Victims reject proposed CSLR – Demand Fair and Effective Remedy in Future, and Retrospective, Financial Redress Scheme of Last Resort

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Victims' Group HNAB-AG

Demand Right to Fair and Effective Financial Redress: Restitution & Compensation

Design of a **Financial Redress Scheme of Last Resort** (FRSLR) must be:
- victim-centred
- guided by principles of perpetrator and enabler responsibility and accountability
- retrospective for victims who drove calls for senate inquiries, scrutiny and a royal commission
- informed by victim data and statistics
- assisted, if a cap is imposed, by alternative interim measures for those left without effective, or any, remedy
- funded by government and industry without excuses or threat of "*viability*" in light of funds available to both, and obtained or misused in scandals
- based on human rights obligations and responsibilities

#FairFinRedress

Treasury Discussion Paper, July 2021: Compensation Scheme of Last Resort (CSLR) re Financial Services Royal Commission Recommendation 7.1:

Treasury's proposed CSLR:
- fails past and future victims on several counts including accountability of, and incentivising, offenders and enablers
- ignores major issues and disturbingly, along with AFCA's Legacy Complaints, excludes people like Holt-victims for the *precise* failures exposed that drove activism for fair and effective redress and a retrospective last resort scheme
- forces victims to subsidize decades of failures of government and industry to safeguard against catastrophic industry financial abuse (IFA) by imposing a patently unrealistic cap for any real-life recovery placing many in long-term or life-long hardship or poverty.

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Chilling failures of institutional responses to industry financial abuse (IFA) are found in Treasury Consultation Paper: **Compensation Scheme of Last Resort: Proposal Paper** – Financial Services Royal Commission Recommendation 7.1, July 2021

Summary

Holt-Victims Demand URGENT ACTION NOW – having waited 13 years and more…

1) Institutional responses to **industry financial abuse (IFA)** – sanitized as ***"misconduct"*** – must be guided by **human rights obligations and responsibilities**, including the right to fair effective remedy in a financial redress scheme of last resort (FRSLR).

2) **A cap is a moral hazard** incentivizing IFA given the vastly favourable cost/benefit analysis. It is inequitable: the least-affected rightfully receive 100% while *(if eligible)* worst-affected victims get a tiny fraction. If a cap is to be imposed – it must be no less than Labor's 2018 proposal of **$2m restitution** *(direct, indirect & compounding losses)* and **$1m compensation** *(for incalculable financial losses & personal injury)*.

3) Redress must be applied **retrospectively** i.e. **IFA *discovered*** (not just conducted) **after 1/1/08** (GFC exposed IFA, drove activism for inquiries and royal commission) and must **include prior victims who remain significantly compromised** e.g.:
(i) financially (living in car / caravan / home of others; hardship; poverty etc.),
(ii) suffering related physical and mental health impacts.

4) Consider increased risk given gender pay-gap and inequities in **already markedly reduced women's economic security**, especially for single, middle-aged or older.

5) Urgent implementation of **alternative or interim measures** until losses are recouped to offset failures of financial redress incurred by a cap or eligibility exclusion.

6) **Proper consumer protections** (and for whistle-blowers) must include fines, penalties and **zero tolerance** of financial abuse, acknowledging serious long-term and / or life-long personal and health (physical & mental) impacts on victims and families.

7) **Trauma-informed training** for politicians, regulators, industry, associates, media etc. of their duty of care to responsibly engage and treat victims in a humane manner, with dignity and respect; provision of **sophisticated complex IFA education** and its impacts **paralleling other abuse of power** along with **institutional response failures**.

Treasury, government and regulator disregard innocent Australians as pesky victims

1) Power structures prioritize profits and protecting self-interest thus, perpetrators, over people and principles when Big Money is involved, political donations occur, transparency and accountability is lacking, no Federal ICAC exists etc.

2) No meaningful data or statistics on complex IFA in Australia exists to inform ethical response or validity of caps in Legacy Complaints or the proposed CSLR: this denies real-life or effective assistance to go forward or recover.

3) Without asking the right questions of victims, or listening to concerns and genuinely partnering, it will likely, if not inevitably, result in wrong conclusions and actions – the CSLR proposal (and AFCA's Legacy Complaints) prove it: the scheme fuels IFA; and places Australians at serious risk.

