Timbercorp-Holt victims respond to KordaMentha's Testimony to

SENATE INQUIRY INTO CONSUMER PROTECTION IN BANKING, INSURANCE AND FINANCE SECTOR

4 May 2018

Susan Henry, Naomi Halpern and Kathleen Marsh

On behalf of:

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

HNAB-AG responds to KordaMentha's testimony given by Mark Korda and Bryan Webster

Reference and quotes come from *Hansard* regarding the Senate Inquiry into Consumer Protection in Banking, Insurance and Finance Sector.

Summary

In response to comments documented in Hansard on 22 February made by Mark Korda and Bryan Webster from external administrators KordaMentha to the Senate Inquiry into Consumer Protection in Banking, Insurance and Finance Sector we detail concern.

KordaMentha's testimony reinforces concerns previously outlined in our original submission of March 2017, and additional information tabled at, as well as testimony provided to, the public hearing on 22 February 2018 (and elsewhere).

Scrutiny by the *Royal Commission into Misconduct in the Banking, Insurance and Financial Services Sector* is warranted

KordaMentha know senate inquiries do not have the resources or time to pursue examination of details or seek genuinely independent corroboration of testimony. Along with banks and other colleagues in the finance sector KordaMentha has gotten away with obfuscation, misleading and outright inaccurate testimony for a long time.

They have advantage over ordinary, financially unsophisticated, people who are victims of their industry. Despite legal power to treat people on the basis of ethics and compassion, KordaMentha seek to rationalize and obscure the power to avoid choices which have severe negative impacts. Their statutory duties do not require these people be re-victimized. Indeed their obligations permit exercising of discretionary authority. They have deep pockets, industry knowledge, contacts, colleagues and associates with vested interests in protecting each other. It is their field of expertise and work. Victims are depleted and debilitated suffering from overwhelming and protracted trauma with marked physical and psychological health impacts. Victims do not have financial resources, industry knowledge and numerous legal teams. Most do not engage, far less persist, because of these factors.

We are lucky to have some industry pro bono assistance out of concern about unconscionable conduct which, it must be understood, is a milder term for white-collar crime. It is not a 'non-violent' crime any more than cyber-bullying, psychological harassment or torture that never directly touches the body: there are physiological stress correlates on every bodily system from the immune, to cardiac, to digestive and neurological. It leads to suicides, accidents and disease. It's just not immediately, or always, graphically apparent. Victims are typically rendered invisible in every aspect.

KordaMentha persist in providing testimony that is:

1) inaccurate and misleading: out of context with omissions, obfuscations, reframing
2) an incomplete portrayal and thus inaccurate regarding discretionary authority under the law to respond to scenarios including ethical concerns
3) incorrect in conclusions with extrapolations lacking logic or clear thinking
4) taking advantage of the Senate committee not being liquidators, having limited resource and significant workload constraints.

Given KordaMentha is now involved as external administrators with the collapse of QUINTIS, it escalates the necessity our concerns are investigated urgently and independently. The **Hayne Royal Commission** is an appropriate avenue.

KordaMentha would fall under the **Terms of Reference** related to:

> (b) whether any conduct, practices, behaviour or business activities by financial services entities fall below community standards and expectations;
>
> (d) whether any finding in respect of the matters mentioned in paragraphs (a), (b) and (c):
>
> (i) are attributable to the particular culture and governance practices of a financial services entity or broader cultural or governance practices in the relevant industry or relevant subsector; or
>
> (ii) result from other practices, including risk management, recruitment and remuneration practices of a financial services entity or in the relevant industry or relevant subsector;
>
> and the declaration that ***financial services entity means***:
>
> (e) a person or entity that acts or holds itself out as acting as an intermediary between borrowers and lenders.

Comments regarding KordaMentha's testimony

<u>Page 45</u>:

Appearance of conflict of interest: Mark Korda dual roles - liquidator for both TFL and TSL

1. (i) Mr Korda states he is: "one the liquidators of all the Timbercorp companies." Craig Shepard has been noted from the outset as the liquidator for **Timbercorp Finance Limited** (TFL) which deals with the loans and so-called *"borrowers."* He has been the contact person for this role to our knowledge, not Mark Korda. KordaMentha has not considered it relevant that some people had no knowledge of loans, others were deceptively placed in known loans misrepresented by Peter Holt who submitted incomplete or blank loan applications yet these were accepted by TFL despite:
   - Timbercorp's own acceptance criteria requiring applications be completed in full
   - due diligence failures related to: - direct contact e.g. check knowledge of loan
     - meaningful informed consent

- credit check
- confirmation of serviceability or suitability etc.

(ii) These issues have not been examined in class actions: only technicalities applied to the broad group of thousands of Timbercorp investors. ASIC banned Peter Holt from holding a financial services licence on 10 September 2012 for 3 years. It only examined 4 couples and 4 individuals (and did not take up the offer of HNAB-AG to access our members). However, Timbercorp was among the few products included. ASIC's decision included noting he failed to comply with obligations, and have regard for clients circumstances and objectives to have a reasonable basis for advice. (See paragraph 95.)

(iii) Timbercorp also had a duty to perform due diligence: had it done so it would have identified and stopped Mr Holt's conduct. Instead, it was not only negligent but complicit, heavily incentivizing Mr Holt and rubber-stamping loan applications that did not fulfil its own criteria. Rubber-stamping was noted in the testimony of a former Timbercorp insider at the special hearing in November 2014. People also report signatures were forged or obtained deceptively. Electronic transmission of documents assists industry fraud.

(iv) KordaMentha has not exercised its discretionary authority to act on ethical and moral considerations in relation to either Peter Holt or Timbercorp's collaboration.

2. We are advised Mark Korda is the liquidator for **Timbercorp Securities Limited** (TSL) which deals with proceeds owed to those placed in various agribusiness projects. This category of *'creditors'* are ordinary Australians. They are distinct from the secured creditors who lent to **Timbercorp Finance Limited** (or bought the loan book) e.g. ANZ Bank. TFL pursues debt recovery on behalf of those secured creditors. We understand TSL is legally obliged to ensure the interests of the so-called 'investors' who are termed 'creditors' regarding proceeds of any of the plantations or crops which may be harvested. Success of crops requires careful attention and management in relation to farming: we understand KordaMentha is reported to have little interest in ensuring viability or prosperous harvests. [Note - This was highlighted in a recent communication from Teague Czislowski at the Sandalwood Growers Co-op (3 March 2018) which seeks to replace the Manager of QUINTIS and is concerned about the receivers and also liquidator KordaMentha. We are not in a position to comment on SGC other than note their shared concern.] Further, Craig Shepard in his role with Timbercorp Finance has almost always required people relinquish any proceeds in TSL. These proceeds fall under Mark Korda's role. It does not appear he has fought for people's interests in TSL at least related to TFL demands.

3. It has the appearance of a conflict of interest if Mr Korda is a liquidator for both TFL and TSL. This applies even if KordaMentha handled both these entities using 2 separate staff members for these 2 arms of the Timbercorp Group given competing interests. TFL demands money from the individual placed in a loan. TSL should ensure proceeds from harvest are paid to that person - and commitment to the best

possibility to achieve optimum harvest including engagement of expertise. Typically people have been required to relinquish proceeds owed to them through TSL as part of the settlement with TFL – on top of a settlement demand up to at least 2 to 3 times the original loan debt at collapse due to penalty interest applied.

