD). It requires tremendous effort often to deal with the re-activation of the trauma and not collapse into loss of hope – or to blunt feelings and operate from resignation, numbness and paralysis submitting to what feels too much to face. Hope is easily diminished if not battered out of you by the colossus of the power structure. It takes a great deal to address the anxiety, debilitation and despair. Endlessly repeating a complex story takes a toll when nothing changes. Industry members are not in a state of trauma. They have pat responses. They pass the buck to other regulatory avenues when pressed, knowing complex cases will likely end in the too hard basket and distressed victims will typically be pushed to their breaking point eventually and just give up.

Review of FOS' small business jurisdiction

87. It is encouraging that FOS has sought to increase its small business jurisdiction to dispute claims up to $2 million and to award compensation up to that amount. However, this amount should not apply merely to small business but to individuals who sustained losses in that region and deserve restitution and compensation. We have outlined previously why full restitution and compensation is necessary to change the culture apart from being the fair and reasonable outcome for a victim of predatory practices. We imagine that even $2 million is not adequate for small business but have no experience to comment further.

88. While we did not learn until the day of its deadline (23 September 2016) that FOS was seeking submissions to provide feedback on its proposals, we would not have prioritized it (had it related to individuals and not just small business) as there is no confidence an internal review would make any difference. Moreover, it appears it fails to address concerns in respect of assisting those it has failed with the previous limited caps.

Powers

89. It is our understanding FOS can do nothing about enforcing payment of compensation for those to whom it favours a determination where the industry member has secured assets beyond the reach of creditors (including utilization of a fake-debt sham bankruptcy, liquidation of the related company/s, off-shore accounts and placements of property and assets in a spouse's name or children's or trust companies). This was the experience of victims of Peter Holt.

90. The two people in HNAB-AG who lodged a claim and were awarded a determination in their favour have not been paid one cent. Meanwhile, Peter Holt still resides in his multi-million dollar home, drives a luxury car, plays regular golf and enjoys a life-style largely the same, it seems, to his life before his insolvency and bankruptcy. However, his former clients experience various levels of hardship through to apocalyptic life-altering distress with resultant severe personal, physical and mental-health impacts.

91. Capping non-financial losses at $3000 in the case of FOS adds insult to injury.

92. It is not reasonable to assume that complainants can seek recourse through the court system. The law is not necessarily about justice. People are deeply traumatized. They typically do not have the resources – financially, emotionally or mentally. Lawyers, often, do not understand the issues or complexity particularly with regard to multi-lenders/products. Repeatedly seeking avenues for assistance and meeting block after block is demoralizing, debilitating and re-traumatizing. It should not require superhuman strength, exact a severe toll on health such that many people report struggling with suicidal ideation.

Governance

93. We understand that both FOS and CIO are governed by a Board of Directors comprised of independent consumer and industry directors and an independent chair as required under RG 139. We note the roles of the Board include to: appoint decision-makers and ensure independent decision-making by scheme staff and decision-makers; monitor the performance of the scheme; provide direction to the Chief Ombudsman on policy matters; set the budget; and review and ensure effective consultation about changes to the scheme's jurisdiction, including monetary limits. It would seem that The Board is not fulfilling its role in adequately monitoring the performance of the FOS scheme given the concerns we have raised. We query the lack of input from victims, advocates and whistleblowers.

Funding arrangements

94. It would seem to raise a potential conflict of interests if the FOS Board determines the funding arrangements for FOS in consultation with members. We note that (item 57 page 13), "FOS is funded by its members under a 'user pays' model that charges members in accordance with their use of FOS. The fees consist of a membership fee, a user charge and dispute fees. Around 75 per cent of the funding comes from dispute fees. This means that funding is more variable year on year as it is more dependent on the overall number of disputes and a member with multiple and/or more complex disputes before FOS will pay a higher amount."

95. As is described with CIO it seems to make more sense to operate, where member fees funding it *"are tiered depending on the size of the member, and include an annual fee as well as case fees."* However, we may not understand enough to make useful comment.

96. Industry members should not have the primary say in how funds of EDRs are utilized, including caps on cases heard or compensation. This is like prioritizing the view of rapists, murderers, paedophiles, arsonists and terrorists about funding the running of the court system and disciplinary measures. This is not meaning to suggest all industry members are dubious or without valuable comment: many obviously have useful contributions; however, it must be balanced with the perspective of the victims, whistleblowers and advocates from ethical priorities.

THE SUPERANNUATION COMPLAINTS TRIBUNAL

97. We are unable to comment on certain aspects of the SCT having had no experience of it and no reports from our members. However, in our view a new system operating in the same format for different categories of financial complaints makes more sense when underpinned by transparency, genuinely independent audit and operated by highly trained and competent panels specializing in the product at issue. It would seem to be paramount that all Superannuation funds must participate in a genuinely independent process rather than be permitted to elect an EDR to operate disputes through.

98. Simple, efficient, competent, fair and sensitive avenues are required. In our view, fragmentation with different schemes and tribunals creates confusion, unnecessary complexity, enables lack of awareness of an option to persist and is more open to influence due to conflicted interests and lack of independence from industry.

99. As mentioned previously, the legal system with its loopholes and technicalities, and the lack of understanding of a product or industry matters by legal representatives, means this is not the most useful, and certainly not the fairest, swiftest or most humane route to resolution. While lawyers who are informed on the product category in dispute will be useful to assist panels with understanding of law, we believe the overarching guiding principle should be accountability in terms of the spirit of the law and ethical conduct. Otherwise industry will continue to manipulate its knowledge of the law with victims disadvantaged and re-victimized due to technicalities and loopholes. Drawn out game-playing and appeals must be avoided.

100. Deceptive and fraudulent conduct which does not fulfil current legal evidentiary requirements will persist, enabling vast profits to be made on the backs of innocent victims of white collar crime who are discarded on the scrapheap of the financial services industry, if it continues to be aided and abetted by the legal system.

101. While these schemes may require pursuit under relevant Acts (such as the SRC Act) of *"the objectives of providing dispute mechanisms that are fair, economical, informal and quick"* it does not seem that this is occurring. It may be in respect of SCT. However, HNAB-AG members who have complaints regarding how their SMSFs were handled did not know about the SCT. It would seem its reputation is thus not trumpeted as might be hoped.

102. Data regarding why a complaint was withdrawn, as well as satisfaction of the complainant, and independent audit of determinations, would provide invaluable information on the success of such schemes being meaningful. We strongly suspect that a high percentage of withdrawals would be due to distress aggravated by the overwhelm at endeavouring to present and argue a case. Perhaps *'settlements'* have been offered by which the victim feels it is preferable to accept something rather than risk nothing being the outcome. We doubt a settlement would be evaluated as a fair and satisfactory outcome based on responses surveyed to those through KordaMentha's Timbercorp's hardship program: only 1 person out of 127 felt it was reasonable. Survey data reveals serious and numerous concerns.

Jurisdiction and powers

103. We note the SCT can deal with complaints relating to the decisions and conduct of trustees, insurers, retirement savings account (RSA) providers, superannuation providers in relation to regulated funds (excluding self-managed superannuation funds), approved deposit funds, life policy funds, annuity policies and RSAs and that jurisdictional and standing provisions are set out in the SRC Act.

104. It is encouraging the SCT does not have monetary limits. We are not in a position to comment on the time limits noted.

105. We see the value of the SCT having the power to join parties to a complaint. In terms of an overhaul and design of a new system (for any type of financial service misconduct) it may well be useful to join parties who report the same, or fundamentally similar, conduct from the same industry individual or member. Pattern of conduct is clearly evident in the behaviour of Peter Holt and his collaboration with numerous lenders and products.

106. We believe that in cases where even a few victims of a member or organization emerge, all clients of that front-line person and the related product should be contacted by mail, by the independent dispute body, informing them of potential concern warranting examination of misconduct. The cost for notifying those potentially at risk should be borne by the industry member / organization.

107. It is encouraging to note the SCT has statutory powers to return the complainant to the position (as near as possible) prior to the dispute event. It is peculiar this does not apply to all products. All products, not just superannuation, deserve compensation as well as restitution given the variety of related impacts in

terms of suffering and practical costs. Particularly, where this has involved years of related costs and loss as well as other impacts.

108. Consequently, as a matter of integrity and ethics, which will increase pressure to change the industry culture, we believe any investigating panel should have the statutory power, in making a determination, to place the complainant into the position they would have been had the misconduct not occurred. This should also involve compensation for the suffering and inconvenience and any related costs incurred (e.g. counselling, time off work, travel and accommodation for those in rural locations, legal advice etc.). These costs should be covered in the penalty imposed on the industry member.

Governance

109. We understand from the outline in the Issues Paper that the "SCT consists of a Chairperson, Deputy Chairperson and no fewer than seven other members. The Chairperson and Deputy Chairperson are appointed by the Governor-General. Remaining SCT members are Ministerial appointments with two members appointed following consultation with the Consumer Affairs Minister" (item 68, page 15).

110. We cannot comment about governance beyond it being central to appointments that people have the competence and experience to fulfil the role with a thorough understanding of the issues particularly in the case of complex, sophisticated, multi-product/lender financial matters.

Funding arrangements

111. We understand as outlined in the Issues Paper (item 69, page 15): that the "Government provides an annual appropriation for the SCT in each budget. This appropriation is then recovered from Australian Prudential Regulation Authority (APRA) regulated superannuation funds via the annual financial sector levies determined by the Minister and collected by APRA. In accordance with subsection 62(2) of the SRC Act, ASIC, on behalf of the SCT, manages the SCT's finances within the designated appropriation, consistent with the *Public Governance, Performance and Accountability Act 2013*. There is no link between the volume of disputes involving a superannuation fund and the amount of levies that it contributes towards the operating expenses of the SCT."

112. In our view, penalties that are a multiple of the loss incurred or risked should be imposed on the lender/product / industry member involved. It is paramount there be a clear link between penalties imposed and accountability of an industry member. This would be used for funding full restitution as well as compensation for suffering and related impacts.

113. Further, where members to date have been enabled to fail to hold adequate professional indemnity insurance or have secured their assets beyond a creditor's reach (insolvency, bankruptcy, Trust funds, offshore accounts etc.) it would be used to fund restitution and compensation for those victims. It could also be used to fund the operation of the service. However, government funding should ensure the operation is secure and available to establish and run a new system.

COMPARISON OF THE EXISTING EXTERNAL DISPUTE RESOLUTION SCHEMES AND COMPLAINTS ARRANGEMENTS

Question 14:

114. **Features of existing EDR schemes and complaints arrangements**

We have taken the liberty of copying the table and footnotes from the Issues Paper to insert our opinion. Please note that areas marked 'P**ositive**' do not discount the possibility of a better alternative or improvements. '**Neither**' reflects our view that the application or translation of that fact depends on whether it has a positive or negative outcome. Some we marked '**Unsure**' due to our limited understanding or experience. '**Negative**' indicates our view this impedes, thwarts, delays or confuses the process.

We have highlighted the word *"resolved"* in red as a definition is not provided. People are often forced into settlements which is not resolving a matter but weighing up the stress and limitations of the system. We are aware people give up being demoralized, distraught, battered and intimidated into submission: this is not a *'resolution'* in the true sense of the word. The matter may be ended or concluded but still be unjust, unsatisfactory, unreasonable and unfair.