4) Treasury, politicians, industry, commentators must ask – *indeed, be able to imagine*…. certain key questions including:

ASK YOURSELF:	**If, through no fault of my own, my home, lifesavings, retirement, investments were taken from me, would reasonable, fair or effective financial remedy be….?**

a) Cap: $0 restitution and $150,000 compensation (proposed CSLR)
b) Cap: $0 restitution and $542,500 compensation (AFCA Legacy Complaints)
c) Cap: $2m restitution and $1m compensation (Labor's proposal, 2018)
d) Full restitution and meaningful compensation (People for ethical response)

5) A cap is a *grave moral hazard and danger*: it signals a green light conveying government will enable or protect IFA, crime pays, proceeds of IFA outweigh cost to industry – and 30 odd inquiries plus the Hayne royal commission are minor short-term annoyances, even if publicly humiliating, without power to influence corrupt profits or industry financial abuse of innocent Australians.

6) The CSLR is not victim-centred. It is not principled. It is tokenistic and insulting. It lacks accountability. It requires victims to subsidize decades of failures of government and industry to safeguard against catastrophic breaches of information and economic security human rights - despite some 30 inquiries over decades and, most recently, the 2018 Hayne *Royal Commission into Misconduct in the Banking and Financial Services Sector*.

7) **13 years later almost all 500+ Holt-victims** *of complex multi-lender / product IFA followed by unscrupulous liquidators pursuing money for placement in deceptive debt, despite explicit loan application criteria not met, along with other ethical and legal concerns* – have received **NO FINANCIAL REDRESS WHATSOEVER, far less proper remedy or compensation for pain and suffering**.

(1) **Background: Holt-victims efforts to seek ethical institutional responses to IFA**

It must be noted substantial efforts have long been at an enormous toll to the authors who represent victims' action group HNAB-AG. Thirteen (13) years after emergence (for most) of **industry financial abuse (IFA)** – sanitized as ***"misconduct"*** – people are worn down, depleted, demoralized and despairing. Common tactics experienced to disempower, compound trauma, re-traumatize, intimidate and silence victims are:

(i) inordinate delays (with negligible, if any, fair or meaningful outcome)
(ii) gruelling, humiliating, overwhelming and unjust processes
(iii) thwarted or blocked efforts to engage with power structures
(iv) engagement is often disingenuous followed by disinterest, obfuscation, spin or abandonment which emboldens culprits and enablers
(v) concerted activities to minimize, deny, victim-blame and discredit.

Many politicians, industry members and associates treat us as pesky annoyances. Common courtesy is often not extended. They ignore, patronize and stonewall.

We persist because of harrowing unjust impacts, well beyond devastating financial repercussions typical of abuse or victimization. We feel a moral and social duty to persist, insist and resist efforts to deflect from, cover-up and enable corruption and abuse of trust and power – at the expense of innocent Australians, their families and loved ones who endure profound and severe long-term or lifelong repercussions.

Prior to forming HNAB-AG in 2011, individuals had already tried for over 2 years to draw attention to their plight from regulatory failures regarding industry financial abuse including unscrupulous liquidators pursuing victims placed in deceptive debt.

Victims have long called – and continue to call – for meaningful and genuine:

1) **reforms**: legislation and plain, clear, processes to safeguard the community
2) **penalties**: zero tolerance (to work in industry); meaningful fines, jail etc.
3) **financial redress**: restitution (for direct, indirect and compounding losses) plus compensation (for incalculable losses and personal injury)
4) **complex IFA education** and **trauma-informed training**: of authorities, decision-makers and power structures (i.e. regulators, industry, lawyers, academics, all politicians, media) about how sophisticated IFA occurs and the repercussions
5) **scrutiny of failures of the above** e.g. in a parliamentary committee of inquiry.

Labor, Greens and Independents met with us, listened and took up issues. Then Leader of the Opposition, Bill Shorten met with HNAB-AG on many occasions over 2014-2017 resulting in Labor's significantly more informed **2018 financial redress proposal of restitution capped at $2m and compensation $1m**. This proposal is far more realistic for real-life financial redress. However, it is still capped. Any cap presents a dangerous moral hazard (outlined pages 8-13).

Given his background, Greens' Senator Peter Whish-Wilson is among the few who understand IFA complexities: how it happens to intelligent, diligent, responsible people with consequent devastating life-long impacts. In 2017, behind the scenes, Liberal Sarah Henderson Federal MP advocated for a royal commission to Cabinet in which she included material sought after engaging with a Holt-victim constituent.