Reasons for accrued penalty interest

4. Exorbitant penalty interest is accrued due to factors beyond people's control. It includes being advised by law firm Mapherson & Kelley to cease repayments, as well as the time taken for the class action and appeals. As a result of marked inadequacies and failures of consumer protections, financially unsophisticated people had no other means to endeavour to protect themselves from further re-victimization by KordaMentha's demands.

KordaMentha's Timbercorp Deed is not a standard Deed of Settlement

5. In a Monty Pythonesque explanation Mr Korda states, "There are currently 6,500 borrowers who have repaid their loans or entered into settlement agreements. So there are a vast number, thousands and thousands, of settlement agreements, and, when it is referred to as 'standard settlement agreement', we tend to say 'standard'—not standard in the industry; standard between the borrowers of Timbercorp, although there will be variations."

6. This illustrates the obfuscation that occurs. People have consistently been told by KordaMentha, its Hardship Program advocates and *"free independent lawyer"* John Berrill it is a standard deed of settlement.

7. Conduct that is 'standard' i.e. applied typically is not necessarily ethical, responsible, humane – or even legal. The Deed cannot reasonably be described as 'standard' because thousands sign it. This ignores an imbalance of power enables KordaMentha to require people to sign it given the threat of legal action or bankruptcy. Moreover, it is not standard compared to other Deeds for MIS we have seen and according to independent liquidators and lawyers.

Interest demanded including at 85c in the dollar (15% "discount") of *doubled or trebled original loan* debt due to penalty interest

8. Mr Korda continues to misrepresent facts: context is relevant. It is not correct people, "could pay 85c in the dollar of your loan; we're done and finished; and, if you couldn't do that, you could apply to the hardship program." Campaigning brought about the Hardship Program. It was not initially on offer – or at least advertised. Nor were people treated this way who effectively sought hardship consideration prior to November 2014. People had to settle given consumer protection failures. The Deed concerns means it is not *"done"* on signing – Mr Korda omits it is 85% outside the program (or other amounts inside) including interest on top of the original loan balance.

9. The lack of avenues for redress, and KordaMentha's stance mean a class action was the only option other than to acquiesce and be further victimized. Hence for many, if

not most, the demand is not just on the original loan balance. It includes exorbitant penalty interest which has, to date, even trebled the loan debt if not more now. (See paragraph 4.) Yet Mr Korda previously testified (6 August 2015) KordaMentha is not concerned with pursuing (the exorbitant) interest. This is inaccurate: percentages of demands are based on interest included. As underscored, nor is it *'done and finished'* on reaching an amount to settle given concerns about the Deed.

Class Action and Appeals

10. The legal reasons that were the basis for the court action pertained to Timbercorp victims as a whole. Nor did legal action address the specifics of arguments related to the victims of Timbercorp's collaboration – via negligence and / or complicity – with Peter Holt. More importantly, nor are the class action arguments relevant to testimony from ANZ and KordaMentha or the liquidator's discretionary authority on which our efforts are based.

11. There is a difference between technicalities on which a court case may be mounted in the view of a law firm and existing (inadequate) legislation versus the ethics or facts pertaining to crucial details specific to a subgroup. Holt-victims report lawyers from major firms were only interested in pursuit of Mr Holt, not lenders or products.

Identification of Holt-Timbercorp victims – what happened to records?

12. In response to Mr Korda's statement, "I did hear the previous witnesses say that there were 140 in the group. I can't reconcile that. All I can say is that we know there are 90 in that group, of which 60 have been settled; 18 are in some form of progress; and 12 we're having no dialogue at all with." We did not say all 140 are Timbercorp victims. Data from our online survey advised to the August 2015 hearing noted 126 participated. (Mr Korda also does not provide data for how long those cases took to be concluded. Nor is it accurate to blame victims for the delays even where some struggled to provide financial and personal data – they had no confidence in fair treatment. Deliberately engaging in this context is knowingly entering further distress.)

13. It is perplexing and profoundly disturbing Timbercorp records do not reveal precise numbers and names including the related advisor submitting documents. These must have been on file. If these records do not exist it goes to concerns about Timbercorp's conduct. It highlights reports of hiding evidence once Timbercorp knew it was in trouble. KordaMentha should be responsible to act on these matters.

14. Moreover, we obliged when Craig Shepard required HNAB-AG provide a list of names when he agreed to a "moratorium" for HNAB-AG members only (not all Holt victims) during the period in early 2015 when we sought to appeal to the COI via a written submission (which Mr Shepard blocked).

Power to write-off debt related to ethical considerations

15. Mr Korda confirmed statements which we have sought to underscore as crucial regarding the liquidator's power i.e. KordaMentha, "…have the right to compromise any debt. 'Compromise' means write it down." (See paragraph 74.)

16. Mr Korda confirmed liquidators can compromise (waive / write down) debt up to $100,000. He did not clarify that for debts greater than $100,000 liquidators have to seek creditors approval or make a case to court. However, in previous testimony it was noted creditors voted, in June 2009, for the liquidator to write down debt of any amount over $20,000. In this latest testimony it could appear that full write-off occurs or reduction down to $20,000, "If you owed $450,000 you could write it down to zero; you could write it down to $20,000 and enter an arrangement." Some were waived. Many settlements are substantially more than $20,000.

17. He is further incorrect in claiming, "But what people don't do is put on the end of that, 'as long as it's in the company's interests; as long as it's in the creditors' interests'." We have argued our case noting a liquidator's duty is to the best interests of all creditors. Those creditors to which he refers appear to be ANZ and other vote-carrying Big Finance – not also the unsecured unsophisticated 'creditors' who Timbercorp Securities is meant to represent (see above concerns of conflict of interest in Mr Korda's role as liquidator for TSL and recent claims he is also a liquidator for Timbercorp Finance – the borrowing arm pursuing "investors" – paragraph 2). This is smoke and mirrors: ANZ has indicated its position in testimony to the ***First Annual Bank Review*** and before (although the bank has also since sought to obfuscate). Duties to TFL creditors are not failed or at risk for breach in relation to this.

18. Data we received, purportedly available from ASIC's website for a fee, suggests the interests of the secured creditors like ANZ have not only been met in recovering the debt but they are making multi-million dollar profits. This is reported as expected to occur for at least another 5 years. Regardless of this, ANZ has testified Holt victims should not be pursued and has encouraged KordaMentha in this position.

19. Independent liquidators report the power to exercise discretionary authority to write-off debt under statutory and common law obligations includes addressing scenarios such as that of Timbercorp-Holt victims. We have been informed the view amongst liquidators is it would be consistent with duties to have Holt-victims debt waived / written off - with other non-Holt people settled at 10-30c in the dollar if there were no other assets available and circumstances supported it.

20. Mr Korda correctly states rights regarding compromising debt, and his responsibilities to creditors like ANZ in relation to TFL (note - separate to ordinary people investing in agribusiness i.e. TSL 'creditors'). He acknowledges ANZ, the largest vote-carrying creditor agrees to non-pursuit of the Timbercorp-Holt subgroup – and appears to suggest any other creditors who may exist (faceless, non-identified and hidden) agree. Despite this, KordaMentha refuse to honour Mr Korda's own testimony on 6/8/15 to treat this subgroup: "with as much empathy as we can under the law" which equates to full write-off: particularly with testified vote-carrying creditor support.

21. The simple facts, and solution, are obscured – deliberate, convoluted, obfuscation seeks to confuse people about ethical responsibilities and discretionary authority. Mr Korda seeks to portray the liquidator's hands are tied despite also acknowledging no-one can instruct a liquidator with whom the sole power lies (paragraphs 15 and 74). There is no risk of breaching duties to creditors when they explicitly guide the action in question to be undertaken. (See paragraph 25.)

