

MEDIA RELEASE

MRAF15D:

ANZ called on at AGM not to profit on backs of Timbercorp victims of white collar crime: refund their money

By Susan Henry, Chair, and Naomi Halpern, Spokesperson for HNAB-AG

ANZ AGM, 16 December 2016, 10am, Melbourne Convention and Exhibition Centre

1) This is the third consecutive year that victims of multi-product/lender white collar crime, including placement in Timbercorp by notorious Peter Holt, have spoken at the ANZ AGM.

2) We understand ANZ cannot instruct liquidators. As the bank is profiting from KordaMentha's refusal to honour commitments, shareholders deserve to be informed. They also have a responsibility to take a stand where ethical concerns or injustice occurs. We don't imagine shareholders want to profit from blood diamonds, or Persian rugs made by children, or any products involving slave labour or which cause seriously devastating impacts to innocent people. Massive profits are made on the backs of victims of white collar crime and their families. ANZ rectified this in respect of our farmers.

3) Consequently, on behalf of HNAB Action Group, we provide a short update about liquidator KordaMentha's handling of Timbercorp victims - and make urgent requests of ANZ.

4) In brief, there have been significant inconsistencies and serious concerns about its hardship program. **Treatment of people is disturbing. The deed of settlement does not provide accuracy, clarity, certainty or protection.** Largely, efforts to address concerns with KordaMentha directly, or through its hardship program advocates, have been thwarted. **Commitments made in senate testimony have not been honoured or were misleading and inaccurate** such as:

- people in serious distress (severe mental health and suicide concerns) are concluded in 2 days with others generally within 2 weeks (in fact many months, up to 1 - 2 years and over, is not uncommon);
- the liquidator accepts the advocate's advice that enough information has been provided and her proposal is accepted (she resigned because he rejected proposals she could not accept);
- settlements range from waiver to less than principal with interest not an issue (untrue);
- the gag clause is omitted where it causes grief (only in 1 known case at the start);
- homes won't have to be sold / people won't be bankrupted (duress occurs including these threats);
- KordaMentha is open to suggestions to improve the process to ensure the significant trauma and distress is considered (Mr Korda never replied to our letter of 27/8/15 requesting to meet; a few meetings occurred due to Senator Xenophon resulting in effectively only minor changes to the deed);
- no limit to the amount of people to be employed to finalize case (cases take many months; many not concluded well over 1-2 years on – others acquiesce to onerous demands due to duress and distress).

5) Even though his involvement is not necessary *at all* if KordaMentha upheld commitments, the liquidator has used Senator Xenophon's commitment since last December to assist us, to delay matters given the senator's busy schedule and time constraints over the election campaign and since.

6) **ANZ Deputy CEO, Graham Hodges** informed us in February 2015, almost 2 years ago, that KordaMentha had been encouraged to treat Timbercorp victims of notorious accountant and adviser Peter Holt, **"as swiftly as possible", "very generously" and "incredibly compassionately"**. The precise opposite is happening in almost all cases.

Mr Hodges reiterated ANZ's position at the **Senate Inquiry into Forestry MIS** in August 2015. In October 2016 he stated at the **government's new annual bank inquiry** that ANZ's view was **victims of Peter Holt should not be pursued**.

7) Moreover, **KordaMentha principal, Mark Korda agreed** in a senate inquiry last year that **Holt victims were a subset of Timbercorp as a result of fraud** - and committed to treat them **"with as much empathy"** as the liquidator could **"under the law"**. *Overleaf/-*

8) **Statutory obligations and discretion permit the liquidator to waive debt in full under \$100,000 or to make the case to seek court approval, or that of the creditors, for debt over \$100,000.** This power enables the hardship program to exist; creditors agreed it could deal with any debt amount.

Full waiver would obviously be the **maximum empathy possible under the law**. Yet demands are made of up to 84% of doubled, and even trebled debt, from collapse in 2009. Further, **how is it justifiable to demand 1% less than 85%** - which is asked of someone settling who is **NOT deemed to be in hardship**? A transparent audit or inquiry to genuinely independently examine the liquidator is needed – with severe penalties imposed for power structures taking further advantage of people.

9) Separate to the hardship program issues, given **Mark Korda's acknowledgement** of Holt victims having been subjected to fraud, the **clear position of the ANZ** as the largest creditor, and the **liquidator's commitment to maximum possible empathy** along with the **legal power to grant full waiver** under statutory obligations, **hardship should be entirely irrelevant to cases of Holt victims**.

The liquidator has the statutory power to decide debt of any amount in the hardship program. The problem is his refusal to honour commitments made or to exercise integrity or ethics. He boasts that not even the prime minister can instruct him and he does not have to justify his settlement demands.

10) We are informed the **view amongst liquidators** is that **industry practice** would be to waive Holt victims in full - with it being commercially viable to settle other people at 10-30c in the dollar.

11) What should be simple, common-sense and straight forward has been muddled by the liquidator's **hardship program staff** who have **denied or ignored facts despite evidence** of open electronic recording and Hansard. They state they do not advocate for Holt victims on these aspects, or treat them any differently. An advocate has the role of advocating – including commitments to Holt victims.

While the first head of the program, eventually, resigned in May 2016 due to concerns about a **"significant minority"** too much damage had already occurred. From early in 2015, **survey data and victims' reports of serious concern** were provided to the senate inquiry chair and ANZ. These were not investigated: perhaps assured by corporate spin with careful wording or omissions obscuring facts to have each other's backs. The current advocate, not only states he is not treating individual Holt victims differently – despite the support for a subgroup, and Mr Korda's commitment – but claims he has not seen any inconsistencies and cannot likely see a scenario where he would resign.

12) Accounts of experiences are appalling. It is regrettable there is not a forum for shareholders to be adequately informed. It is **galling that senior executives receive obscene salaries yet want more despite so much misconduct on their watch**: victims are in crippling debt, homes have been lost and dire, ongoing impacts on all aspects of lives are inflicted. **Inversely link executive pay to misconduct losses (not profit) and impose penalties as a multiple of loss**: then change will occur.

13) On behalf of Holt victims, we call on ANZ to **proactively reimburse settlement demands immediately**, and further assist those forced into bankruptcy, sell homes, or to take out loans which have incurred yet more interest. While the liquidator claims some debenture holders exist who refuse to let their representative meet with us, this would not prevent the ANZ, as the primary creditor, from giving back settlement money to Holt victims: exorbitant interest also charged will easily cover it.

14) It is reasonable that ANZ **pay restitution** for what has been paid and lost as a result of fraudulent and misrepresented loans – **and also compensation** for the consequent indirect financial ramifications, not to forget the extraordinarily protracted anguish and devastating personal and family impacts. Victims are committed to pursue this – but we should not have to.

15) We also call on ANZ to **support reforms for liquidator accountability, transparency and audit of hardship programs including imposing meaningful penalties**.

16) 2016 has shown the 99% will make elite power structures listen. Critical mass is occurring: victims of devastating white collar crime will not rest until ethical practice and remedies are in place.