Most victims endeavouring to meet with local Federal MPs or ministers are given short shrift at best. Sometimes hope occurs – only to be devastated by failure to follow through (with limited exceptions). Only with kind industry assistance did we gain access to certain politicians from 2014-2017. Prime Ministers, Treasurers, Ministers and other politicians continue to avoid efforts to meet. Typically, pro forma replies are (eventually) issued. These fail to address concerns raised. Politicians are adept at deflection. Spin is extraordinary. Disinterest in genuine engagement is appalling.

Including by invitation, we appeared at, and contributed written submissions to, senate inquiries, parliamentary committees, Ramsay Review and media pressers.

Despite offering, we were not called among a mere 27 witnesses at the Hayne royal commission (nor were other victims of complex multi-lender/product negligence, deception and fraud in collaboration with so-called "*independent*" third party advisers). Nor was the Commission's excellent counsel permitted to scrutinize matters of agribusiness MIS, BT Margin lending, liquidator misconduct, in-house or associated consumer / hardship advocates and lawyers, along with numerous serious concerns.

(2) **Savvy IFA perpetrators and enablers lose no sleep over regulators or legal system**

Our experiences are reflected by Edward Siedle, a former attorney with the United States Securities and Exchange Commission, forensics expert and award winning whistle-blower in the USA, author of ***"How to Steal A Lot of Money-Legally: Clueless Crooks Go To Jail, Savvy Swindlers Go to Vail."*** He outlines how savvy industry members steal people's investments as their skill "…*mercilessly overwhelms any so-called rules and devours those who play by them.*" In Forbes, 18 August 2021, Siedle describes how regulatory and legal systems (administrative and criminal) as well as the FBI are no threat whatsoever. He explains how these avenues enable IFA as authorities do not understand complex sophisticated scenarios. How can the public?

It is compounded by grossly inadequate penalties, "*settlements*" with non-disclosure agreements, resulting in no conviction or transparency, and failures of meaningful

consumer protections and financial redress. Systems cater to culprits with significant resources, industry and legal knowledge, contacts, and teams of lawyers skilled at finding technical holes in prosecutors' cases – and securing assets beyond reach of "*creditors*" – i.e. their victims. (Note: "*Settlements*" are also entered to – given no real choice – where victims are forced to "*accept*" responsibility for IFA thus, **ironically, required to knowingly falsify a legal document**, to extract from unknowing deceptive placement in debt.)

Siedle notes cases are "*often extremely complex and difficult to explain to juries*… [even] *law enforcement-including the FBI, often doesn't understand investment scamming cases and*….[therefore] *fails to recognize criminal activity or prosecute*…."

Typically, criminal convictions occur in "*…the most straightforward and seemingly stupid*" cases because "*…the masterminds you never hear of, never get caught…*" or get very far in the regulatory system. Processes to "*settle*" mean systems focus on reducing risk to perpetrators not holding them to account. Victims are denied justice.

To be successful, perpetrators "*…devise intentionally over-complex investment schemes-which can even be painstakingly disclosed in sales materials provided to investors-but which neither investors nor regulators/law enforcement will be able to understand or prosecute.*" It is no surprise, in the experience of Holt-victims that most politicians, industry, media, and all too often lawyers and regulators, do not understand the problem. It has taken Holt-victims years to grasp. Most give up trying.

Siedle notes the ***3 Hallmarks of High-Level Investment Fraud*** are:

- Nobody ever admits guilt
- Nobody ever goes to jail
- Nobody ever pays back all the money they have stolen.

The bottom-line in Australia is the same as reported in the USA by Edward Siedle:

> "*Law enforcement, including the FBI, generally neither 'get' nor are effective prosecuting high level investment scammers.*"

(3) **The human right to effective remedy – ignored in the "CSLR" Proposal**

Dr Kym Sheehan and Professor David Kinley, Sydney Law School, The University of Sydney, note human rights obligations and responsibilities of banks and other financial services entities are binding domestically as well as internationally and must be considered in responses to financial "*misconduct*".

In a submission, to the Hayne royal commission dated 26 October 2018, they recognize, "*Community expectations… reflect the principles upon which human rights are based – namely to be treated with respect, dignity, fairness and equality such that one's security and welfare are protected and promoted.*"

Holt-victims have not typically encountered treatment guided by recognized human rights or community expectations from ASIC, industry bodies, lenders, product issuers, liquidators, insurance companies, customer / consumer advocates (including the head or "*chief*" of IDR), "*hardship*" programs (or variations on title), lawyers, or successive governments: indeed, overwhelmingly it has been the reverse.