Victim-blaming intermingled with acknowledgement of fraud

22. Mr Korda engages in victim-blaming when he says, "I remember Holt Norman, where they got themselves into a terrible situation…" We did not get ourselves in trouble. We were subjected to misconduct i.e. white-collar crime. His obfuscation seeks to divert from the misconduct of product issuers like Timbercorp and lenders like Timbercorp Finance. Victims were placed in a terrible situation due to the conduct of industry enabled by inadequate legislation and consumer protections permitted by successive governments. Society at large now has insight into dynamics regarding imbalance, and abuse, of power. The issue of responsibility is not confused regarding a victim of bullying, coward punch, rape or family violence any more than the victim of a home invasion or mugging etc. Power structures and society must recognize blaming a victim for theft related to white-collar crime (or milder terms such as 'unconscionable conduct' or 'misconduct' etc.) should be no more acceptable than being robbed from a victim's wallet or purse.

23. His appreciation of power imbalance and abuse of the reasonable right to trust in duty of care is demonstrated when he says, "…from what I've read, where they've probably got wrong advice, maybe been defrauded—all the allegations, a terrible situation—of which the principals in the business went into bankruptcy and the professional indemnity insurance was woefully inadequate to compensate the victims of that financial services practice." However, it is noteworthy he has backtracked from previous testimony.

24. Mr Korda was unequivocal in August 2015, agreeing the Timbercorp-Holt subgroup were victims of fraud. He now seeks to modify his stance that *'maybe'* it was fraud.

25. Again, he notes KordaMentha's power while deflecting by creating an impression of constraints related to responsibilities to creditors ignoring the fact no risk of breach exists, "We can completely write it off, but only if it's in the best interests of the creditors."

Reform: ethical conduct of liquidators; avenue for redress

26. It appears to be an error in *Proof Hansard* or may reflect stress for Mr Korda in appearing, as it is incorrect that, "You can have an 85 per cent discount." It is a 15% 'discount.' This applies not to the original loan balance but up to trebled amounts.

27. It should not be forgotten no *'discount'* is possible when applied to deceptive loans or entirely unknown, unauthorised loans. Democratically and ethically, related losses should be reimbursed and compensated for by an appropriate mechanism. Laws require reform to ensure no liquidator can pursue people placed in debt in this

situation as determined by ASIC or independent industry members (as in the case of Peter Holt) – or court. Unscrupulous liquidators incentivized by maximizing income and profit (and future business in being seen as ruthless pursuers) must be held in check and accountable. This includes refusal to act within ethical considerations particularly where guided by vote-carrying creditors. Preferably, the law should protect victims from industry's *'discretion'* – or lack thereof when warranted – by ensuring protections. Of course, the law must also limit the likelihood of victims such as those of industry's collaboration with Peter Holt subjected to white-collar crime being in the grips of liquidators in the first place.

28. For those deemed ineligible for the hardship program – including many people prior to its existence who would have been eligible – KordaMentha's so-called *"offer"* of a 15% so-called *"discount"* is not on the (original) loan debt at the time of Timbercorp's collapse but on debt up to at least trebled amount due to exorbitant penalty interest (see above). Craig Shepard claimed no further reduction was possible. He would not review these cases after establishing the Hardship Program (other than one).

Subcontracted 'advocates' for hardship cases

29. Mr Korda does not acknowledge efforts to seek a hardship style arrangement were sought well before the Hardship Program was established or advertised (it has been rebranded as the *"Borrower Assist Program"* recently). We are not aware of anyone obtaining assistance prior to the media and political attention in 2014.

30. He states, "The process is that we have a hardship advocate—that is Catriona, then Stephen—Stephen has recently resigned to get a full-time job and now we have Sigrid involved. That hardship advocate is paid by KordaMentha—who else is going to pay them?" We understood they were employed full-time. Mr Korda testified in August 2015 that, "there is no limit to the amount of people needed to be employed to get this thing done" (Senate Inquiry into FMIS, 6 August 2015, Hansard page 17). Yet delays are extraordinary.

31. The reason KordaMentha is required to pay for subcontracted "advocates" is because Craig Shepard, to our knowledge, typically refused to engage with genuinely independent professionals to negotiate such an arrangement. Moreover, reputational damage from media coverage and concerns of parliamentarians meant it was in KordaMentha's interests to implement some mechanism – or be seen to. Regrettably, no genuinely independent forum or avenue for addressing concerns of victims exists – hence, seeking help of media and parliamentarians. Subcontracting advocates was not an altruistic or pro-active responsible and ethical option on KordaMentha's part. It shut down political and media focus and thus reputational questions as to being ruthless and unethical. It enabled processing of people hidden from scrutiny.

Page 45-46

John Berrill: 1 hour "free independent lawyer" for Deed paid by KordaMentha

32. Mr Korda states, "Also, the end of the process there is a lawyer, John Berrill. I see he has put in his own submission. He is there to go through the settlement deeds with them, explain their legal rights et cetera. Yes, he is paid by us, because they can't afford legal advice. But he is bound, under the law, to work for his client. His client is not KordaMentha. His client is the individual person that he's seeing. I think that's pretty well known." Certainly, expectations of lawyers and provision of legal advice is relevant – the point is that legal advice in the best interests of the person in the full sense is not what occurs in this 'service' provided by KordaMentha.

33. The best interests of the client are not served by John Berrill. We provided one particular example at the hearing in which the interests of the person in question clearly were not in focus while protection of KordaMentha's gross error was uppermost by omitting at the outset to clearly underscore further advice be sought or make clear that following his advice about the Deed could impact other major considerations. Regarding Mr Berrill's response to our concerns, in his letter to this Committee, 13 July 2017:

    (i) He notes KordaMentha hire him to provide "legal advice as to the settlement, including the terms and conditions of the settlement deed." He states, "I believe that the advice provided was and is in the best interests of the applicants to assist them to understand the nature and extent of the agreements." Context is crucial: transparency would have been served to state that his advice in explaining the Deed may seriously conflict with best interests in other regards about which he is not hired to comment.

    (ii) The point of a Deed is to provide finality for all parties. Other lawyers dispute the Deed is standard or provides closure, certainty and note it contains errors in statement of fact. This reinforces it is not accurate to claim his advice is in people's best interests in the full meaning of this notion. He failed to clarify signing meant people would relinquish any right to a defence if KordaMentha elected to re-open their case and could do so on a whim without evidence. This is related to the structure of the Deed and its direct consequences which he describes as his role.

    (iii) He also frames comments in a manner appearing to imply HNAB-AG may have suggested otherwise e.g. we have no dispute that he "routinely advised the applicants my fee was paid by the liquidator" – this was a specific concern we raised. We query that he acted fully in the spirit of the manner he claims when he adds, "but I was bound by the legal profession rules to provide them with independent legal advice" – our concern is the role was narrowly specific: he omits to raise aspects relevant to an individual's best interests or to strongly suggest independent legal advice be sought for those issues beyond his prescribed role or indicate these exist.

(iv) We have referred to one example where his advice, or lack thereof, substantially failed the person's best interests (beyond the disputed issues of the Deed in general).

(v) We did not dispute – and agreed and expressed concern that – Mr Berrill's role was to explain the terms of the Deed of Settlement and answer questions about the clauses. Not initiating attention to directly related concerns is problematic.

(vi) He notes amongst the particular matters he would explain, it included, "the finality of the agreements," however; it is a primary point of dispute.

An analogy would be hiring someone to provide advice about a car's operation manual (assuming the advice was accurate) but not about the safety of the car even when there was evidence further advice should be provided or encouraged to be sought relevant to proceeding with purchasing or driving the car.