Responses are written into the table provided in the Issues Paper summarising and comparing key features of the existing EDR schemes and complaints arrangements:

	FOS	CIO	SCT
Governance and legislative base	**Positive**: set up as a not for profit company **Neither (given outcomes)**: FOS is an ASIC-approved EDR scheme. Financial firms are required to be members of an EDR scheme by law. It must submit to periodic independent reviews.	**Positive**: set up as a not for profit company **Neither**: CIO is an ASIC-approved EDR scheme. Financial firms are required to be members of an EDR scheme by law. It must submit to periodic independent reviews.	**Unsure**: The SCT is a statutory authority established under the SRC Act.
Relationship to IDR	**Negative**: Where a consumer has not undertaken or completed IDR, FOS will refer the consumer to the financial firm's IDR processes, and monitors complaints.	**Negative**: Where a consumer has not undertaken IDR, CIO will refer the consumer to the financial firm's IDR processes, and monitors complaints.	**Negative (on basis of rest of industry but no experience to comment)**: The SCT cannot hear a consumer's complaint unless the consumer has attempted to resolve the matter through the superannuation fund's complaints processes.
Powers	**Negative**: Established in FOS Constitution.	**Negative**: Established in CIO constitution.	**Positive**: Statutory powers set out in SRC Act.

Cont'd/-

	FOS	CIO	SCT
Funding arrangements	**Positive**: No upfront payment by complainants. **Neither:** Funded by industry, via a combination of membership fees, user charges and dispute fees. Dispute fees comprise about 75 per cent of funding.	**Positive**: No upfront payment by complainants. **Neither**: Funded by industry, via a combination of membership fees and case fees. Membership fees comprise around 70 per cent of funding.	**Positive**: No upfront payment by complainants. **Neither**: Budget set by government then recovered via annual financial sector levies set by the Minister and collected by APRA.
Models of dispute resolution	**Neither (given outcomes)** Majority of disputes resolved through negotiation/ conciliation. **Neither (given outcomes)** Operates different dispute resolution streams with several ombudsmen and adjudicators and a lead ombudsman for each stream.[1] **Positive**: Publishes final decisions and guidance documents.	**Neither (given outcomes)** Majority of cases resolved through negotiation/ conciliation. **Unsure**: The Ombudsman is the final decision-maker. **Positive**: Publishes final decisions and position statements.	**Unsure**: Combination of investigation, conciliation and decision by Tribunal members. **Positive**: The SCT publishes decisions.
Ability to evolve	**Unsure**: Terms of Reference can be changed after public consultation with stakeholders and Board agreement and approval by ASIC.[2]	**Unsure**: Rules can be changed after public consultation with stakeholders and Board agreement and approval by ASIC.[3]	**Negative**: Jurisdiction changes require legislative change.
Dispute resolution criteria	**Unsure**: In making its decisions, FOS does what in its opinion is fair in all the circumstances, having regard to: legal principles; applicable industry codes; good industry practice; and previous FOS or FOS predecessor scheme decisions (although FOS is not bound by these).	**Unsure**: In dealing with a complaint, CIO will have regard to: relevant legal requirements; applicable codes of practice; good practice in the financial services industry; and fairness in all the circumstances.	**Unsure**: The Tribunal makes a determination about whether the decision complained about was 'fair and reasonable' in the circumstances.

1 FOS decisions are made by ombudsmen, panels and adjudicators, depending on the types of dispute.

2 Changes to the Terms of Reference that are of a minor or technical nature do not require public consultation but must be approved by ASIC.

3 Changes to the Rules that are of a minor or technical nature do not require public consultation but must be approved by ASIC.

Question 15:

115. **Accessibility, and awareness, of EDR schemes** – as noted members of HNAB-AG were generally aware of FOS (or were made aware after discovery of the white collar crime) but no-one in the group of almost 140, including those with concerns about management of their superannuation, has reported awareness of CIO or SCT. Consequently, if these separate entities are to continue to operate (or any new one-body is established) there needs to be concerted efforts to raise public awareness as to where and how to access assistance for any financial sector or banking issue.

116. Raising awareness and educating the public about avenues for assistance and redress is another reason a dedicated body, designed and trained for genuinely resolving disputes (without duress, threat, overwhelm at not having qualified, competent, expertise to help present the case) is best achieved via a one-stop-shop rather than through various schemes. It would mean all operate with the same parameters in terms of competence, sensitivity, the objective of restitution and compensation when a case is determined in favour of the complainant, and devising safeguards and informed consent in relation to products and practices which have presented.

117. Awareness could be raised through TV, radio and bill poster advertisements. Most easily a notification with the annual tax return would reach most of the community. A leaflet required to be provided by all accountants, advisers, lenders and products on engaging with their service should be required and signed for to provide proof. School students could be provided with a list (preferably an app) of contact telephone numbers / websites for the most common abuses in our community. Guidance to help avoid what may be possible with knowledge, or to act when violated and taken advantage of, regarding family violence, sexual abuse, physical assault, bullying, workplace issues and financial abuse (from partner/spouse through to accountants and advisers and banks).

118. Accessibility is clearly a problem for people in rural or remote areas. Panels could travel to interview the victims although it may be most cost effective to fund the victim travelling to a city or major regional centre to meet with the panel. It may be worth trialling panel interviews via Skype but we suspect that would be limited. We suggest a new body be established and funds for penalties of offenders cover these costs including time off work (lost income or lost holiday leave, child-minding for duration of trip etc.). Where a case of alleged misconduct is not found to be established, the complainant could be required to cover his or her own costs. However, options for appeal and audit should be available first. If the complainant has attempted to defraud the system and it can be demonstrated he or she has made a false claim, penalties should involve meaningful fines and jail.

119. Care would need to be taken in cases where the complainant can be shown to have some level of reasonable responsibility too and was willing to take a risk or disregarded clear evidence of informed consent. However, a car owner cannot be blamed for a mechanic's unscrupulous tinkering to create a problem or falsely representing facts. Nor is the customer responsible for eating poisoned food at a reputable restaurant especially where it does not smell, look, taste or feel to be questionable. A doctor or surgeon's negligent, incompetent or inappropriate

incentivized treatment is also not the patient's fault. People should not have to research other fields of expertise to ensure a professional level of trust and competence appears to exist before proceeding: we pay professionals to have this expertise. People will research according to their own prior experiences or a public level of an index of suspicion. Prior to the GFC exposing extensive financial services sector and banking concerns, people did not typically discuss these issues far less their own personal financial and investing strategies and products (unless they were sophisticated financially – and thus able to better protect themselves).

Question 16:

120. **Ease of use and communication with EDR schemes and complaints arrangements processes -** The same barriers noted for IDR apply – in fact, more so. Utilization of FOS (and also IDR schemes) required knowledge of these. When someone discovers significant misconduct with substantial financial losses revealed and / or placement in debt for which risk was not informed or consented (indeed, directly stated as being unwilling to take), the person descends into a state of marked distress and trauma.

121. A significant part of the ease of use and communication depends on how much awareness and understanding of the problem the complainant has and what exactly has transpired. Nothing is easy when you do not understand the problem to be able to describe it. All you know is (something of) the loss or debt revealed. When previously you have asked questions endeavouring to understand, and been led to reasonably believe that you are informed, the discovery that this was fabrication sprinkled with critical omissions, is overwhelming.

122. It was almost eight years ago that one of the authors telephoned FOS. The six months after discovery of the situation are a blur for certain things. It is recalled that the staff member did not adequately appreciate the distress or trauma. One expects a call to a police station or 000 or a funeral parlour or such to meet an attitude of respect, sensitivity, appreciation of the gravity, if not the distress, and competence to provide clear answers and guidance. Certainly, you do not expect to feel disregarded, dismissed, disrespected or treated with minimal, or no, dignity and concern. This appears to be not uncommon

123. The notion it is helpful to suggest losses, above the cap FOS holds, could be heard through the court system is peculiar and disingenuous: it displays a lack of understanding of the reality of what occurs. It fails to appreciate the limitations of the law and each so-called 'option.' Equally demoralizing is hearing parliamentarians and commentators, as well as industry members and advocates appear to believe that genuine assistance exists for all instances of misconduct or unconscionable behaviour. It is easy to dismiss victims by referring them to another facet of the labyrinth as if it guarantees a fair hearing or outcome. If this is their genuine perception, it is another reason a Royal Commission into the finance sector and banking is urgently required. If they know their referral suggestions are not adequate, this in itself underscores the necessity of a thorough examination of the state of affairs. It is troubling that people who do not have experience or adequate understanding of such serious matters can make light of it and weigh in based on opinion rather than knowledge or facts.

124. In short, FOS does not appear to be easy to use or responsive to complex and extensive matters. People feel, and indeed are, invisible and without power or agency. There needs to be access to competent and expert professionals able to assist in presenting their case (i.e. a forensic accountant) to proceed.

Question 17:

125. **The extent EDR schemes and complaints arrangements provide an effective avenue for resolving consumer complaints -** If the definition of *'resolve'* is understood to mean meaningful accountability (i.e. offenders being held responsible and required to meet appropriate penalties required) with fair, ethical responses the outcome for the victim (which can only be considered as restitution and compensation) as well as safeguards established to protect consumers in the future through changing industry culture and practice, then FOS fails. It excludes those most hard hit financially in terms of their overall financial situation, not necessarily the amount of loss (for instance $1 million may wipe out one victim but be a small financial dint for another) or those extensively affected personally (resulting in inability to take action given distress). FOS cannot enforce awards it determines. It cannot apply penalties or impose disciplinary action. This is not effective resolution.

Question 18:

126. **The extent current arrangements allow each of the schemes to evolve in response to changes in markets or the needs of users** - We understand that FOS has increased the cap on hearing cases from $150,000 to $500,000, and hopes to award compensation up from a maximum of $309,000 and to increase the cap for both to $2 million. It would seem it has the *capacity* to evolve in response to the needs of users. However, FOS's will, interest and moral imperative are questionable as this is, far too little, far too late. There must surely have been instances of loss well beyond $150,000 prior to 2008. Beyond this, we cannot comment as we do not have expertise or knowledge. Perhaps the fact FOS is a private company and not a government body has also influenced its lack of motivation to take on the more complex and time-consuming cases particularly where inadequate PI exists or has been depleted.

Question 19:

127. **Appropriateness of jurisdictions of existing EDR schemes and complaints arrangements** - The fact that Greg Medcraft, ASIC Commissioner, has described Australia as *'a paradise for white collar crime'* demonstrates that these criminals are flourishing under the current regulatory and legal systems. Jurisdiction should encompass all financial crimes committed against the consumer/client. It should not exclude categories of victims or products or industry members.

Question 20:

128. **Current monetary limits for determining jurisdiction and rationale for variance between products -** There is no reasonable rationale for less than the objective of full restitution as well as compensation for suffering and related impacts. Banks cover credit card fraud and cybercrimes with respect to online account hacking. The type of product – or type of association with the offender (i.e. internal staff or external authorized representative/adviser) – should not alter the lender or

product issuer's responsibility for due diligence and appropriate checks, and hence responsibility.

129. Grossly inadequate monetary limits - or any at all - for disputes is not ethical. It is not helpful in the bigger picture of changing the industry culture. It places no pressure on the system to hold the offender accountable. Accountability must result in meaningful fines (to provide redress, cover dispute costs and hopefully, provide deterrent at least for many). Zero tolerance of offenders from involvement in the industry would be important also in providing deterrent. Scrutiny of their supervisors and protocols which failed to identify these activities is necessary with actions against those members equally imperative to take.

Question 21:

130. **Provision of consistent or comparable outcomes for users of current EDR schemes and complaints arrangements** - Outcomes should relate to the guiding principles the review panel noted in the Issues Paper and include the additional ones we suggest for the reasons outlined. As discussed immediately above, there is no valid reason for anything short of full restitution and compensation where it is apparent that efforts to obtain informed consent, a client's financial objectives and plans as well as circumstances and risk tolerance were not sought or respected.

131. Where gross negligence, deception or fraud is indicated, or a pattern of conduct across several or hundreds of victims (or more) is apparent, redress must be considered in the face of inadequate documentation that the loss was something that could have been averted and responsibility lies with the industry members involved.

132. While token amounts of compensation, or less than restitution, are considered acceptable outcomes by those who are not the victims, there is little reason for the system to change and take responsibility. Moreover, there is incentive to continue to engage in white collar crime given the profits. Victims have no issue with profits being made: this is clearly a crucially important goal. However, it must not be at the expense of innocent people and their families (or the economy longer term in relation to the social impacts). The proceeds of crime are not 'profits' and should not be conflated as such. This is another reason penalties must exceed the amount in question in a case: otherwise any lesser fine is effectively paid out of the money procured unethically or unconscionably with little or no impact on the member.