However, we underscore our sincere thanks and gratitude to those exceptional, decent, industry members who have assisted us and politicians who have engaged.

(4) **A moral compass must guide a victim-centred financial redress scheme**:

Power structures must prioritize people and principles over, profits and protecting perpetrators.

To effect meaningful change regarding IFA, in addition to ensuring accountability of culprits and prompting decent industry members out of enabling complacency (i.e. the good do nothing), a redress scheme must provide real-life assistance, be victim-centred and trauma-informed. This is not in evidence in the proposed CSLR.

The proposed CSLR, along with failures of design in AFCA's Legacy Complaints, is not victim-centred or trauma-informed: both are industry-centred and politics-centred.

(5) **Data, ethics and partnering with victims is necessary to design proper fair redress**

Without asking the **right questions of the relevant people i.e. having lived experience**, or **listening** to concerns and genuinely **partnering**, it will likely, if not inevitably, result in the wrong conclusions and actions. The proposed CSLR fuels IFA. It places Australians – young through to elderly – at grave risk in the future. It ignores retrospective cases.

To design a useful financial redress scheme of last resort (FRSLR), data on the range of impacts is needed with commitment to ethics, moral compass and accountability.

Without data and ethics, the proposed CSLR is a **tokenistic insulting sham requiring victims to subsidize decades of failures of government and industry** to safeguard against catastrophic breaches of information and economic security human rights…

- this is despite some 30 inquiries over decades, and most recently, the 2018 Hayne *Royal Commission into Misconduct in the Banking & Financial Services Sector*.

(6) **Treasury, politicians, industry, consultants, commentators must ask 4 essential questions**: - ***indeed, be able to imagine….***

1) **If, through no fault of my own, my home, lifesavings, retirement, investments were taken from me, would reasonable or effective financial remedy be….?**

   e) Cap: $0 restitution and $150,000 compensation (proposed CSLR)
   f) Cap: $0 restitution and $542,500 compensation (AFCA's Legacy Complaints
   g) Cap: $2m restitution and $1m compensation (Labor's proposal 2018)
   h) Full restitution and meaningful compensation (People for ethical response)

2) **What does provision of less than full restitution and compensation signal to…**

   a) **Perpetrators?**

   (i) Crime pays – proceeds of crime outweighs cost of redress to victims: cost-/benefit analysis of IFA favours perpetrators and enablers?
   (ii) Decades of 30 inquiries and the Hayne royal commission are optics: minor annoyances with little clout to effect change or help victims?
   (iii) Political donations fuel corruption and protect industry not the public?

   b) **Enablers (in cover-up or complacent otherwise decent professional industry members)?**

(i) Whistleblowing is a pointless, traumatic risk: forget trust and integrity?
(ii) Hear no, see no, speak no evil: it won't make any real difference?
(iii) Don't rock the boat: protect career; focus on rewards, promotion?

3) **Why should industry offenders avoid jail** when – appallingly in a supposed democratic, civilized country – an already disadvantaged 10 year-old indigenous boy is sent to jail for stealing a bike?

4) **Why is industry permitted to keep proceeds of IFA, and related benefits** as a result of loopholes and inadequate legislation, at the expense of victims without sophisticated industry or legal knowledge, contacts or resources?

If the current reality is unacceptable – politicians, industry and others must – demand:

1) integrity, compassion, transparency, accountability: human rights
2) effective and proper redress: full restitution and fair compensation
3) the strongest whistle-blower protections (rewards and financial redress)
4) a Federal ICAC: applied retrospectively, exclude no class of people, with power and resources to fulfil its purpose and be independently audited
5) ASIC not be beholden to government or treasury or powerful industry entities
6) victims must not be expected to subsidize industry and government roles in the occurrence or enabling of IFA or delay in providing effective redress
7) authorities who cannot imagine self (or a loved one) being in the position of everything taken or "lost" and rolling life-long repercussions, must either:
   (i) meet extensively with victims and families to grasp issues, urgently, or
   (ii) be excluded from design of a financial redress scheme of last resort.

(7) **Government's responses to financial redress and IFA demand a PCOI**

Successive Coalition governments, especially since the GFC and calls for a royal commission, have thwarted, and sought to silence, victims and consumers rights while endeavouring to protect and enable industry and corporate greed.