It boils down to a simple fact: KordaMentha could have agreed to pay the same amount it pays Mr Berrill to a lawyer of an individual's choice – this would be a genuinely *'free independent lawyer'* providing legal advice in the best interests of the client.

Page 46

Root problem: Penalization and disregard for ethics – not *"irreconcilable differences"*

34. Independent liquidators dispute Mr Korda's opinion, "To go back: we seem to have this irreconcilable difference that because these people have been terrible victims of circumstance, we should exercise our discretion to write off the loan. We say that is not within our duties, but we will deal with people as best we can." Applying logical, clear thinking, and understanding statutory obligations, exposes the issue as KordaMentha's refusal to act on ethical considerations despite discretionary power and vote-carrying creditors support. Questions should be raised as to the cost effectiveness of these actions. It is also patently inaccurate to claim the liquidator "deal with people as best we can."

35. Independent liquidators have informed HNAB-AG the discretionary authority under statutory and common law obligations exists to cover a variety of situations in which exercising discretion would be appropriate. Ethical considerations are seen as part of these scenarios regarding a liquidator's responsibilities within the scope of duties to creditors – and whether or not those creditors agree.

36. Mr Korda erroneously describes the situation as related to "irreconcilable differences" yet the reality is Craig Shepard refuses to exercise his power and choice to consider relevant factors. KordaMentha is not willing to reconcile its discretionary power, encouragement from the largest vote-carrying creditor - and apparent multi-million dollar profits to creditors as well as KordaMentha and its lawyers. (Profit is irrelevant to the ethics at the heart of it – but it is another reason to highlight there is no

ethical basis for KordaMentha's position given authority under the law to consider these).

37. Moreover, independent liquidators have advised that courts do, in fact, look at circumstances around signing documents. As noted, ASIC has looked at this to a small degree and found Peter Holt failed obligations. The specifics of this related to Timbercorp Finance has not been examined in court but is relevant to Mr Holt's incentivized activity. Mr Korda's persistent position begs the question:

    Why might KordaMentha refuse to exercise statutory authority despite all the reasons – and encouragement - to do so?

    Two reasons:

    (i) Massive financial incentive: Mr Korda acknowledged the longer this drags on the more money they make (see paragraph 93).

    (ii) Penalizing HNAB-AG members for our efforts to:

    a) assist our members with their cases and provide emotional trauma support
    b) challenge demands and treatment of victims based on being informed about liquidators legal duties and discretionary authority
    c) call out KordaMentha's disingenuous engagement
    d) pursue commitments being honoured
    e) expose inaccurate and misleading testimony
    f) raise concerns related to treatment of victims and also the hardship program including inconsistency
    g) seek to hold Craig Shepard, Mark Korda and KordaMentha's "independent hardship advocates" and "free independent lawyer" accountable
    h) endeavour to seek ANZ's assistance
    i) speak out about ANZ's misconduct
    j) work with media
    k) harness political pressure (resulting in hardship program in 2014)
    l) contribute to senate inquiries and select committees as well as other reviews etc.
    m) highlight the necessity for scrutiny and transparency e.g. a royal commission to include examination of Timbercorp, KordaMentha and ANZ.

38. It has been reported by an insider Craig Shepard becomes more furious when activity increases related to court cases or efforts to challenge his conduct. It results in ongoing, and more, unyielding positions and unreasonable demands.

39. Of the 4 representatives who met with KordaMentha in January 2015 after the November 2014 special Senate hearing into Timbercorp:

(i) Susan Henry's 'debt' was waived. (Bankruptcy would have been the alternative.) The case was eventually closed in March 2015 without a Deed - although negligence or deception resulted in 'Without Prejudice' on the document. This would have null and voided any action should KordaMentha change its mind in the future. It was removed on request. It may be KordaMentha expected waiver would terminate her efforts to assist Timbercorp victims. Entirely understandably, the end of other cases that had a high profile in the media and / or the senate hearing resulted in their withdrawal from active campaigning. (Additional note – a further example of KordaMentha's conduct is that Craig Shepard's offsider, Andrew Ryan, provided information KordaMentha knew was inaccurate about Susan Henry's case to journalist Adele Ferguson in December 2014.)

(ii) Bernard Kelly had to withdraw largely from further campaigning in 2016 due to significant health and family matters. He struggled for many months to have his case finalized in 2015 despite severe physical and mental health challenges he disclosed. It would appear he was penalized for challenging the liquidator and refusing to accept certain demands.

(iii) Naomi Halpern's case appears to be a clear example of being penalized as noted. This is further described in her Additional Confidential submission subsequent to the hearing 22/2/18.

(iv) Kathleen Marsh never had a Timbercorp loan. She was deceptively placed in other MIS. She has been unrelentingly committed to help Timbercorp victims from the outset.

40. As noted, we have many examples of inconsistency and unreasonable refusal to budge despite treatment of comparable, or even worse off, cases.

41. Mr Korda misrepresents facts. The reason KordaMentha should write off Timbercorp-Holt loans is not merely "…because these people have been terrible victims of circumstance…" but because of his own testimony to senate hearings which support ethical action. This is reinforced by ANZ's encouragement. The law permits discretion as part of statutory obligations. Independent liquidators indicate the view amongst industry of it being appropriate to waive i.e. write-off loans of this subgroup.

42. Mr Korda testified, in August 2015, commitment to treat this subgroup he acknowledged as victims of fraud with *"as much empathy"* as within the law: this constitutes fully writing off or 'compromise' of loans. He also failed to honour various other testimony regarding operation and activities of the hardship program.

Consistent treatment

43. A thorough examination would reveal without doubt it is false to claim "Everybody's treated the same way in the hardship program, no matter what their circumstances are." Catriona

Lowe resigned citing concerns. We have addressed similar concerns and more in information tabled in February 2018 at the public hearing, the March 2016 submission and at the August 2015 hearing into FMIS. It is blatantly inaccurate for Mr Korda to assert everyone is treated the same. It is revealing he would claim this especially after the reasons Ms Lowe cited in her resignation.

Involvement of former senator Nick Xenophon

44. In regard to Nick Xenophon whom we asked to assist, Mr Korda said, "I don't want to put words in his mouth, but I think he would tell quite a different story about the effort that we've gone to to try and resolve these things within our duties as liquidators to collect the money. We try to do that in an empathetic manner, in very difficult circumstances." We would be shocked if Mr Korda's confidence was founded on the basis of views Mr Xenophon expressed.

45. As Mr Korda noted Mr Xenophon is a qualified lawyer. We did not seek his involvement in that regard. We were fully aware class actions were based on legalities related to consumer protection and legislative inadequacies. They did not proceed on the primary concerns we have with both Timbercorp Finance and its collaboration with Peter Holt in terms of negligence and/or complicity.

46. We requested Mr Xenophon's assistance as a politician, and formerly a member of the senate economics references committee, in relation to KordaMentha's dishonoured commitments, senate testimony and inconsistencies in the hardship program as well as concerns about the Deed.

47. Mr Xenophon was extremely busy. Time to brief him was reduced to half an hour immediately prior to meeting with KordaMentha in December 2015. Rare conference calls, once arranged were often cancelled and not rescheduled or reduced to a few rushed minutes. Summaries of concerns were provided, and re-provided as well as updated by us, on many occasions. There were considerable difficulties obtaining follow through despite his repeated reassurances of commitment. This occurred through to agreeing to look at matters on 2 February 2018 on again highlighting the urgency.