Question 22:

133. **Powers of EDR schemes and complaints arrangements to settle dispute** - Existing powers appear to be grossly inadequate if the experience of victims of Peter Holt and the lenders and products with which he collaborated are considered. There is no viable, appropriate avenue to address the consequences of their actions.

134. BT margin lending has escaped responsibility entirely.

135. Mismanagement of SMSF has been kept under wraps with no accountability.

136. We do not know the precise amount but multi-millions of dollars are involved on estimation given the numbers of largely 'ordinary' (i.e. hard-working, financially

unsophisticated) people who sought services from Peter Holt's firm which linked to numerous lenders.

137. Numerous agribusiness schemes collapsed after the GFC. We understand this had a great deal to do with government altering taxation laws which revealed these had been largely effectively Ponzi schemes. It should be noted that Mr Holt portrayed these as a *"vastly superior"* investment to superannuation and thus, to encourage people was *"government endorsed"* (explained as backed, not as related to product rulings as we later learned). We were led to believe our commitment supported farmers, was sustainable and ethical and boosted the Australia economy. People did not typically enter these as tax measures as is often the accusation. Mismanagement and disease seem to have been rife as revealed after 2008. Many crop projects were not even planted (so the money had not been spent) – yet people were pursued despite being deceptively placed in loans. (Adam Schwab's book, *"Pigs at the Trough"* Chapter 8 in particular, is recommended: available on Amazon.)

138. Not only have victims not received redress but they have been forced to pay for loans in which they were deceptively placed in part, or in full i.e. without any knowledge *whatsoever*. This is despite receiving no loan approvals and applications being blank or incomplete with false information (not in their hand-writing), witnessed by people never met and with no proof of informed consent or contact from the lender. Original documents do not always exist and are accepted at law allowing for adulteration and doctoring. Credit checks by lenders do not appear to have been performed – merely willingness to accept Mr Holt's claims on a client's behalf without question. People were required to sign documents as they do a tax return or licence agreement for software etc. unsuspecting misrepresentation.

139. We estimate losses of about $120 million in Timbercorp alone related to victims of Mr Holt. However, there are at least 5 other different groups (e.g. TFS, FEA, ITC, Rewards, Huntley) selling a variety of forestry and horticultural projects (avocadoes, mangos, olives, sandalwood, eucalypts, mahogany etc). Assuming they held similar amounts of money for projects this amounts to possibly $600 million in agribusiness. It must be underscored that obligations and risks were not adequately disclosed, were often grossly and falsely misrepresented and loans were taken out in someone's name entirely without their knowledge. (Further details are available from HNAB-AG.)

140. These concerns have not been 'resolved' – there is no accountability for these offenders. There is no redress for the victims – in fact, there is further loss where unscrupulous liquidators take advantage of their ability to apply their discretionary powers to the law to their financial advantage despite *also* having discretion under statutory obligations to waive debt in full as would be accepted industry practice.

141. KordaMentha is an example regarding its *choice* to exercise application of legislation in a further victimizing manner that other independent liquidators suggest general industry practice would not do given the deceptive and unconscionable conduct of Peter Holt's collaboration with Timbercorp. Further, Mark Korda (principal and liquidator for Timbercorp Securities) acknowledged to a senate hearing (August 2015) that the subset of people who had been placed in Timbercorp through Mr Holt should be treated differently, with as much empathy as possible

within the law. He made numerous commitments which have not been honoured to date. At the same inquiry, ANZ, the largest creditor, encouraged the liquidator (Craig Shepard for Timbercorp Finance) to treat victims of Mr Holt *"incredibly compassionately"* and *"very generously"* and *"as swiftly as possible"* in its so-called hardship program. Graham Hodges, Deputy CEO reiterated the position Holt victims should not be pursued or foreclosed upon at the first annual parliamentary "grilling" of the major four banks on 5 October 2016. Yet this continues to occur. Inaccurate and misleading senate testimony has not been held to account.

142. A genuinely independent audit of KordaMentha would reveal that settlements are often arbitrary and not consistent with wide discrepancies at times; some people have been targeted and penalized for their activism in the settlement amount demanded; matters have been dragged on unnecessarily for not just months but over 2 years; engagement with HNAB-AG representatives has been disingenuous and obstructive. As noted, testimony provided to the senate hearing has not been honoured by the liquidator or upheld by first or subsequent so-called *"independent advocate"* engaged by KordaMentha.

143. The liquidator's *"offer"* to provide a *"free independent lawyer"* – from a list KordaMentha selected (not the victim's own choice of lawyer) to go over the deed of settlement is further evidence of the system working against the victim. The *"advice"* has been clarified to merely *"explain"* the deed rather than to provide guidance as to victims' best interests. Effectively this means KordaMentha can claim to parliamentarians and media (as well as future court scenarios) that *"legal advice"* was offered free so the victim was informed and is thus responsible for accepting the terms and conditions. The primary lawyer has been John Berrill who is known in the industry for insurance work and has links to CALC hence could be portrayed as credible. However, his advice boils down to sign it or you will be taken to court and clauses are not negotiable (despite one stating they are). It is a farce.

144. Despite declining (in writing) to accept a writ being served by email (cheaper and quicker for KordaMentha) one man was served and as he was in the hardship program legal proceedings were meant to be on hold. However, he was erroneously taken to the Supreme Court without his knowledge. A judgement was obtained against him. Not only did the liquidator not take action to adequately apologize or compensate the man, but the first advocate, Catriona Lowe, and the *"free"* lawyer, did not make suggestions to him about his best interests urging him to sign the deed. They knew that as a consequence of the financial ordeal in which he had been placed, and personal and family impacts, he was struggling with understandable mental health issues and was hanging by a thread. Learning of the judgement brought him to the edge of ending it all. A year later, his deed of settlement is not finalized.

145. Another man, known to have attempted suicide, was first contacted by the advocate whose focus was to encourage him to accept a writ by email: not move forward on his case which has been lodged months earlier. There are countless stories which reflect serious concerns.

146. The hardship program has achieved some better outcomes than if it did not exist but for all victims of Mr Holt, these are poor outcomes at best. Worse, they are unnecessary had the liquidator exercised his statutory obligations according to ethics

rather than profit (and it seems, perhaps displeasure at being challenged). It is a further example of victims having no power, being at the mercy of the industry – and being penalized for speaking out for a fair and ethical outcome.

147. Further, there continues to be serious concerns about its deed. Catriona Lowe, the first "*advocate*" engaged by KordaMentha eventually resigned in May 2016. She expressed concern that continuing involvement lent implied endorsement to outcomes achieved. She stated it had been difficult to reach satisfactory outcomes in a significant minority of cases. She has also noted concern about inconsistency and transparency. Notably, reports about her replacement, Stephen Blyth have been that he effectively uses the protracted stalemate with the liquidator, Craig Shepard, resulting in tremendous demoralization and hopelessness, to pressure people to acquiesce to demands. There may also be a conflict of interest as KordaMentha is the liquidator for both Timbercorp Securities *and* Timbercorp Finance. Victims also have concerns about both advocates effectively accepting KordaMentha's position and not having advocated adequately on the basis of honouring testimony provided to a senate inquiry as well as ignoring guidance (he cannot be instructed) by the creditor's view or industry practice regarding discretionary power under statutory obligations.

148. The above provides a glimpse of some of the reasons the powers of an EDR scheme should include ability to:

(1) demand documentation from the industry member / organization (and make a determination on the basis of the complainant's report where it is not forthcoming)

(2) determine responsibility

(3) determine and enforce payment of penalties (a multiple of 3-10 times the loss incurred: the lower end for individuals and the upper end for lenders and major organizations with shareholders)

(4) implement zero tolerance and ban people who have engaged in severe misconduct from the industry with recommendation others are fired or closely supervised for a substantial period as well as salaries and bonuses of those directly involved and senior executives and CEOs being correlated inversely to complaints (not profit)

(5) recommend courts consider criminal charges

(6) award and enforce restitution and compensation (direct from the offender/s and/or a stop-gap fund contributed to by other penalties, the industry and government)

(7) hear cases regardless of the legal statute of limitations where it was not possible to know of the dispute or to seek redress due to other factors

(8) make findings public (respecting privacy and confidentiality of the victim's identity) including a clear, non-jargon summary which would concisely assist a general member of the public to understand the concerns and outcomes

(9) hear cases retrospectively for victims revealed by the GFC and others prior related to concerns about industry members.

(10) require participation of the parties, including senior executives through to the CEO (in 1 out of every 4 cases related to the organization), in a Restorative Justice-style program that is facilitated sensitively and competently, and aimed at:

(i) providing victims with an opportunity to be heard and state the impact on all aspects of their lives and to collaborate in outcomes which make their experience not in vain

(ii) educating offenders about the human impact of their conduct

(iii) providing offenders with the opportunity to apologize and make amends

(iv) educating senior executives through to the CEO about the impact of white collar crime and how it continues to occur in their organization

(v) require input on design of a 1-2 page, simple, clear questionnaire to establish informed consent and suitability of the product/s in question (through selecting Yes, No or Unsure) – these could be tested on other people who have those products and the general public to ensure they were comprehensive. [It would safeguard people as it would identify if the product is not suitable for a prospective client. He/she, the industry member and an independent witness (not associated with the industry member) would be required to sign and date 2 copies in each other's presence – with originals kept by the client and member and an electronic copy sent at the time to all parties. Failure to do so would null and void a dispute. This would also result in swift cultural and process changes in the industry.]

Question 23:

149. **Criteria used to make decisions** - The criteria to make decisions must be clear, ethical and adequate to evaluate whether the complainant's rights and responsibilities were met. Industry has a duty to place the welfare and best interests of the client at the centre. The fact this has to be stated underscores the issues.

150. **Criteria should relate to consideration of whether there is evidence the industry member:**

(1) Sought to obtain written financial goals, plans, circumstance and risk tolerance at the outset

(2) Sought to obtain updated and current goals, plans, considerations which would impact participating in a product

(3) Sought to understand what products appealed or did not and level of sophistication to engage with

(4) Assessed serviceability as well as suitability

(5) Obtained written informed consent for a product / loan (as outlined above – not merely provision of technical PDS with jargon and information not understood on a financial or legal level by those who are not sophisticated financial investors)

(6) Completed applications in full, and accurately, in terms of financial details for which he or she was responsible

(7) Gave appropriate advice given the above and with a view to diversifying a portfolio and respecting risk tolerance

(8) Provided a clear, comprehensive statement of position with respect to the client's complete portfolio, if acting in the role as primary advisor, and undated at least quarterly (or monthly as the client requested)

(9) Ensured the client's financial welfare and best interests were at the heart of the advice (as opposed to conflicted remuneration: commissions, trailing fees, gifts, bonuses, promotion etc.)

(10) Behaved in an unconscionable manner, taking advantage of his/her power (e.g. knowledge, position of trust and professional expertise, authority to act, contacts etc.) over the client's lack of financial sophistication or legal understanding.

151. **Criteria should relate to consideration of evidence of whether the client of the industry member**:

(1) Had been given the opportunity to document goals, objectives, risk tolerance, or be adequately informed to provide genuine consent

(2) Expressed concerns which were responded to in a manner which reasonably allayed anxiety or confusion (even if it was false or deceptive and could have been identified by someone with expertise to know differently)

(3) Can demonstrate reports of similar conduct with other clients of the particular industry member

(4) Has been failed by the system, falling through *'cracks'* (better described as gaping chasms) in the view of independent industry members who have examined some or all of the client's documents (this includes unresolved cases from the past).

(5) Can demonstrate (or reasonably be assumed) he or she was not complicit in responsibility: a difficult thing to do when meetings are not electronically recorded and no documents were required to be completed.