Commitments to recommendations arising from the royal commission have been eroded, wound-back and fudged. Now, government seeks to use COVID-19 as a rationale for sacrificing victims yet again, influencing ASIC's role, prioritizing industry over customers without regard for IFA (past and ongoing). This includes victims who have existed for well over a decade – as well as those set up as future sitting ducks.

Industry-centric policy and corporate greed prioritized over Australians and victims

Government's August 2021 directive to ASIC in the Statement of Expectations does not prioritize Australians' interests in identifying, and acting unequivocally on, IFA. It further diminishes an already weak, ineffectual, regulator. Disturbingly, its focus could divert ASIC from, or potentially trump, its regulatory role and enforcement of the law.

Andrew Schmulow, Faculty of Law, University of Wollongong, notes in The Conversation, 27 August 2021, Commissioner Hayne was scathing about how ASIC carried out its duties. (Holt-victims can attest to his accuracy – both pre and post the royal commission.) Schmulow recounts Hayne's statement, "*Financial services entities are not ASIC's 'clients'. ASIC does not perform its functions as a service to those entities. And it is well-established that 'an unconditional preference for negotiated compliance renders an agency susceptible to capture'.*

Negotiation and persuasion, without enforcement, all too readily leads to the perception that compliance is voluntary. It is not."

In relation to the unquantified damage for over a decade of "*habitually-abused financial consumers*", Schmulow states, "*Colleagues at the University of Melbourne estimate the full cost at north of A$200 billion, affecting approximately 54% of the population.*" We are unsure if this includes people subjected to complex IFA.

Call for urgent scrutiny and action – parliamentary commissions of inquiry

The state of affairs underscores why a PCOI into the following is essential if politicians and industry genuinely want Australians to have confidence and trust in the banking and finance sector as well as regulators in an accountable democratic society:

1) hold government to account for winding back Commissioner Hayne's recommendations and using COVID economic recovery as a further excuse for abandoning these as well as provision of effective financial redress
2) scrutinize ethics failures and human rights' breaches in design of financial redress remedy and formulate principles that must underpin effective redress schemes – including for retrospective cases (i.e. *discovered* as of 1 January 2008 and those *existing* prior who remain significantly disadvantaged).
3) investigate sophisticated IFA not scrutinized in the Hayne Commission including lenders / products protected under law due to so-called "*independent*" third parties, liquidators, in-house consumer advocates, programs and associates and why regulators / politicians fail to understand
4) examine why expensive tax-payer royal commissions are called with reports routinely left to gather dust on shelves (as Malcolm Turnbull predicted) – and accepted recommendations are unmet for years, or decades later, if ever.

(8) **Processes for financial redress** – must be:

1) trauma-informed (trained by trauma specialists with extensive experience and understanding of complex IFA)
2) simple to access and navigate
3) competent, transparent, ethical and prompt
4) responsive to otherwise intelligent people, as well as those compromised, who lack financial sophistication and are subjected to complex IFA
5) informed on how sophisticated complex IFA occurs, why regulators failure to identify or understand, and the wide-ranging impacts across all aspects of life
6) designed to provide free, independent, competent, ethical experts who understand how negligence, deception, fraud and related loopholes occur, and will take on collating and compiling – or assist with – lodging a complaint
7) designed in partnership with victims and trauma therapists / specialists experienced with victims of serious life-altering IFA and related repercussions
8) independently audited by those with comprehensive trauma-informed training and well educated about complex sophisticated IFA.

(9) **Caps – moral hazards: fuel IFA; gross inequities; worst-affected subsidize redress**

1) A cap means those least affected by IFA, rightly and fairly, receive 100% redress – while, however, those most-affected are left to crawl or limp along, seriously debilitated with little or no chance to "*start over*" when at mid-life or older, dependent on family or friends for a home, in social housing, couch-surfing, homeless etc. Many are severely financially compromised for the rest of their lives. However, this is also quite apart from consequent devastating personal, social, economic and related physical and mental health, impacts.

2) A cap further disadvantages women, particularly those who are single, and especially those middle-aged or older, as the gender pay gap and inequities compound issues already in play that reduce women's economic security.

3) A cap means institutional practices are emboldened to disregard ethics or to not be client-centred or victim-centred: aggravating matters where rendered with the least power and resources – emotionally, physically, mentally, financially – and who are thus less able, or unable, to fight for fair responses.

4) A cap is a major moral hazard. It fuels IFA. IFA is not deterred. It is enabled, even turbo-charged, due to an immensely favourable cost / benefit analysis.