48. Mr Xenophon did not adequately understand the reasons for our pursuit of waiver / write-off as a result. Nevertheless, he agreed to assist in the meetings with KordaMentha in December 2015 regarding inconsistencies. He also assisted in June 2016 related to the Deed with a follow-up call in September. Matters remain outstanding.

49. He was keen to examine the loan documents at the outset of his involvement. We emphasized matters related to the law and loan applications had been examined in depth – and these reflect urgent need for legislative reform. Very serious concerns about incomplete or blank applications beyond signatures, with witnesses unknown to people, false information and even loans not known to exist, were not the focus in the class action. We re-iterated we did not expect further scrutiny of Peter Holt's involvement with loan applications to assist given inadequate legislative and consumer protections. We underscored we believed it would not be productive.

50. However, we accepted Mr Xenophon wished to satisfy himself. Out of respect we assisted with the provision of examples of loan applications. Legal advice he received from colleagues was almost verbatim what lawyers had claimed.

51. Mr Xenophon's view of KordaMentha's treatment of victims does not gel with what Mr Korda appears to believe or suggest.

52. In our experience, the significant workload of politicians means that without adequate time to be informed through listening to victims and/or having competent advisors assisting, they cannot be in a position to understand key factors. This goes to the necessity for establishing a funded *Victims of Financial Misconduct and Whistleblowers Advisory*. Professionals, industry and power structures would benefit from appreciation of the benefits of consulting with those best positioned to add to their understanding from the unique experience of being subjected to failures and abuses.

53. One person in crisis or under threat of bankruptcy or violation by a Goliath power more easily attracts responsible action because the situation is contained or at least engagement is direct and personal. When the same ordeal is experienced by 10 or 100 people or hundreds or thousands, it is easier to disconnect from the urgency or devastation - even if one person acts as a representative. Indeed, often the more widespread and larger the numbers of people and the greater the impacts, the less likely prompt responsible and humane action occurs unless it is a natural disaster or overt health matter. Industry 'misconduct' (white-collar crime) has gone on for decades: since early last century, at least in the form we recognize today. However, it was demoralizing, disappointing and cause for profound despair that Mr Xenophon dropped the ball so completely. This is all the more distressing given his repeated assurances. Further, in 2016, when concerned about the lack of progress particularly given the distress levels of people Susan Henry was assisting, she was told she had *"done enough"* and the predicament of victims was *"not (her) responsibility"* by his senior advisor at the time, Skye Kakoschke-Moore. There was no-one else to turn to but HNAB-AG representatives. Victims deserve practical help within the hardship program (and beyond to redress for misconduct in the banking and finance sector). Mr Xenophon's promises were not delivered. It compounded matters with the liquidator.

Responsibility and compounding impacts

54. Senator Whish-Wilson called the landmark Inquiry into FMIS for which victims are immensely grateful. Cross-partisan action for redress, accountability and reform would reflect recognition of the urgency, depth of the systemic problems and commitment to the safety and security of citizens and our economy. A parliamentary commission of inquiry or a royal commission was overdue. No redress scheme exists for people like us. Victims could not go to FOS for losses over $150,000 and/or did not have the financial sophistication to understand what had occurred or how to

argue their cases. Lawyers often understood less: many have contacted Susan Henry (not a lawyer) for advice on their cases.

55. Moreover, Timbercorp was typically one of numerous other deceptive placements in debt: people were, and many still are, deeply traumatized. They scrambled to save what they could, increase income, salvage relationships thrown into turmoil or cope with divorce and try to emotionally support families devastated by the financial decimation. The impact on health, career, work, social lives and so forth was, and is, colossal almost a decade later.

56. It is ludicrous to think victims of overwhelming unconscionable financial misconduct would not be further (and often more deeply) traumatized by the abject failure of the system to provide assistance, support and redress. KordaMentha's role here could have been to act ethically within its power and parameters. Refusing to do so has compounded distress immeasurably.

57. HNAB-AG representatives have chosen to 'be the change you want to see'. Everyone has a personal and social responsibility not to be bystanders to abuse of power.

Discontinuance versus write-off/waiver

58. We well understand the stress of appearing as a witness but it seems Mr Korda's response to the matter of the case referred to by Susan Henry is a further example of deflection and obfuscation. While his second sentence is perplexing, there was no dispute that, "Sometimes it's really technical. A discontinuance is not a document. A discontinuance means it's been discontinued in court and the loan's been written off. That happened in December. So sometimes the facts get a little technical, but no doubt sometimes the processes aren't perfect."

59. We made the same point at the hearing: Discontinuance is not the same as a case being closed. Legally the liquidator can re-open it in the future at their behest and make demands. People need – and deserve morally, ethically and legally – finality. Whether it is through a Deed or another simple means of closing the case via a single statement, it should provide release. The man in question was promised waiver or write-off in full – Discontinuance was not part of it as agreed in December 2015. KordaMentha waived Susan Henry's deceptive debt without requiring a Deed or framing it as a Discontinuance. Failing to do so in this case – and others - also goes to inconsistency issues.

Commitment to improve the hardship program

60. Mr Korda is inaccurate in terms of the outcome or intention, in our experience, of the second part of his statement, "People are in really difficult situations, and we've been, for years, trying to improve the process." He has not responded to our letter of 27 August 2015 (after his testimony at the FMIS Inquiry) written partly as he claimed to be open to efforts to improve the program. Ms Lowe's reasons for departure did not appear to improve the process. If anything it aggravated matters.

61. We are unaware of any benefit or assistance impacting victims related to, "In the last two years we've had Kildonan, who are well known in the industry—a Uniting Church organisation. We have Timbercorp staff; we supervise the Timbercorp staff. There are about 16 people that work for Timbercorp. They talk about the Borrower Assist program, with coaching. We go through some of the communication. So we're sympathetic to it, but it is really difficult. That's probably all I need to say."

62. It may be interesting to speak with Timbercorp staff aware of case details. We believe it would need to be strictly confidential. Even then, we imagine, people may be fearful of their jobs, obtaining references and working in this industry if they contradicted KordaMentha.

Rebranding of Hardship Program to "Borrower Assist Program" - terminology concerns

63. At some point after Catriona Lowe resigned it seems a re-branding took place.

64. The use of terminology to inaccurately frame key factors is disturbing. Attributing the word *"borrower"* or *"investor"* to someone deceived into a loan, or who had no knowledge at all of a loan, is like calling a rape victim a 'sexual partner' or 'lover' of his or her rapist. This is one of many things which must change - and be understood as imperative. Accuracy, transparency and dignity for victims is paramount.

65. We have previously commented on the terms "*independent hardship advocate"* (IHA) and *"free independent lawyer." "Hardship Program"* is more accurate although limited but the rebranded *"Borrower Assist Program"* is not, for the reasons noted above regarding *"borrower."* We strongly dispute *"assist"* is appropriate given the level of profound trauma that has been inflicted on so many. The new term *"Timbercorp Advocate"* is closer to reality than "IHA." However, in truth these people broker settlements acceptable to KordaMentha. They do not independently assess cases removing the capacity for abuse of the liquidator's power or ensuring fairness within 'hardship' parameters. *"Grower"* and *"investor"* are also a stretch of the imagination in the circumstances. We would expect the farmer to be the "grower." Informed consent is surely required to be an *"investor."*

66. It is not about "*hardship"* when misconduct is involved. We understand from KordaMentha's perspective, given the limitations of legislation in industry, 'hardship' is a reasonable term to use in assessing cases most struggling financially (of course, this excludes those who had to declare bankruptcy prior to its existence or who endure serious hardship having settled at the 85% demand on instruction no better arrangement would ever be possible). However, people who are not in financial hardship – and may even be financially secure through to billionaires – also should not be expected to pay for deceptive placement in debt. They have equal right to financial redress for negligent and deceptive conduct.