Question 24:

152. **Different governance arrangements** - The primary disadvantage of different governance arrangements is the potential lack of consistency, fairness and transparency. It would seem to increase complexity, confusion and fragmentation. It may also enable misconduct or vested interests to be hidden. Representation should encompass industry, consumers and former victims without industry domination.

153. It is paramount for dispute panels to comprise expertise in the particular area (superannuation, margin lending, agribusiness, investment loans, small business loans, income protection, health insurance etc.). However, it is equally paramount the objective in all disputes is accountability, meaningful penalty, restitution and compensation (for suffering, related costs and incalculable losses etc.). Where there is shared responsibility it must be clear the complainant acted in a manner willing to accept risk or in disregard of advice. In instances where both the industry member and complainant share responsibility for the outcome the accountability outcomes must be carefully attributed.

154. It is imperative there be genuine learning and practical measures to change industry culture and protocols: it is not enough for there to be rhetoric.

155. Those involved in governance, along with panels experts, should all be competent for the task.

Question 25:

156. **Current funding and staff levels** - Funding and staff levels could only reasonably be deemed adequate if cases were concluded to the satisfaction of the complainant and independent auditors within a specified period (we see no reason for more than 3 months at the outside to be required once a forensic accountant has gathered and prepared the material for examination).

157. Further, until cases which to date have been excluded by FOS on the basis of monetary limits or other reasons such as the refusal of the industry member to comply with requests for documentation (as Mr Holt reportedly did), have been heard, it cannot be said that there is adequate staff and funding. People in this situation have nowhere to go other than the court system which is not a comparable alternative even if they had the financial or emotional resources to engage in protracted, long-winded legal action.

158. Training and competence in conducting an investigation as well as appreciating the human aspects are essential to factor into funding and staff levels. Support is necessary for the well-being and mental health of staff to avert vicarious traumatization as an occupational hazard being exposed to repeated accounts of deception and the seedier side of humanity.

159. Funding must provide well-paid employment and conditions to retain staff and attract people with the expertise, competence and of the calibre required to act with integrity and dedication to changing the system. If it is not designed with the highest level of professionalism required it will result in high turnover, and worse, mediocre or unfair outcomes.

160. We have commented elsewhere on how we believe funding could be obtained and maintained.

Question 26:

161. **Transparency of current funding arrangements** - Unless former victims, whistleblowers, advocates, consumers in general and industry members are all involved in decisions around funding arrangements the potential for a conflict of interest in terms of industry influence exists. These should be made public and be available for review and consultation. It must be user-friendly and well-advertised so the ordinary citizen is aware of the facility for assistance with respect to misconduct and unconscionable financial conduct.

Question 27:

162. **Holding existing EDR schemes and complaints arrangements to account** - As we understand it ASIC is responsible for holding schemes and arrangements to account. However, the state of the industry and rolling scandals suggests accountability is not something for which there is adequate activity or enforcement. Ultimately, this involves responsibility of successive governments for the state of the regulatory system.

Question 28:

163. **Extent current reporting by the existing EDR schemes and complaints arrangements assists users to understand the way in which the scheme operates, key themes in decision-making and any systemic issues identified** - This would appear to be negligible. If systemic issues have been identified it does not seem to translate to substantial change. This is a key reason in our view, that a *Royal Commission into the Finance Sector and Banking* is urgently required.

164. Beyond these comments, we do not understand how FOS operates or key themes in its decision making or any impact it has had on addressing systemic issues it has identified.

Question 29:

165. **Measures to assess the performance of the existing EDR schemes and complainants arrangements -** We do not think continuing with the existing schemes and arrangement is the best course. There is little trust or confidence and too many people have been failed before they could even enter this process. We believe a new, clear, practical system guided by principles, agreed to by victims groups, whistleblowers, financial counsellors and advocates is necessary. Having said that, in our experience financial counsellors and consumer advocates do not always understand complex cases or the impacts.

166. However, whatever system is undertaken, measures to assess performance must consider the assistance given to the victim to provide redress and make amends as well as alter future protocols to safeguard the public regarding the specific product/s and hold offenders accountable in a meaningful way: this includes enforceable penalties, ban from industry (or where the conduct was minor negligence

implementation of supervision) and participation in designing proper, clear informed consent. It must also involve feedback about the interaction between the complainant and the EDR staff from outset to conclusion.

Question 30:

167. **Gaps and overlaps under the current arrangements** - Beyond comments previously made we do not think we can add to this. We imagine there are far greater costs in having separate EDRs in addition to the problems with lack of consistency and clarity in fair objectives which disadvantage the public. It could be addressed by eliminating the existing system and devising a new system along the lines outlined later in this submission.

Question 31:

168. **Multiple dispute resolution schemes and better outcomes** - Multiple schemes do not appear to be providing good, fair, outcomes. Rationally, multiple schemes do not seem inherently likely to produce better outcomes. We believe it is likely a waste of money and resources. It would complicate and fragment an already fraught experience. Consistency, independence, transparency and accountability are all essential for fair outcomes. Some victims of multi-product / lenders would fall under more than one EDR so this is not viable.

Question 32:

169. **Consumer confusion and existing arrangements** - We have mentioned that in our opinion, consumer confusion is, and will be, heightened without a well defined and reputable body designed to investigate financial integrity, or lack thereof, and address all aspects of a case and its implications for the industry and public.

Question 33:

170. **Insufficient jurisdiction concerns with respect to small business lending (including farming) -** We do not have the experience or expertise to comment on this.

Question 34:

171. **Impact of extension of unfair contracts legislation to small business contracts (once operational) or other recent or proposed reforms on EDR schemes** - We do not have the experience or expertise to comment on this.

Alternative models of dispute resolution

172. We are very keen to assist with recommendations about the merits and issues (including related to implementation) with regard to alternative models of dispute resolution. In our view, it is imperative that victims are integrally involved in the design, operation and evaluation of a one-stop-shop alternative model.

ONE-STOP SHOP

173. For years we have recommended a 'one-stop shop' model as essential to assist consumers seeking to resolve disputes within the financial system (finance sector and banks). The outline we have drafted would meet the potential benefits which have been noted also by other proponents of reducing consumer confusion about where to lodge a dispute, minimising the possibility of consumers being (dismissed and thus) referred between the schemes and (most importantly) ensuring consistency in process and outcomes, and realising efficiencies.

Triage service

174. We do not believe there is any value in attempting to overlay a 'triage' service on existing schemes. The reason for this is that it seems apparent the actual substance or operation of schemes urgently needs review and redesign to meet fairness and ethics. We understand (Issues Paper item 73, page 19) "Under this model, a one-stop shop would provide a single point of entry for dispute resolution for consumers, with information passing behind the scenes to the correct scheme. It would not require any changes to the resolution schemes themselves, merely a single application point for consumers, where notifications would be sent to the correct scheme. After making contact, consumers would be provided with information about how to pursue their complaint with the financial firm involved and they would also be referred to the dispute resolution scheme which was most appropriate for them."

Question 35:

175. **Triage service and impact on user outcomes** - This would likely have little if any real benefit other than that people who did not know about FOS, CIO and / or SCT would be informed of these. However, awareness is different to meaningful user outcomes: only a small percentage of victims of Mr Holt made contact with FOS and even less engaged or were permitted to do so. Being shunted from one place to the next does not engender confidence that there is willingness or competence to address concerns. It complicates an already highly stressful experience.

Question 36:

176. **Desirability of a triage service model of a one-stop-shop: run by, funded and providing referrals for issues beyond its remit** - We do not believe this would serve any useful purpose and see little to make it a desirable option. It would be just a further step and change nothing of substance.

One body

177. We strongly support the other model proposed which "involves creating one entirely new body, or integrating the existing schemes and arrangements, which would hear all consumer disputes in the financial system. As well as lessening consumer confusion, such a model would have the potential to simplify the overall framework, enhance consistency in outcomes and decision-making processes and reduce administration costs for regulators." We have made this same proposal in recent years to senate inquiries and on meeting with parliamentarians. Careful and considered design would be crucial. It should cater for new cases in the future as well as those which have been failed by the existing system. Involvement with victims of various products and lenders would be essential to ensure meaningful design.

Question 37:

178. **Determination of the number and form of the financial services ombudsman schemes by industry only** - Leaving industry to determine the number or form of schemes to provide a means to ensure financial integrity by way of implementing or overseeing accountability, redress, reform or related concerns is, strongly not recommended.

179. At best, it omits the critical input, insights and experience of victims, whistleblowers, consumer advocates, financial counsellors, researchers and others. Even whistleblowers and those working with victims may not appreciate the extent of impacts on victims or it may be limited to their field of product experience. At worst, it leaves the door open to undue influence of those with vested interests. There is no reason it would not continue to amount to similar disturbing institutional responses to sexual abuse in terms of denial, perpetrator protection and re-circulation as well as cover-up and victim-blaming such as occurred until recent years.

180. History has demonstrated the financial services industry's regulatory system is failing miserably: although the extent is yet to be appreciated. A Royal Commission is paramount in order to reveal the breadth and depth of the problem in order to address it. This must sit alongside a forum to urgently address cases and provide restitution and compensation.

Question 38:

181. **The desirability, merits and limitations of further integration of the existing arrangements** - The existing arrangements fail those most severely affected (i.e. misconduct-related significant hardship resulting in serious impact on well-being, physical and mental health, living arrangements, life-style, relationships, work, retirement etc.). The limitations of the existing system is that it does not address, fairly, or at all, the decimation or complete loss of life-savings, home, superannuation and/or placement in debt or bankruptcy. Consequently, there is no reason to presume amalgamation under one body, in itself, will result in better outcomes without thorough restructure based on review of all aspects of foundational principles, operation, objectives and feedback.

182. However, the merits and desirability of integration of existing arrangements are that if these underwent the necessary overhaul and radical restructure required

based on consistency of expectations and outcomes and so forth, it would allow for more transparent audit and monitoring. This effectively requires establishing a new body altogether. In our view, it makes more sense on every level to commence this afresh.

Question 39:

183. **Effective response to the unique features of different financial sectors and products in a one-stop-shop** – The value of national standards and evaluation of products is that the community can rely, to the degree those setting the standard are competent and acting with integrity, that these are safe and provide what is claimed. It makes it easier to assess and provide quality assurance. People know what is expected and what is not acceptable across products of a similar category.

184. Internal complaint processes and various external schemes purportedly established to address concerns have patently been failing the public. The clamour for serious attention has grown, particularly since the GFC exposed more of the relatively hidden underbelly. There is no reason the unique features of different financial sectors and products could not be addressed in a one-stop-shop. Indeed there is every reason that they not only could, but should, be addressed via one body. The organization or scheme or specific avenue is not the critical ingredient: it is the design of the investigating panel, their expertise and competence and the principles guiding them along with transparency. Each panel should include (amongst others) industry people with specific expertise in relation to the product/s in question. In this way the special features of the products can be understood in terms of requirements to meet obligations to the complainant. While differences between products are the determining factor in designing a scheme, it allows for principles and integrity to be secondary. This means certain people will continue to be failed. Worse, it invites misadventure and indeed, paves the way for the paradise that Australia is for white collar crime by catering to industry and minimum levels of response.

185. The overarching reformatting of response to industry in addressing 'disputes' requires that investigation of members, lenders and products be underpinned by the same principles of integrity, accountability, full financial redress and compensation, learning and change.

186. For many victims the word *'dispute'* betrays the industry's minimization and denial of what is for many, immense, at times cataclysmic, life-altering devastation beyond the financial. It is protracted over years on end. It can persist for the rest of their lives. The severity of the consequences of gross negligence, deception and fraud is not understood in much the same way that for decades the community at large did not appreciate the damage of sexual abuse or family violence, the innocence of the victim or the abuse of power of the offender. That began to change in 1970s Australia.

187. We no longer dismiss the impact, injuries or death of a victim of family violence as a result of a *'tiff'* or *'argument'* or *'a domestic altercation'* – we recognize it as violence or murder. It is a choice by the offender: the victim did not collaborate in that choice regardless of whether she or he was behaving badly too. We would not refer to a rape or sexual assault as *'consensual'* recognizing it is a violation of power and thus, is abuse. Whether a victim is randomly set upon by someone, or decides to

refrain from continuing to participate in what was consensual sexual activity, if the partner ignores it and persists or forces activity, it is abuse for which he or she only is responsible.

188. Similarly, in cases of either predatory financial grooming or opportunistic financial misconduct both are unconscionable deliberate acts of abuse of power. The gravity of this has not been reflected in the response of successive governments, or the regulatory system. These are not minor *'disputes'* but crimes of grave consequence resulting in mostly invisible, unrecognized and immeasurable impacts on personal, family, social, work and health, well beyond the financial. We recognize that a term is required to identify the concern: perhaps *'complaint'* is better as it focuses on the targeted person (the victim) rather than the denial of the offender in disputing the claim.

189. It is for this reason we suggest a change also in terminology of any future system. We recommend use of the word *'integrity'* and *'commission'* rather than *'scheme'* – the latter has connotations with plotting and planning to the benefit of one party at the disadvantage of another or others. Horticultural and forestry Managed Investment 'Schemes' have been revealed as dodgy Ponzi schemes. Elsewhere we have suggested something like a "*Financial Integrity Commission and Service*" with the acronym reflecting the need to make the objective to fix problems based on integrity. *'Commission'* underscores it has power and authority. The *'service'* component would relate to the paramount role of safeguarding the community in terms of transparency about misconduct and provision of adequate informed consent summaries (based on the learning from previous complaints). Substance, not name, is most relevant.

190. A one-stop-shop, genuinely designed to meet objectives which are failed in the current system, would be able to respect the important differences and unique features of sectors and products by incorporation of people with expertise within the composition of the panels. The potential for conflict of interests could be addressed by any industry member on a panel being required to recuse him or herself from a case involving an organization in which there is any alignment (including as a shareholder) unless disclosed and agreed. In other words, panels would require industry participants who are highly competently trained and experienced with the specific product/s in question thus meeting the need for an appreciation of the specific related features. Perhaps a second adviser, not familiar with the product but able to consider the view of the expert, would ensure the professional opinion is sound for panel members without financial sophistication. This could be addressed in the role of the panel chair.

Question 40:

191. **Suggested form of a 'One-stop-shop' -** While reform of the legal system is beyond the scope of these comments, the matters heard under the jurisdiction of a one-stop-shop would result in fair outcomes being based on independence, transparency and integrity if set up under certain parameters. Small highly trained and competent panels, which in turn would be subject to scrutiny through audit by specialized panels, accountable to meaningful governance in place and the public would ensure fair outcomes. Genuine facility for complainants to feedback in a meaningful manner would be part of monitoring and scrutinizing its operation.

192. Below we illustrate a proposed overview:

Suggestion for Financial System Complaint Resolution based on independence, transparency and integrity

<table>
<tr><td colspan="3">GOVERNMENT

Responsible for setting the framework and ensuring it works</td></tr>
<tr><td colspan="3">INDEPENDENT FINANCIAL ACCOUNTABILITY COMMISSION (IFAC)

Responsible for approval and oversight of FICS; random regular audit of cases</td></tr>
<tr><td>IDR

Firms are required to register with FICS to be able to operate and must provide a free IDR strategy (requiring provision of a written response to a complaint within 28 days)</td><td>FINANCIAL INTEGRITY COMMISSION AND SERVICE (FICS)

If the IDR does not resolve the complaint, or the complainant (or representative for an ill or deceased complainant) has reason to believe deception has occurred rendering IDR questionable it can be by-passed. FICS can be accessed for free for:

1. Financial services and banking

2. Credit and Investments

3. Superannuation

4. Small business lending</td><td>THE COURTS

Recourse can be sought through the court system if preferred</td></tr>
</table>

193. **Governance: Establish an Independent Financial Accountability Commission -** IFAC would be responsible to a committee comprising parliamentarians from all parties and a certain number of independents. It would present outcomes of audits which would be randomly selected by IFAC or requested by victims, consumer advocates or whistleblowers. Audits would be regularly and randomly conducted and unannounced. Findings would be published. The victim's identity would be confidential. The victim would be informed of the audit. Audit or accountability panels would constitute a forensic accountant, financial adviser, product expert and a consumer advocate. The complainant should be given the opportunity to comment with the support of the trauma counsellor.

194. Suggested Structure for a One-Stop-Shop (proposed name: FICS)

Suggested Structure for a One-Stop-Shop: FICS

FINANCIAL INTEGRITY COMMISSION AND SERVICE (FICS)

Board of directors:
Comprised of: Chair, parliamentarians, academics, industry members, whistleblowers, advocates. Consultation with a victims advisory service (to be established)

Role: Ensure ethical, competent and transparent operation

Chief Executive Officer
Role: Normal responsibilities and expectations of a CEO but perhaps best not from industry

Internal auditors – integrity and quality assurance
Role: Regularly, randomly review concluded cases; sit in on randomly selected cases in progress

Senior Co-ordinator for Case Preparation Teams and Panels
Role: Recruit, evaluate, assign and review panel members and case preparation forensic accountants/advisers

Case Preparation Team - Forensic Accountants and Specialist Counsellors
An expert forensic accountant or adviser (in product/s in questions) with trauma-informed training and a trauma counsellor (counsellor would continue on in the Panel during interviews and to provide support during the process) would be assigned to assist a complainant on making contact to:
Role:
1. Work with complainant to obtain, understand and present information and documents ready for a panel examination
2. Provide opinion if Panel decision is appealed or to auditors

Panels
Comprised of: 1. Forensic accountant (not CPFA who prepared case);
2. a) financial adviser or industry expert with experience of product
b) additional related FAs or industry expert/s in cases of multi-lender/products);
3. former victim of the product/s involved;
4. specialist trained trauma-informed counsellor
5. chair: to assume responsibility for the investigation and write up the decision

Numbers: must be adequate numbers of panels to conclude cases competently, sensitively and fairly within 3 months
Role: 1. ***Review*** material provided
2. ***Interview*** complainant and industry member/s in question for clarification
3. ***Assess*** whether industry member fulfilled ethical duty of care (e.g. client circumstances, goals, plans, suitability, risk tolerance, informed consent and presence of original documents: completed in full and accurately by member or client plus signed, dated and witnessed at the time with all present)
4. ***Determine culpability and hold accountable with enforceable penalties*** (e.g. fines a multiple of 3-10 times loss incurred – lower for individual, high for organization; life ban of direct industry member/s; independent supervision of enablers; referral to criminal justice system)
5. ***Determine and enforce redress*** restitution, and compensation for suffering and costs incurred, would be payable from the fine imposed (or an industry funded pool for those who fall through cracks e.g. FA has no or inadequate PI or has secured assets beyond creditor's reach – a stop-gap fund will quickly be built up with meaningful fines enforced - including for cases retrospectively assessed existing before new system is operational)
6. ***Contribute to a draft required of the industry member for a 1-2 page informed consent check*** based on the product(s) involved, written in plain, simple language (see #)
7. ***Publish case online*** (respecting victim's confidentiality).

Continued/-

FINANCIAL INTEGRITY COMMISSION AND SERVICE (FICS) cont'd/-
Required Participation in Restorative Justice-style program on conclusion of decision The complainant is given the opportunity to meet with the industry member/s directly involved as well as his/her senior leader in a facilitated forum to outline the impact of the conduct. It may be useful to have aspects of this occur at the outset and/or mid-way as well. The senior executives and CEO of the organization(s) involved are required to attend 1 out of every 4 cases related to their firm in order to be in touch with the human face of misconduct or practices which are less than ethical. This is necessary to change culture. The direct offender(s) - and related senior executives and CEO of the organization(s) involved - are given the opportunity to learn through taking responsibility for what occurred and to make amends in other ways beyond the fine for restitution and compensation and related remedies. The trauma counsellor (assigned at the outset on first contact) would facilitate. These should be video-recorded and where permission is granted by the victim used for teaching purposes within the industry and professional development programs. Shareholders should be given the opportunity to hear from victims at the AGM with access to such recordings anytime. They should receive monthly figures of numbers of complaints, percentage of satisfied complainants (not 'settled' or 'resolved' cases) and how much money was lost or risked and returned to the complainant.
Seek and address feedback regarding any aspect of process 1. **Initial Contact** – assignment to CPT-FA and counsellor 2. **Preparation of material** – interaction with CPT-FA and counsellor 3. **Assessment** - Panel interview 4. **Decision** – time involved, accountability, learning and redress of impact 5. **Restorative Justice-style program** – value and benefit 6. **Human concerns**: respect, dignity and appreciation of the ordeal
Option for Appeal – by independent body (IFAC) Requests, if founded, would alert to concern of a particular panel's conflict of interest, competence or related concern

Further detail re Panels – Role 6.# - a **1-2 page Informed Consent check** would require Yes, No or Unsure responses to be selected by the prospective customer to the key considerations for suitability and understanding of risk, obligations, conditions etc. All questions must receive a 'yes' for informed consent to be possible or require completion by the prospective client/customer. It would be signed, dated and witnessed by all present related parties to safeguard each. (It could also be electronically administered but would require an original copy signature.) The questions would be drafted to be designed in plain, simple language by the industry member and reviewed by the complainant for agreement that it would have protected him or her. All similar products would be required to provide this IC in future: industry would be informed via their relevant bodies as well as accessible (to all) on the FICS website. These could be distributed by email to members and required by law to be provided by product issuers and lenders as well as external accountants and advisers.

Informed Consent Checklist examples are provided in Appendix D and E (for margin lending and agribusiness respectively).

Question 41:

195. **Funding, powers and regulatory oversight and governance arrangements of a One-Stop-Shop**

(1) **Jurisdictional limits**

We believe that any matter related to the finance sector and banks should come under a new one-stop-shop body designed along the lines we have suggested. Clarity, effectiveness, transparency, timeliness, integrity and (genuine) independence are required in order to hold offenders responsible in a meaningful manner such that there is pressure to change the culture where moral compass and ethics is not enough to prevent greed from flourishing. Proper redress is essential. It is also necessary to ensure victims are assisted.

If negligence, deception and fraud is permitted to occur the foundation of the industry, society and national economic security is weakened. Care and procedures to ensure the customer / client's financial interests and well-being must be implemented and honoured. Errors will occur as we are flawed as humans. We should be responsible for our errors; hence industry members must be made properly accountable for those types of problems too.

196. (2) **Funding** - Two phases most likely would be necessary for funding to establish and operate a new one-stop shop body:

(i) **Funding - Phase 1**:

a). **Establishment** - initially a contribution from industry and government to set-up and operate a new system would be required until penalties charged covered costs. These should be a multiple of loss incurred or potentially risked: a minimum of 3 times for individuals and a maximum of 10 for organizations so that the penalty outweighs the benefit. It will not stop some individuals but we anticipate it will curtail many. Even if this does not stop the activities, it ensures victims are properly assisted.

b). **Retrospective redress –** must be provided for cases which have been in limbo or abandoned due to the current system and which have not been fairly or adequately concluded in terms of restitution and compensation.

As noted, successive governments are ultimately responsible for the regulatory system and inadequate response to patently grave inadequacies leading to massive scandals and white collar crime. Thus government has a financial responsibility to those who have been effectively abandoned, forgotten and displaced for years. Many people are now homeless and couch surfing or living in cars, tents and caravans or at friends or family. Many endure consequent mental, emotional and physical health impacts. Careers and work is curtailed, derailed or unable to be pursued. Numerous other personal impacts cannot be redressed by any amount of compensation, but deserve immediate assistance.

We underscore, victims include people who were previously as competent, functioning, talented and intelligent as the reader of this submission.

(ii) **Funding - Phase 2**:

Ongoing funding – would be met primarily through meaningful penalties charged to offenders (individuals and their organizations). Industry members should also be required to contribute as they have a role to play in regulation. Government contributions via the tax payer should not be the primary source.