ANZ guidance: Holt victims should not be pursued or foreclosed upon

67. Regarding any alleged misunderstanding or mismatch of expectations, ANZ Deputy CEO Graham Hodges expressly agreed at the ***First Annual Review of the Major***

Banks that Holt victims should not be pursued or foreclosed on. KordaMentha has the authority to fulfil this guidance and risks no liability or breach of failing to act in creditors interests. Mark Korda committed to treat this subgroup with as much empathy as the law permitted: this equates to full write-off of these deceptive loans.

68. In carefully choosing his words to HNAB-AG representatives, almost 2 years prior, Mr Hodges outlined KordaMentha had been encouraged to treat these people as *"swiftly as possible," "incredibly compassionately"* and *"very generously."*

Creditor guidance to write-off Holt-Timbercorp debt

69. Mr Korda states about ANZ, "I don't want to put words in their mouth, but if we wrote off all of the loans they'd be very happy, because it goes away." He then claims, "ANZ is just one of the creditors. There are a multitude of creditors. I think that they'd probably be happy if we wrote off all of the loans, because it's not going to change the return they're ever going to get. I've known Graham for a long time. When putting the hardship program together, we met with their hardship people, and Graham has been actively involved in that. ANZ Bank are not acting like they want to get all the money back; I think they're acting as if they've sank." ANZ or other creditors losing out appears to be at odds with the COI source's information.

70. Further, in January 2015 Craig Shepard claimed that ANZ and a '*bucket of mum and dad debenture holders'* are the remaining creditors. We were refused the opportunity to meet with their representatives, or of any other creditors that may have existed. Secondly, we understand data on ASIC's website indicates the debt has been recovered: multi-million dollar profits are being made.

71. Regardless of profit or not to creditors, ANZ, the largest vote-carrying creditor has encouraged KordaMentha to write-off debt Holt victims have been placed in. KordaMentha has the power to do so under statutory obligations.

Page 47

72. Mr Korda's claims writing off the loans affects other creditors beyond ANZ requires independent substantiation of their existence and view. As noted, no opportunity to ascertain the impact on any such creditors, or their willingness to write-off the Holt victims, has been permitted.

73. Mr Korda replies to Senator Whish-Wilson's question as to whether other creditors have stated they don't feel the same way (as ANZ), "No, I think there's a broad view amongst the creditors—we decided that we shouldn't give all the files to the bankruptcy trustee. There is a better way of doing this, and we think that will be both economic and the best way to do it for the people involved, and they will agree with that. If we want people's houses, we give them to a bankruptcy trustee; we don't do that." This statement also demonstrates misleading and inaccurate testimony about which we have previously sought to highlight. In Mr Korda's testimony in August 2015 he stated it was a *"myth"* they took people's homes: semantically this is correct. It is not within KordaMentha's direct power. However, as he notes, it is in their power to force bankruptcy and involve a trustee or create such severe financial distress that it

requires people to sell their home. This has occurred. He now indicates they do cause homes to be lost. This demonstrates his previous testimony was misleading.

74. As we have noted even if all creditors provide the same guidance, Mr Webster is correct in stating that, "….a committee of creditors can help and assist a liquidator. They actually can't tell him to write off loans. Under law, the liquidator makes the decision."

75. We agree with Senator Ketter, "But, if you're acting in their interests, surely if they instruct you then that would be very influential—"

76. Mr Korda persists with obfuscation seeking to bamboozle parliamentarians (as they have victims) to avoid being held accountable. KordaMentha do not want to exercise discretionary authority. It is a choice not based on constraints of the law over which they have no discretion. The vote-carrying creditors agree with write-off/waiver/compromise. The liquidator would not be breaching duties or at risk of action for breach. The issue is power and refusal to exercise it under ethical considerations (see paragraph 37).

KordaMentha's Timbercorp Deed of Settlement

77. Apart from issues already noted regarding the Deed it is not correct the reason confidentiality exists is because, "We do like to keep that confidential because otherwise it may set expectations for others that might be unrealistically low or unrealistically high." It is to deny transparency. This enables inconsistencies to be less likely to be identified, if at all. It protects the liquidator not the victims. It prevents accountability. If the program was robust it would not be an issue: nor would Ms Lowe have resigned.

78. Again, Mr Korda makes the illogical implication that as, "We have signed thousands and thousands of deeds" it equates to these being acceptable. It is like saying treatment by institutions engaging in sexual abuse is acceptable because it occurred to thousands thus rendering complaints by a small number irrelevant.

79. It seems extremely unlikely Mr Korda would genuinely believe people sign these Deeds because they agree they owe a debt, or agree the amount demanded at which they proceed is fair, reasonable or acceptable. Signing does not mean people agree the terms are fair, ethical or appropriate. He must have a basic understanding of the imbalance of power between KordaMentha, the legal system and ordinary, very traumatized victims of unconscionable conduct. In our view, to suggest otherwise would be an insult to intelligence.

80. We have documented concerns about the Deed. We recognize the gross limitations of the system mean most people must sign a Deed if the liquidator demands it (KordaMentha did not require Susan Henry to sign one so it is clearly possible to elect a different path.) Lack of avenues for recourse or redress for innocent victims of Timbercorp's collaboration with Peter Holt, as well as KordaMentha's refusal to act ethically, means signing a Deed is necessary.

81. It is not reasonable people are expected to sign a Deed which does not provide closure or certainty and contains errors in statements of fact. It is not reasonable those who have signed a Deed - either too distressed to understand, or in spite of knowing its limitations - remain without fair protection while KordaMentha retains all its rights. People should not be expected to relinquish their right to a defence.

82. Holt victims would certainly prefer a statement acknowledging fraud and the system's failures. However, our focus has been in the context of understanding if the liquidator refuses to exercise discretionary authority, the limitations of the law require deceptive debt to be settled. Therefore, we pursue closure and certainty as well as not accepting errors in statements of fact.

83. Mr Korda's statement is revealing, "We'd like to have a standardised deed, so people think they're all getting treated the same, but we can vary them from time to time if we need to. The key thing is coming to the conclusion, not what I would call the detail of the deed." If there is one thing victims have learned, it is do not trust industry's word: the devil *is* in the detail. It is extraordinary KordaMentha would hold this view in light of conduct inflicted on Holt-Timbercorp victims. Further, it is hard to believe Mr Korda or Mr Shepard would accept such a Deed were they in our shoes.

84. The issues with the Deed are far more substantial than it being a 'work in progress' as the Chair indicates has been put to the senate committee. Moreover, KordaMentha has had since 2009 to design a solid template for this Deed.

85. We note Mr Korda states, "Craig is on the record as saying: 'Even though that might be in someone else's deed, we'll revert to what's in the new deed.' We've been on the record to do that. And that will happen." The record about reverting to a new Deed was agreed in June 2016 – almost 2 years ago. It is not finalized. Again, Mr Korda seeks to portray a certain image which is not consistent with KordaMentha's conduct.

Page 48

86. Mr Korda ignores the Chair's question about Naomi Halpern's statement of being subjected to inconsistent treatment.

87. It is misleading when he states, "But, again, we've got thousands and thousands of these deeds, so we've got to have some sort of process. We can't negotiate every single one." We have not sought special individual Deeds – just a fair, accurate, simple, ethical, genuinely standard Deed. To suggest otherwise is outright inaccurate.