While even 10 times the loss incurred or potentially risked may not be a sufficient deterrent for lenders and organizations with vast and deep pockets, substantial penalty payments may – and should - upset shareholders. This pressure may provide incentive to change the culture. If it does not, perhaps a higher multiple of loss or risk is necessary.

Review of CEO and executive salary and performance bonuses seems relevant. *'Performance'* should not equate to profit but ethics and promotion of a secure economy based on social responsibility. It would thus seem a way of ensuring industry culture is fair and ethical, is for the salary / bonus of a CEO or senior executive to be inversely correlated with performance in terms of the number of complaints and / or also the amount of losses incurred / penalties paid.

The fact there is no reliable funding for restitution and compensation currently must be rectified. Government assistance is required urgently and immediately (and could be paid back once a fund from penalties is established). This will apply pressure on government to ensure legislation and redress is adequate and that offending individuals, lenders and organizations are being held accountable. This would link to dissatisfied shareholders applying pressure for a change in culture to ethical practice to reduce losses through fines; industry colleagues will be more likely to report concerns or knowledge of misconduct (particularly if industry contribution for funding is reduced once the system is funded mainly by penalties).

197. (3) **Powers -** In addition to what has been outlined, for a meaningful response, powers must be:

a) **Full** - A complaint body should have the power to decide and enforce penalties and redress. The assessing panel is in the best position to follow through to these conclusions. It should have a sense of the human toll which could come from a victim impact statement or meeting. The immense impacts must not be buried in the invisibility of the current system where people are not even be asked for a *Victim Impact Statement* far less have the opportunity to convey in person the repercussions. The skill of industry to deny or minimize is extraordinary.

Powers should extend to penalties and referral to the court system. This includes any complainant who has engaged in deceit and made a false allegation. The possibility must obviously be considered although it is difficult to imagine this would be common. Powers should at the very least include recommendation for job retraining and supervision or dismissal for *minor negligence* (and publication of this and the organization's response). Preferably, in cases of deceit or fraud, we believe zero-tolerance is necessary resulting in a ban from operating in

the industry. Too many culprits appear to return, phoenix their operation and continue having learned more skills to play the system.

Mr Holt did not learn from previous ruin he caused victims before the turn of the century. He has boasted about bankruptcy as a strategy to get out of debt. While banned by ASIC from operating a financial services licence he could still provide accounting services. As we have noted, these were blurred with financial advice in the past.

b) **Freeze 'creditors' access to assets** - On lodging a request to enter the process, the one-stop-shop body must have the power to immediately freeze access by any creditor alleging a claim to the complainant's assets. To ensure a complainant is not using the system to secure assets beyond the reach of genuine creditors, he or she should also not be able to sell, transfer or access assets (which were not already in motion prior to discovery of complaint) other than the usual account/s for daily living. Access must not be permitted until the case is concluded and only if the complainant's case is not founded.

c) **Stop flight risk** - Passports of any flight risk should be confiscated until resolution of the case occurs (includes payment of fines). Customs should be notified.

d) **Retrospective redress** - It is essential a one-stop shop have the power to review cases which emerge after the statute of limitations (for the court system), or to take on those which currently remain in limbo having had no appropriate viable avenue available, or which are alleged to have been handled unreasonably by lenders or liquidators. We do not believe there should be a limit on this.

However, ***if a limit on acceptance is imposed***, given research about outcomes for people over 45 years of age, it should not exclude anyone who reports having to sell their home, or refinance it, to pay unconscionably incurred debt and who will be unlikely to be able to buy a home, or pay off their mortgage by 65 due to the financial circumstances in which they have been placed unconscionably.

Research by economist Dr Andrea Sharam of Swinburne University shows that if Australians do not have a foothold in the property market by the age of 45 they have probably "*missed the boat*" to own a home because of rising prices, sickness and unemployment risks, and (ironically for victims of white collar crime) difficulty obtaining a bank loan. The report "*Security in Retirement: The impact of housing and key critical life events*" showed that single mothers and divorcees in particular were exposed to seriously dire consequences for their retirement if they reached 45 and were not paying off a home.

Different pathways are revealed for men and women into rental poverty in old age (outlined as cost of care and gender pay gap for women and low educational achievement, consequential limited employment prospects and disability for men) beyond relationship breakdown and loss of home for one or both. Of course, white collar

crime does not discriminate in its victims. We have people in HNAB-AG who were on incomes of $40,000 through to people who were comfortably financially secure and some very wealthy. These particular factors are relevant to the impacts of white collar crime for people middle-aged and over. It should inform compensation.

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

Victims of white collar crime, through no fault of their own, must face the indignity and severe constraints of the aged pension and renting. This is despite having endeavoured to take responsibility for their financial well-being. Research into their plight is urgently required.

e) **Change legislation to halt payment on tax assessed as due, to the amount of loss incurred, until adequate restitution and compensation occurs and secure in a trust fund** - Full restitution and compensation (including for the protracted delay in concluding a case due to inadequate avenues and assistance) is a reasonable, fair and ethical outcome. Until that occurs, a modicum of alleviation could be provided to victims by holding tax assessed as due, to the amount of loss incurred, in a trust fund to contribute to compensation (including for the delay).

This could be an interim transitionary measure until a new one-body is operational or continue to be part of the government's contribution. It is unreasonable that victims should have to pay tax when the country's governments have failed them via inadequate regulation. At least it could be used toward compensating them (even if a miniscule amount in relation to losses). It may also place pressure on government to restore a trustworthy and professional finance sector and banks with adequate regulatory safeguards and responses.

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

tax also contributed) to the amount of the loss incurred as determined by the panel.

f) **Award proper protections, rewards and compensation to whistleblowers and others involved in exposing a case –** The capacity is essential to determine what is fair to honour and reward the integrity of a whistleblower and to ensure there are no financial repercussions and are provisions of compensation for costs or any retaliation (e.g. discredit in the media or industry etc.). These brave people should be encouraged, appreciated and lauded as the sort of Australians we want as role models: they should be rewarded.

Being faced with corruption, its tentacles and ramifications means burn-out, PTSD and other mental and physical health consequences are an occupational hazard for whistleblowers, investigative journalists or anyone who takes an active stand to expose it and the immeasurable impacts on victims and their families. The media coverage our farmers finally received touches on the harrowing ordeal of corruption and corporate greed and lack of humanity or care.

There needs to be funding for trauma counselling for people helping to expose matters. It should be part of determining the penalty imposed on an offending industry member or organization. It should also be part of compensation for victims: many have spent many thousands of dollars over a period of years due to the compounding trauma of their unresolved case – not just the initial problem. Regrettably, others do not seek the professional help they need because they are concerned about affording it given their situation. These people are at risk of longer term mental and physical health impacts due to the consequences of severe, unaddressed stress.

g) **Other identified concerns** - Any potential loophole that has been identified in the current system should be addressed with appropriate statutory power in place and discretion of panels.

h) **Publish reports (including the financial and human impacts) and make available for consideration of a Royal Commission –** A new one-stop-shop designed along the lines suggested would not replace the need for a Royal Commission: indeed we are confident it would highlight the necessity one occur immediately given the extraordinary extent of unconscionable conduct and the galling fact that the current system silences and excludes a large portion (if not the majority) of those who are affected the most severely financially and/or personally.

It has been too easy for white collar crime to be denied, glossed over, minimized and ignored.

What occurs in Australia is not adequately understood. On telling their story to members of the community people in HNAB-AG have frequently had the response that it is shocking and alarming to hear this level of corruption is possible in Australia. It is only expected in

developing or undemocratic countries. It seems the difference is that the cover-up is substantially more sophisticated in Australia.

197. (4) **Regulatory oversight and governance arrangements**

In our opinion, a new body in the role of approval and oversight is required at least in terms of addressing complaints from 'consumers.' As noted earlier, we suggest it be called something like **IFAC**: ***Independent Financial Accountability Commission*** and have the power (professionalism, competence and commitment) to regularly and randomly audit cases heard through the one-stop-shop organization proposed.

Our experience of ASIC provides no reassurance or confidence in its ability, interest or competence with the type of white collar crime to which we were subjected. Staff turnover appears to be high and / or we were shunted from one staff member to the next. Staff did not appear to have access to records or relevant information previously supplied about Peter Holt. Nor was there generally adequate understanding of, or response to, the ordeal people endure.

The matter of a Security Bond of only $20,000 held by ASIC in case *'a'* (single!) complaint was lodged against Mr Holt is revealing. Staggeringly, ASIC had not conceived that, or catered for, a major offence being committed or indeed against hundreds of clients. Further, ASIC did not inform victims of Mr Holt of its existence. The interest accrued of $12,000 on the Security Bond was not available to Mr Holt's victims: it was to be returned to him (or his insolvency Trustee). Thus, it effectively cost Peter Holt a mere $8,000 of his money to satisfy ASIC there was protection in the event of *'a'* complaint! To our knowledge, the smallest loss incurred by one person was $30,000 so ASIC's Security Bond would not have adequately assisted even one of his victims. The Security Bond fiasco illustrates numerous concerns with ASIC (further details available; also see Appendix A).

AN ADDITIONAL FORUM FOR DISPUTE RESOLUTION

Question 42:

198. **Benefit of an additional tribunal to improve outcomes for dispute resolution –** It is deeply disappointing that today, the 7 October, the actual deadline date for submissions to the EDR Independent Review Panel, Prime Minister Turnbull saw fit to announce a banking tribunal would be established. This is his response to reactions over the "grilling" of the 4 major banks by a parliamentary committee. Alarmingly, this pre-empted and, thus, was without regard for the conclusions and recommendations of the EDR Independent Review Panel. The fact that 3 of the 4 banks agreed with the plan for a Tribunal (and appeared to have had discussions with government about it) adds to concern that the format will not be an adequate avenue for victims.

199. We are unclear as to whether this tribunal would include concerns with banks where external accountants and financial advisers (often advertised as *'authorized representatives'*) were utilized to procure business and which took over, or securitized, loans as well as other concerns about the financial sector. It is essential these victims do not remain stranded, abandoned and forgotten. Those forced into settlements under the current system and legislation must be able to have those cases examined.

200. For any such tribunal to work and not be another version of what it exists already, it must not be legalistic, adversarial or involve cost to the complainant or leave him or her without genuinely independent industry assistance to prepare the case. It must also be contained within a timeframe and provide restitution as well as compensation. It should not be open to legal appeals. The finance sector and banks must not have control or influence over its operation or outcomes. In short, it would need to meet the parameters we suggest for a new one-stop-shop body as the way forward with it being an interim measure until that is established. We would vehemently oppose any Tribunal established to operate with the noted limitations.

201. We sincerely hope government will genuinely, carefully and thoroughly consider the review panel's recommendations. While we do not know what these will be, we are encouraged that the panel saw fit to meet with us and invite a submission. We remain of the conviction that it is paramount government (and other parliamentarians) meet with victims in order to hear their stories and ask questions. We have sought this opportunity before and will continue to plead to be able to help government appreciate inaccurate assumptions, unrecognized concerns and impacts as well as other insights from our perspective, rarely noted by commentators.

202. In relation to comments in the Issues Paper (pages 20-21) we may not understand enough about disputes over small business loans to respond from an informed position. However, it is our view that the principles of investigating a case, determining accountability and redress are the key components to successful and fair outcomes. In other words, it does not seem to make sense that the product (i.e. small business loan or insurance policy or investment loan etc.) should be the focus of a tribunal or dispute process as much as the principles guiding the examination and outcome of any complaint related to the finance sector and banks.

203. Terminology may confuse the ideas and vision at issue. A tribunal that operated as a process to review or audit or assess what essentially would be an appeal, where a complainant is dissatisfied with the outcome, has an important place. In our model we have structured this ultimately as the 'Independent Financial Accountability Commission' as well as suggested another panel within a one-stop-shop body under the parameters we outlined, could address the need for a (genuinely) independent review. These also should be transparent and published.