Inconsistency

88. Mr Korda's response to the question about Catriona Lowe's concern for a significant minority is, again, typical smoke and mirrors. In some situations where she recommended people pay nothing, or a certain amount, KordaMentha accepted it yet in others it was rejected. Examination of cases would reveal our reports to be substantiated. Other testimony notes the advocates have been overridden.

89. We are not aware of anyone who feels 'satisfied' – some are relived or grateful on release from the ordeal on eventual waiver or a settlement less than 85% of doubled or trebled deceptive debt. In our experience people are not satisfied with the horrendous, onerous process – or the fact legally they have been re-victimized and forced to comply with paying yet more money. Effectively, people have no real choice but to permit further legally sanctioned theft. Court is not an option guaranteeing justice. It is protracted and traumatizing. Industry can afford the 'best' barristers and QCs (i.e. those most able to use the law to defend their client). There may be people who were financially sophisticated or had access to informed consent or advice but not among those whom we know.

90. Mr Korda says, "Nothing works perfectly. Since 2015 we have improved, but we cannot satisfy all of the people." We are not seeking perfection. We seek fair and consistent treatment. We seek commitments to be honoured within the scope of legal duties and discretion.

Risk to public interest – KordaMentha's involvement with QUINTIS

91. A survey conducted in February 2018 of those who were also placed in **TFS Sandalwood (now QUINTIS)** revealed 22% were extremely concerned KordaMentha was appointed administrators and 78% held the utmost concern having no confidence in the liquidator. That is 100% marked concern. It is 0% confidence.

92. We also fear QUINTIS-Holt victims may be penalized by KordaMentha for the reasons outlined (see paragraph 37 in particular). The ethical and fair treatment of any victim over which this liquidator has power is deeply concerning. It is a major reason we believe our concerns warrant the careful attention of the Hayne Royal Commission.

Incentive for KordaMentha

93. It is relevant that the longer this drags on the more billable hours KordaMentha gets: this goes to incentive to disregard ANZ's guidance and Craig Shepard's discretionary authority. Mr Korda notes, "We get remunerated on a per-hour basis."

Page 48-49

Reputational damage to creditors in failing to write-off fraud cases

94. Mr Korda deflects from Senator Whish-Wilson's question about it being in a creditor's interest in terms of reputational damage to write-off debt in fraud cases. We have commented earlier that issues in court action have not addressed the specific concerns of victims of Timbercorp's collaboration with Peter Holt (along with many other product issuers). It is noteworthy Mr Holt provided outright inaccurate information to ASIC (and CPA Australia's Disciplinary hearing). This could have been proven readily had a forum existed which involved participation of victims and required proof of his claims.

95. However, some scrutiny of Peter Holt has been determined by ASIC (ASIC INVESTIGATION – Posted 25 September 2012: http://www.asic.gov.au/mr 12-236MR). ASIC found that Mr Holt failed to have a reasonable basis for the advice he gave to retail clients. Further, Mr Holt failed to meet his disclosure obligations about the costs and benefits that may be lost in switching a client's superannuation and failed to ensure the business maintained professional indemnity insurance. ANZ appears to have considered these facts. KordaMentha refuses to accept the bank's guidance. It is ethically questionable KordaMentha dismisses this information.

Page 49

Deed of Settlement

96. Again, Mr Korda extrapolates with the extraordinary conclusion, "Six and a half thousand people have agreed they have owed the money and have paid it back." This is reprehensible. We have seen letters people have written to KordaMentha. We would expect – hope – Mr Korda has read the concerns or Craig Shepard reported these given the gravity and life-long impacts of KordaMentha's decisions. Powerless and distraught, many will not bother expressing their opinion: the system is stacked against the ordinary person. He must know his statement is false.

97. Signing a Deed does not mean people chose to do so of their own free will, with no pressure or duress. It is not always done willingly as a means to end a genuine dispute about which the parties ethically agree to a shared responsibility. In the case of Timbercorp it is a legal requirement to avert a more distressing alternative – court or bankruptcy. It's the same reason most rape victims don't proceed to court: there is no confidence the law equates to justice, it is a long, arduous, expensive and gruelling process – often deemed worse than the rape. Not taking a rapist to court is not the same thing as agreeing no rape was committed or that 'responsibility' lies with the victim or that he or she agrees with the options available as appropriate.

Recommendations for reforms

98. Moreover, Mr Korda deflects and seeks to divert from the primary issue which is about the discretionary authority to write-off debt in cases which would ethically and morally be reasonable. Insidious obfuscation occurs thus it is unsurprising he persists when queried by the Chair on his thoughts about reforms he might propose given his argument the legal framework limits what KordaMentha can do for victims.

99. Mr Korda says, "It just becomes a philosophical question: when people lose money, should there be a compensation scheme? That's a very vexed question." Losing money where informed consent was provided, permitting willingness to risk loss, is entirely different to having money stolen or obtained via deception or fraud including through placement in debt. Mr Korda avoids the question by, again, taking it away from matters related to victims of industry's conduct.

100. He proceeds by diverting to a separate issue of people he alleges used MIS to get a tax deduction in saying, "You work from Storm Financial through to Holt Norman, and there is no doubt there are borrowers in here that borrowed the money to get the tax dedication right? There were sophisticated borrowers as well. It's probably above my pay grade to talk about government compensation systems." He ignores the question of reforms to safeguard the community by raising the unrelated issue of tax deductions and sophisticated investors that has nothing to do with victimization.

101. We have outlined the reasons Holt victims were placed in MIS (when they at least knew of a loan even if it was misrepresented). We were informed it was a vastly superior option to superannuation, sustainable, benefiting farmers, the economy and the investor: a win-win. Tax deductions and being 'government endorsed' was framed as government's efforts to encourage people to have confidence by promoting agribusiness for our generation as superannuation was not going to be adequate. Mr Korda offers no reform suggestions to address deception. He is aware of the deception involved.

102. We are not industry professionals. We can respond to questions about reforms from the perspective of both victims and concerned citizens. Mr Korda had little to suggest. He seeks to protect his industry rather than promote responsible conduct, safeguards, professionalism, ethics, integrity and a strong financial sector.

103. When pressed about professional indemnity Mr Korda said, "If you're taking other people's money, it should be held on trust. We've seen that recently at the auction houses. That's always important, particularly for mum-and-dad investors. They should go in a trust. Professional indemnity insurance will start to become very expensive. What should the level be? We've got to carry a huge amount. Maybe it's the level that the financial planners haven't got and maybe it should be attached to their AFS licence. It seems to me the insurance scheme is better than difficult government compensation schemes. Get them insured properly." Increasing professional indemnity insurance to a meaningful amount would push small planners into big companies.

104. Further, mostly (but not always) Mr Holt did not directly take our money – he was paid by industry via commissions, trailing fees and kickbacks. He had only $2million PI for at least 500 clients. Mr Korda does not suggest lenders and products be held responsible who accept loan applications from planners like Mr Holt without respecting their duty of care to perform due diligence, ensuring meaningful informed consent and so forth. Revealingly, nor does he suggest laws to require liquidators' write-off the debt of victims of such lenders and product issuers.

105. We have made detailed suggestions about reform in our original submission in March 2017 and the Additional Information tabled 22/2/18.

106. We note Mr Korda posits no reforms for liquidators' conduct. His colleagues report a *"cowboy culture"* amongst unscrupulous elements that is largely unchecked and without meaningful recourse for complaints. We understand no special training is required to be a liquidator.

107. We agree with Mr Korda, "that some of these products shouldn't get to retail investors." We understand from financial advisors who have been helpful, that these products are, ethically, only suitable for sophisticated investors who understand what is involved not ordinary people. This would seem to be another reason it is ethically appropriate to write-off debt.