Question 43:

204. **Desirability of a tribunal in relation to existing EDR and complaints arrangements –** as we assert a comprehensive and appropriately designed one-stop-shop could address the concerns of various products and industry sectors in the composition of panel experts. Whether it is called a *'scheme'* or *'commission'* or *'tribunal'* is only relevant in relation to what constraints or powers are legally

attributed. We do not understand enough about those matters. However, a *'tribunal'* appears to have a legalistic basis. This is precisely what victims wish to avoid as it is the letter of the law with its loopholes and technicalities, not the spirit, along with who has the deepest pockets and resources, which tends to influence outcomes. This places the industry at considerable advantage yet again.

205. In our view a new system requires a one-stop-shop empowered to obtain documents, interview parties separately and facilitate discussion between them in order to effectively ascertain in a respectful (non-adversarial) manner and decide on the consequences. Ethics and requirement for duty of care and due diligence should be central.

206. The law does not always result in justice or promote ethics. It is about which party can afford the best debater of technicalities and / or intimidate the other party into acquiescing. "*Settlements*" enable culprits to avoid prosecution. They hide their activities and continue on, paying much less than the losses inflicted or related impacts on victims. White collar crime at their hands goes unrecorded. Transparency and accountability are required for personal, social, and financial reasons.

207. It is for these reasons also that in our view monetary limits and compensation caps must not be permitted.

208. It is reasonable there be an appeal process given panel members are human and errors may occur. The existence of other panel participants should assist in reduction of this whether genuine discussion and engagement occurs. As outlined, another panel could review the case (with names of the original panel, and reviewing panel, withheld from each other). If dissatisfaction continues it could then be sent to the oversight body whose decision would be binding. Panels whose conclusions are found to be in question should undergo retraining, close supervision and ultimately dismissal should the concern cast doubt about professional conduct or if it continues beyond a level determined as reasonable human error.

209. Advocating for improvements in industry behaviour (such as along the lines of signed and witnessed informed consent checklists referred to earlier – see Appendix D and E for examples) as well as changes to the regulatory framework should be a key role of any resolution focused body as well as restitution and compensation. There is no reasonable rationale for a monetary limit or capped compensation only and with no restitution. We suggest that people who understand the issues pertaining to this would recognize the need for a thorough expose of the industry and those who do not recognize the problems reinforce why there must be a royal commission.

Question 44:

210. **Role of the Small Business and Family Enterprise Ombudsman** – as suggested this is seen to be best incorporated in a one-stop-shop model operating from the same principles.

OVERSEAS DEVELOPMENTS AND OTHER SECTORS

Question 45:

211. **Consideration of best practice developments in dispute resolution arrangements in overseas jurisdictions and other sectors** – We have limited knowledge of what occurs overseas. However, we are aware of the United Kingdom's Financial Ombudsman Service and that it consolidated previously separate schemes. We were not aware of the UK's *Financial Services and Markets Act 2000* which the Issues Paper noted created a consolidated statutory dispute resolution scheme.

212. We do not support the approach noted in the Issues Paper that the Financial Ombudsman Service is limited to hear complaints which fall within its jurisdiction from:

- consumers;
- a micro-enterprise - an enterprise that employs less than 10 people and has a turnover or annual balance sheet that does not exceed €2 million;
- a charity which has an annual income of less than £1 million;
- a trustee of a trust which has a net asset value of less than £1 million.

213. Nor do we support the cap on a maximum money awarded in the UK (of £150,000) exclusive of interest and costs. Nor do we support the respondent not being liable for the full amount and compensation as well as penalty of a multiple of the amount at risk or lost. We have outlined at length why we strongly oppose this view.

214. Any developments overseas which are based on the guiding principles addressed earlier and which result in a swift and meaningful change of industry culture, returning victims to the position they would be in, had the unconscionable conduct not occurred, and mindful of the often inordinate related suffering and anguish, deserves to be carefully considered for responsible and ethical review. The industry has the capacity and responsibility to provide full redress financially (i.e. restitution) plus compensation. Until and unless industry offenders incur greater cost than they benefits from, there is little incentive to change.

Question 46:

215. **Particular features of other schemes or approaches that would improve use outcomes** – from our limited knowledge of what occurs overseas, we can only comment on the idea of consolidating EDR schemes in the sense that one service or commission exists – not in the sense that they still effectively exist as they have been. In our opinion a new name (not the Financial Ombudsman Service 'FOS') is necessary because of the association with the current name which is not helpful but limited and selective. It would also confuse people and result in dismissing its relevance or benefit without substantial efforts to re-educate about, as well as promote it. Further we understand FOS is a private organization rather than a government body hence this may present problems.

Other issues

UNCOMPENSATED CONSUMER LOSSES

Question 47:

216. **Uncompensated consumers after determination awarded** - While it is the case as described in the Issues Paper (item 86, page 24) there is the intention that - *"All Australian financial services and credit licensees who provide financial and credit services to retail clients must have arrangements for compensating those clients. Generally, this means holding adequate professional indemnity (PI) insurance unless an exemption applies or a licensee has alternative arrangements approved by ASIC."* However, it is most certainly not the reality. Industry regulation and successive governments are ultimately responsible for the catastrophic consequences for victims of this being enabled to occur.

217. As noted, the 2 couples who are members of HNAB-AG who lodged a complaint through FOS were awarded a determination in their favour; however, they have not received a cent. The actual determination has meant a great deal to both as it helps deal with the victim-blaming and feeling that at least part of their substantial losses has been vindicated as real. Their claims did not address the full extensive losses they incurred as they far exceeded the cap FOS imposed: hence only one investment complaint was lodged to meet this limitation.

218. FOS had no power to do anything about the fact Peter Holt held grossly inadequate Professional Indemnity insurance of $2 million (yet had at least 500 known clients amongst those impacted as revealed by the GFC – there were earlier victims who are now known to us). He was insolvent, and has secured his multi-million dollar assets beyond creditor's reach (while still residing in his multi-million dollar home and driving a luxury car despite being a bankrupt and liquidating his company – not for the first time).

219. We note that on claims since 1 January 2010, the Issues Paper lists (item 87, page 24) that 32 financial firms have been unwilling or unable to comply with 137 determinations made in favour of approximately 194 consumers. This will be a speck in the ocean when it is considered in light of the percentage even just amongst HNAB-AG members who were not even accepted by, or put up for investigation by FOS.

Question 48:

220. **Addressing uncompensated consumer losses** – As mentioned earlier, people who have been left uncompensated – as well as those excluded from determinations who deserve to be assessed properly – could be provided for through a safety-net fund contributed to from penalties as a multiple of losses incurred or risked. In the meantime, government ultimately has responsibility for regulatory failures and has a responsibility to provide funding urgently. It could be repaid, at least in part, from the safety-net fund once established. It is also imperative that the lenders and

product issuers be required to immediately contribute to meet this gap. At a minimum, a *Retrospective Compensation Scheme of Last Resort* should be urgently established in the interim until a new one-stop-shop body can assess cases which have had no real avenue, and award full restitution along with compensation for related suffering and impacts. This would enable people to better cope in their situations and give some hope and practical assistance. The additional costs of compounding losses would be reduced in terms of the compensation aspect of suffering with this facility implemented as soon as possible.

221. We have outlined our strong view that imposing penalties of a significant multiple of loss incurred or risked is essential for several reasons including as a way to fund restitution and compensation when an industry member has been able to operate without adequate cover or engage in strategies to place assets beyond reach of creditors. Jail sentences for those members who have not provided adequate means to restore their victims to the position they deserve to be in, and endeavoured to take responsibility for in seeking professional services, is a reasonable outcome. It may deter people. Hopefully, it may result in certain offenders choosing to release their secured assets to avoid the penalty of jail for failing to have adequate cover.

222. The situation in which victims of white collar crime have been placed is a result of inadequate regulatory safeguards which are ultimately the responsibility of successive governments.

223. The potential for consumers not to be compensated is not the only factor which, ethically, deserves attention. Restitution for gross negligence, deceit and fraud is paramount in terms of the victim's rights and the necessity for accountability and pressure to change the industry.

224. A thief has a significantly more easy, cushy, comfortable and relaxed experience stealing from victims, if he or she enters through the front door as a so-called industry *'professional'* with nothing more than a pen, scanner and computer than with a gun or other weapon. Moreover, it seems that not only will he or she be less likely to be prosecuted or held accountable in any meaningful way (including loss of job) but may be more likely to be promoted, praised and financially rewarded with 'performance' bonuses for what they rake in. These industry members are well-healed criminals in suits. They are far better protected in acquiring money via deception and fraud than the stereotypical, balaclava covered, gun-toting thug.

225. Further, it was beyond the capacity of members of HNAB-AG to take on the lenders or product issuers involved for their collaboration through legal action. Some tried taking action internally or through lawyers. Claims, as noted earlier, have been dismissed out of hand by IDRs and lawyers were reluctant o pursue anyone other than Mr Holt. When it became evident he had secured his assets beyond reach lawyers were not interested. The same is true of BT margin lending, CBA, ANZ, NAB, Bendigo Bank and numerous subsidiaries.

226. We underscore, that Peter Holt – like many unscrupulous accountants and advisers - could not have gotten away with what he did had the lenders and product issuers done their due diligence. They have substantial responsibility, even at a level of negligence, far less active collaboration.

Question 49:

227. **Statutory Compensation Scheme of Last Resort – must be Retrospective -** The idea of *'compensation'* being the prime objective, as if it is reasonable, is deeply concerning. The notion of a *'cap'* is unreasonable and unethical; it also invites corruption in the system to continue. Comments have been made at length elsewhere in this submission as to the rationale for this view.

228. However, until reserves are acquired through appropriate penalties and contributions from industry and government, it is essential there be a compensation scheme in the interim. It should not prevent people from being assessed in a one-stop-shop once established.

229. Moreover, there must urgently be a ***Retrospective*** **Compensation Scheme of Last Resort** established at an absolute minimum for those people who exist already and have been left severely impacted. In these situations bankruptcies should be annulled. Settlements people have been forced into under duress must be factored into losses. Liquidators and others should not be able to access money awarded in compensation (or restitution). If ethics do not prevail and a cap is applied, there should be flexibility to make additional payment to people who were required to sell their home and have not been able to buy another and are unlikely to be able to do so given their age or circumstances. It must enable these people to buy another home to the value of that property if it were to be sold in today's market (minus the mortgage owed at the time provided that loan was not part of the misconduct). It must also assist people who have had their savings decimated and been required to refinance in order to reduce or pay deceptive debt. Those whose superannuation has been lost or decimated should also receive further compensation.

230. **Impact of Compensation Schemes on other parts of the system e.g. professional indemnity insurance** – Compensation Schemes should not substitute for PI insurance. An industry member with inadequate PI or reported inability to pay penalties imposed (of a multiple of loss incurred or risk taken) should be subject to a lengthy jail sentence, ban from the industry and required to contribute 25% of all future earnings (pre-tax) towards payment made by other parties to his or her victims until the amount is repaid. Access to assets held in trust companies and family structures should be legislated for in order to pay victims of members who are not adequately covered by PI. The system rewards and encourages unconscionable conduct: this must be reversed.

231. We do not have the expertise to comment on how PI could better work. It would seem appropriate that all industry members are required to carry at least $2 million minimum *per client* as that amount would at least provide for a home and retirement even if they were not able to be awarded full restitution through PI.

232. Unless meaningful and serious consequences are enforced, along with encouragement and benefit for ethical practice there is little incentive for a change of behaviour or learning. It is not reasonable that victims should be required to effectively subsidize unconscionable or criminal conduct. The culprits, their shareholders and the regulatory system including government must take responsibility.

Conclusion

233. Cover-ups, minimization and denial over unconscionable fraud, deception and negligence with an almost total disregard for the impact on the victim is an extraordinary reality in Australia. Senate inquiries reveal a shocking and deeply disturbing depth and breadth of systemic problems. Regrettably, victims' experiences suggest this barely scratches the surface of the tip of the iceberg. Investigation and reformation from the bottom up and top down is overdue.

234. To this end, we believe that careful and serious consideration is necessary of recommendations with a view to implementation as soon as practicable for existing victims and establishment of a new competent and properly resourced independent body, to address future victims. Consultation and collaboration with victims is essential in the design and implementation of a meaningful one-stop-shop.

235. To safeguard Australia's economy, and our community, white collar crime will only be fully exposed, allowing a comprehensive strategy to overhaul of the regulatory system, and hold culprits accountable, with a Royal Commission. That is separate to the need for immediate action to assess cases of victims which are not adequately assisted in the current system.

236. Confidence in government is also paramount. Response to recommendations by the esteemed panel reviewers is placed in grave doubt when Prime Minister Turnbull indicated no action is taken even after those formulated from a Royal Commission. What does this mean for victims of institutional responses to sexual abuse or pink batts or trade unions or youths in detention and so on: does this highlight concerns about the response failures to the findings so long ago from the inquiry into black deaths in custody? In the Financial Review, 5 October 2016, in respect of a Royal Commission, Mr Turnbull stated, it is "*...a one off inquiry. It happens and it writes a report and then it gathers dust.*" We hope recommendations from all reports and reviews are given due consideration to improve the lives of Australians.

Thank you for this opportunity to contribute our views. We are very willing to assist in any way to clarify or expand on our ideas and vision.

Appendix A – HNAB-AG's Experience of ASIC

At 16 May 2016

SUMMARY: HNAB-AG's EXPERIENCE OF ASIC

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

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

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

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

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

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

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

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

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

3) In January 2011, a few victims met after an invitation to a creditors meeting with **Greg Andrews**, the liquidator for Holt's business. HNAB-AG was formed. We

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

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

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

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

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

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

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

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

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

7) It seems ASIC want to be seen to be acting: its **fraud squad** made much of appearing keen to meet with HNAB-AG. Its response over the many years prior

had not engendered trust or confidence: consequently, a further meeting was a low priority. People were (and still are) in terrible distress, debilitated from years of protracted trauma. High levels of suicidality exist. Years after these crimes emerged, victims struggle with **overwhelming financial and personal consequences**. Still ongoing is the aggressive, sadistic, pursuit of Timbercorp victims by liquidators at **KordaMentha in its inhumane and farcical "hardship program**.**"**

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

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

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

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

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

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

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

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

10) ASIC failed to advise victims (who had contacted it) of a **Security Bond of $20,000**. This was held should *'a complaint'* be made about Holt. The spectacularly inadequate *'security'* bond (plus interest in the bank of $12,000)

would have been returned to Peter Holt, had ***G.S. Andrews and Associates*** (liquidators for his company) not behaved with integrity and professionalism, informing HNAB-AG it existed. ASIC only later advertised in a newspaper: no-one appeared to see it as no other victims applied.

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

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

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

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

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

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

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

It did not mean investments were deemed ethical, solid and sound, helping farmers and the economy or Australians as we aged to relieve the burden of superannuation being insufficient and to encourage self-funded retirees. It was

key to selling products spruiked by greedy industry and individuals motivated by gargantuan profits and conflicted remuneration.

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

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

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

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

Leadership is needed NOW: it requires genuine consultation with victims

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

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

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

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

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

Type of crime ➔ **Dynamics ⬇**	**White Collar Crime / Financial Abuse:** ("Misconduct" "Poor advice") **- negligence, deception, fraud**	**Sexual Abuse in Institutions (e.g. orphanages, sects, schools, churches, synagogues, mosques, scouts)**	**Family Violence / Domestic Violence / Abuse**
Power structures set regulations: responsible to hold accountable, remedy injustice, unethical and criminal conduct	Successive governments: Regulatory system / legislation, Boards, Lenders, Product issuers, FSI: associations etc.	Head of organizations eg. directors, principals, successive Popes, Grand Muftis, Rabbis, Archbishops, CEOs, executives	Successive governments, Family Court, Legal system, Police Force
Criminals protected by incompetence, disincentive and vested interests	Offending 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		

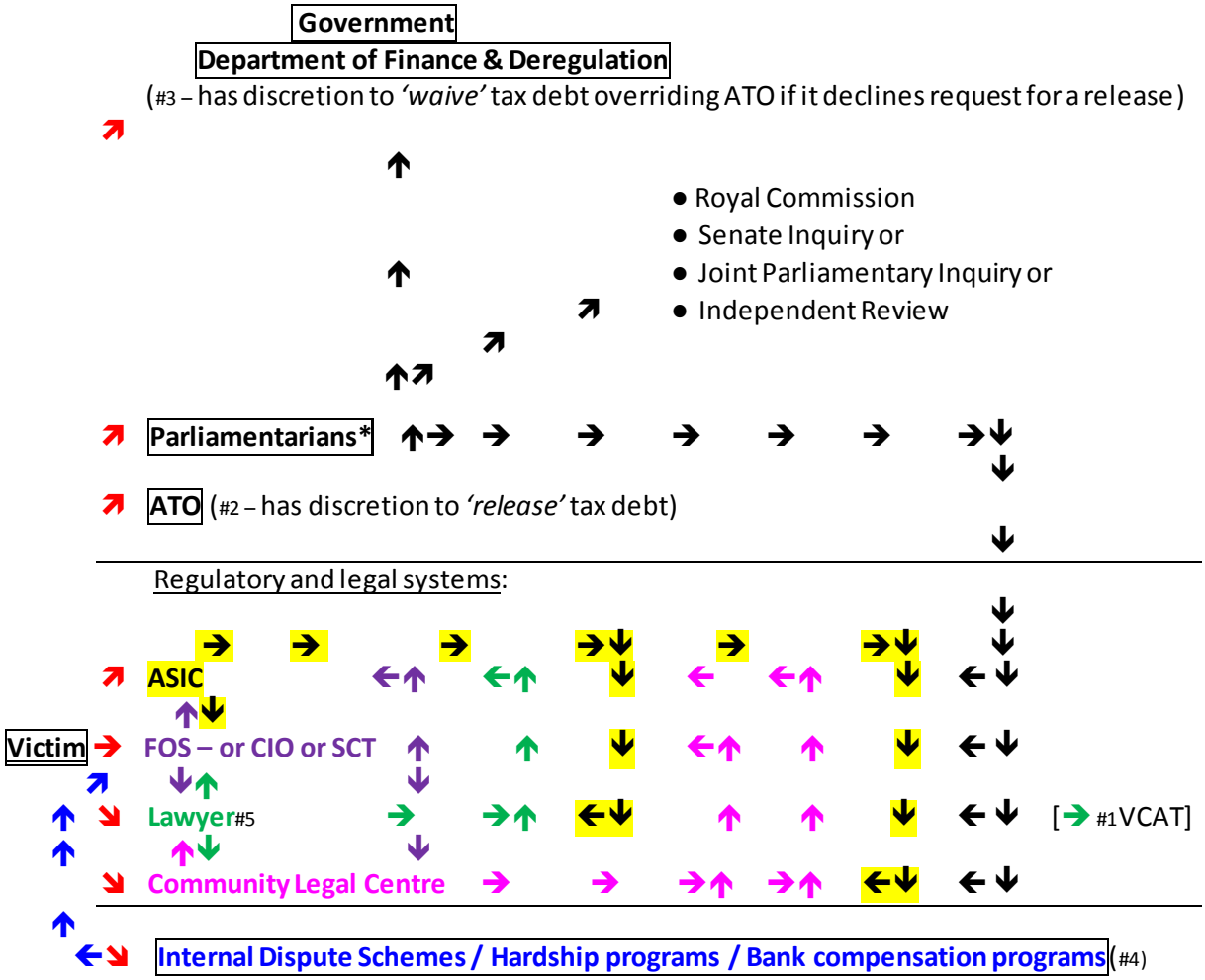
Continued / -

Dynamics	White Collar Crime / Financial Abuse: ("Misconduct" "Poor advice") - Negligence, deception, fraud	Sexual Abuse in Institutions (e.g. orphanages, sects, schools, churches, synagogues, mosques, scouts)	Family Violence / Domestic Violence / Abuse
What are the damaging impacts?	Betrayal of trust and power = loss of hope, dignity, self-confidence; Family, social, economic, career, health: all aspects of life; Trauma leads to varying psychological and neurophysiologic impacts including compromised immune systems and stress-related diseases, personal and social consequences (substance abuse, homelessness, poverty, violence, inability to cope, suicidality etc.); Family relations affected: separation, divorce, alienation, isolation Intergenerational impacts and also repetition if unaddressed		
Literature on impacts, healing	Little on related specifics	Extensive, vast research and therapeutic literature	
What are *specific* uninformed victim-blaming attitudes used to protect criminals?	Victims at fault because: - irresponsible / at fault: 'buyer-beware' - must or should have known risk - disgruntled - greedy - deserve it	Victims at fault because: - did not object - asked for it (by dress, place, time, relationship etc.) - seduced / aroused offender: invited it - liked it: body aroused *[as designed and/or in defence*]	Victims at fault because: - provoked it - deserved it - need to be taught lesson / punished - need to suffer - retaliation - deserve it
What is *general* uninformed attitude?	People make it up or seek to blame others for some gain or to deny responsibility		
Resources available	Trauma-informed counsellors / health professionals specifically trained the neuroscience and psychology of extreme stress / 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	

Continued / -

Dynamics	White Collar Crime / Financial Abuse: ("Misconduct" "Poor advice") - Negligence, deception, fraud	Sexual Abuse in Institutions (e.g. orphanages, sects, schools, churches, synagogues, mosques, scouts)	Family Violence / Domestic Violence / Abuse
Community awareness	Limited awareness or health impacts; Few personal impact stories in print /film; Some film and documentaries re industry big picture	Substantial; Extensive clinical literature re psychological and neurobiological impacts over 200+ years and numerous personal accounts:	Substantial; Extensive literature since 1960s re psychological and neurobiological impacts with many personal accounts
Advocates, commentators, journalists and parliamentarians raising awareness	- Whistleblowers: e.g. brave people like **Jeff Morris, Dr Koh** etc. - Award-winning business journalist **Adele Ferguson** (has done what ASIC has not) and others: - various **senators, parliamentarians** and **some industry members** for years	Nationwide mental health organizations, advocates, media, journalists, politicians and campaigns after victims eventually heard (after enough research/awareness); *Royal Commission into Institutional Responses to Sexual Abuse*	Nationwide mental health organizations, advocates, media, journalists, politicians and campaigns after victims eventually heard (requiring enough statistics and graphic exposure); Victoria's *Royal Commission into Family Violence*

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



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

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

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

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

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

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

Appendix D – Informed Consent: BT Margin Lending

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

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

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

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

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

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

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

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

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

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

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

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

Prospective BT client 1: Prospective BT client 2:

Signed: _____ _____ ***Continued overleaf/-***

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

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

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

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

Prospective BT client 1:

Signed:……

Print name:……

Today's date:……

Prospective BT client 2:

……..

……..

……..

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 a BT margin loan.

Witness 1:
Relationship to client 1:……

Signed:……

Print name:……

Witness 2:
Relationship to client 2:……..

……..

……..

BT Margin Lending representative (not external authorized representative) in attendance:

Signed:……

Print name:……

Date:……..

External authorized representative in attendance (accountant, financial adviser, other):

Professional position:……

Date:……..

Signed:……

Print name:……

Appendix E – Informed Consent: Agribusiness

SUGGESTED DRAFT - Informed Consent Checklist for MIS / Agribusinesses

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

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

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

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

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

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

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:

Signed:……

Print name:……

Today's date:……

Prospective agribusiness client 2:

……..

……..

……..

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:
Relationship to client 1:……

Signed:……

Print name:……

Witness 2:
Relationship to client 2:……..

……..

……..

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:……..