Page 50

108. Mr Korda recognizes, "They shouldn't have access to the products that are highly sophisticated." We suggest it should be part of a liquidator's responsibility to report occurrences of such situations and stipulated at law those loans must be written-off with restitution for money lost and compensation for the ordeal. It could be funded via suggestions in our original submission and to the **Ramsay Review** including establishing a ***Financial Redress Scheme of Last Resort*** and a ***Retrospective*** one. Reviewing the conduct of liquidators in this way would underscore ethics. It would take away any alleged fear of threat from creditors for liability in breaching duties by eliminating it as merely an option related to exercising discretionary authority. It would place responsibility on lenders and product issuers to ensure they implemented meaningful informed consent, genuine due diligence etc.

Debt recovery focus – not viability of crops: activities of MIS and lenders related to collapse and actions of external administrators

109. As Senator Whish-Wilson noted from the FMIS Inquiry, 'Ponzi' scheme is one word that could be used and there was evidence of cash-flow problems and issues meeting prospectus projections. He also noted **TFS Sandalwood (now QUINTIS)** wound up this year. As he stated, it had a monopoly and a high-value product in Indian sandalwood yet has gone to the wall. This concerns victims too.

110. As noted in the Additional Information tabled 22/2/18, a former Timbercorp insider reported KordaMentha did not have (or utilize) the skills, competency or commitment to ensure the plantations were viable: the liquidator appears heavily interested in debt recovery. We also note concern about data reportedly existing that suggests ANZ knew about concerns and made arrangements around millions of dollars related to preferential treatment, on Christmas Eve the year before and prior to New Year 2008.

111. In a survey of members of HNAB-AG who had both Timbercorp and **TFS Sandalwood / QUINTIS**, participants indicated 100% are extremely concerned or have the utmost concern and no confidence in KordaMentha which has been appointed as administrators.

Determining hardship

112. As Mr Korda notes, ultimately who decides repayment, and thus what is considered hardship, is the liquidator Craig Shepard. He overrides the 'advocate' (or external accountants) by tens of thousands of dollars or more. Ms Lowe resigned in

relation to this in *"a significant minority"* of cases yet no concern was raised or investigation commenced.

113. Unless Mr Korda refers to another 10 examples, he cites those provided by HNAB-AG in the meeting in December 2015 to illustrate concerns. We warned Mr Xenophon that KordaMentha would seek to focus on these specific cases rather than the themes across all related cases. Mr Korda appears to suggest KordaMentha obtained the cases and permission: HNAB-AG representatives did this work. KordaMentha may have provided their related files to Mr Xenophon. He was not familiar with the details of concerns we had for specific cases.

Nick Xenophon: lack of follow through does not reflect lack of concern

114. Based on our experience we dispute Mr Korda's belief about Mr Xenophon, "You can talk to him, but I'm sure he would have kept on calling me and Mark Mentha forever if he thought we were so bad."

115. Mr Xenophon's actions or lack of follow through on commitments do not always reflect his beliefs or concerns. For instance, he volunteered to phone some of the people among the example cases after the meeting in the week prior to Christmas 2015. He expressed profound concern. For example, one man had already tried to kill himself and was suicidal; another family was struggling with the additional trauma of the unexpected death of their 19 year old son; another man had 6 months to live and a teenage child relocated overseas to live with his aunt. There are many more stories. Mr Xenophon did not call the people he volunteered to phone that week or any time since. We have no doubt he was genuinely concerned about people. However, he did not prioritize action. Mr Korda's conclusion is not logical or correct.

116. Mr Xenophon was candid with us about his view of KordaMentha's conduct regarding Timbercorp (it may be different regarding Arium and his dealings in SA with Mark Mentha). We do not believe his lack of follow through related to confidence in the liquidator being fair and reasonable. Nor would we expect Mr Xenophon to have behaved other than cordially with KordaMentha.

Page 51

Legal power to write-off loans exists

117. Mr Korda is incorrect and contradicts his earlier testimony saying, "We just can't write off the loans, which is where everybody would like to be." KordaMentha has the power to do just that within creditors' interests – further, these interests are not contradictory to our argument and vote-carrying creditors are supportive. (See paragraphs 15, 74.)

Material impact – exclusive deals

118. Regarding the Deed, Mr Korda makes an assumption there would be no practical effect, "I don't think the other 591 who have signed up would make any material difference to these circumstances. It would make no difference to their money. In the eight years we've been going, we've never had to sue on one of these agreements. I don't see it as being an issue, but I don't see it having any practical effect on any person we've signed up." If cases are re-opened people could be pursued for the original loan and however many years into the future of penalty interest rate. That could effectively bankrupt yet more innocent people. It is not reasonable for Mr Korda to expect people accept his opinion it's not an issue or there would be no practical effect. Nor does it matter it has not occurred to date. Trusting the word of industry professionals is entirely unreasonable (see paragraph 83). KordaMentha has done little to instil trust in its word or commitments – and rather, a great deal to the contrary.

119. Mr Korda's opinion about impact is not fact. It is not based on consultation with, or survey of, victims – or respect for information provided by HNAB-AG. If he refers to the Deed in relation to our members who have signed, we are aware it would make a difference to have assurance regarding closure, certainty and errors in statement of fact corrected. It would also incur potential further loss of money. This also affects peace of mind.

120. The other situation, in which there would be a material impact on people, is those who signed the Deed believing no further reduction than 15% was possible prior to the existence of the hardship program. Other than Naomi Halpern, they have been refused a Review under hardship parameters. It is incorrect to claim that because they paid the 85% demanded they are not in hardship: people sold their home, used what was left of their life-savings or retirements, or borrowed against homes or from relatives and others. Some people will be working full-time for the rest of their lives. Others entered bankruptcy which has life-long impacts. It affected relationships, families, work, careers, social life and health.

People pursuing further court action

121. Mr Korda demonstrates his cavalier attitude and capacity to draw erroneous conclusions or attempt to misrepresent matters when he says, "There is a small group left who are taking another court proceeding, which they lost but they're putting on an appeal to try to argue to court that they shouldn't have to pay the loans at all. One of the interesting things about this is that, when the legal actions were being pursued, a lot of people said, 'I might win the legal action and will have to pay nothing." What is "interesting" about victims hoping the legal system might prevail and provide justice? People were placed in loans in the period Timbercorp knew it was in trouble and / or crops weren't planted or money moved to the relevant place. Whatever the legal arguments are, these are further to issues related to Timbercorp's collaboration with Peter Holt.

122. Mr Korda ironically attempts to portray people as casually seeking to dodge their responsibilities and effectively rip off KordaMentha and ANZ etc. despite all he has acknowledged about Holt victims and fraud. His comments are further evidence of concerns about KordaMentha's inadequate and inappropriate approach. They highlight misleading and inaccurate testimony.

Conclusion

123. KordaMentha's testimony at the public hearing on 22/2/18 continues to reinforce concerns reported by HNAB-AG of misleading and inaccurate testimony. Attempts to muddy waters are to such a degree people are bamboozled and lost in a maze of smoke and mirrors. KordaMentha and ANZ's conduct warrants inclusion in the ***Royal Commission into Misconduct in the Banking, Insurance and Finance Sector*** for the reasons indicated. KordaMentha should also be held accountable for concerns related to truth and accuracy of testimony to senate inquiries and committees.

Victims have unique insights and perspectives given their experience of misconduct / white-collar crime. This must be utilized in contributing to a much needed understanding of concerns in order to effect meaningful change.