5) The proposed CSLR cap is not based on data related to victim impact: it is a figure deemed acceptable to some in industry, academia and politics. It is not based on pragmatic, real-life needs to recover with dignity. The CSLR cap is not underpinned by the human right to effective remedy or accountability.

   No adequate IFA statistics exist: neither ASIC, nor the ABS or any independent body has gathered comprehensive, meaningful or accurate records of:
   (i) how many victims exist
   (ii) which industry members or organizations and IDR / EDR were involved
   (iii) what products or types of negligence, deception or fraud occurred
   (iv) amount of losses incurred:
   - directly
   - indirectly
   - compounding
   (iv) related impacts and timeframe (short/long-term, life-long, life-ending):
   - personally (including existential crisis, plans, dreams, world-view)
   - key relationships, family and animals (pets etc. 'relinquished')
   - social and community (alienation, isolation, relocation)
   - work and career (inability to work; trajectory altered or ended)
   - serious stress-related physical and psychological / mental health (including suicidality, attempts and completions).

Historic cases such as Holt-victims who pushed for senate inquiries and a royal commission, including design of proper financial redress, are left, almost entirely, without recourse to any redress whatsoever – far less effective or fair remedy.

We persisted with efforts regarding feedback on a "CSLR" and retrospective redress, despite the toll, because we do not want what we have been through to be in vain. We despair little has changed for those who will be future victims of serious IFA – and, the appalling travesty nothing has changed for those left to struggle without any retrospective redress. This is, by far, the greatest factor in ongoing trauma endured.

It is not acceptable, ethical, moral or reasonable that people who drove demands for integrity, reform and accountability have been ignored and carefully excluded – by design – out of fair, responsible and effective retrospective financial redress.

(10) **Alternative or interim measures for financial redress**

Mechanisms for financial relief up to the amount of losses incurred – plus interest and compensation for delays of years and personal injury – must occur where victims are:
1) excluded from access to a scheme retrospectively, or will be in the future
2) significantly disadvantaged or compromised by a cap being imposed
3) awaiting determination of restitution and compensation.

These have been outlined by HNAB-AG over many years including to Treasury, senate inquiries and the Ramsay Review. These must be implemented urgently.

Victims must not be expected to subsidize serious government and industry failures. If forced to subsidize these compounding failures, alternative interim measures must reduce impacts through immediate, prompt, trauma-informed processes.

Urgent simplest alternative interim measures – *up to loss amount to be recouped:

1) exemption from income tax assessed*
2) reimburse income tax paid since discovery of IFA (or preferably, occurrence)*
3) tax-free super contributions*
4) ex gratia payment for those where loss of home and / or retirement resulted
5) ex gratia payment for those unable to work and / or related health concerns
6) government funded trauma, family and relationship counselling / therapy from a provider of the victim's choice with no session limit
7) reimburse counselling / therapy and medical expenses since discovery of IFA
8) exemption from stamp duty
9) wipe related damaging credit rating records
10) null and void records of related bankruptcies / insolvencies
11) interest-free loan provision – include in losses to be recouped
12) require lenders, liquidators etc. to prove alleged debts met loan application criteria, that informed consent and due diligence occurred, and where not, cease demands, void "*settlements*" – provide restitution with compensation.

(11) **The sum total of financial redress for Holt-victims** - of which HNAB-AG is aware:

1) **5 victims received a FOS determination in their favour:**
   - most victims were excluded from lodging a FOS complaint under eligibility criteria in 2008 – including, as losses could not be over its cap of $150,000
   - the majority, also, were unable to lodge a complaint due to:
     (i) financial complexity (it's taken years to understand and collate)
     (ii) the trauma of losing one's home, or threat thereof, and / or life-savings and retirement, plus discovering deceptive placement in overwhelming debt which bankrupted some and threatened others for many years and remains ongoing for others
     (iii) battling to stay afloat and focus on making an income
     (iv) dealing with turmoil, despair, hopelessness and overwhelming distressing consequences across all aspects of life.

2) **Claim against HNC P/L [In Liq.] January 2011 to be finalized in September 2021**

   Of 500+ documented Holt-victims, only 21 were *able* (literally) to make a claim against HNC P/L (In Liq.). In 2 known cases (two of the authors) this was only possible due to substantial pro bono assistance from a former FICS (became FOS, now AFCA) decision-maker. Some had legal assistance (unaffordable for many). It was clearly beyond the vast majority of victims.

   A pool of money became available after insolvency firm, GS Andrews and Associates P/L, made uncommon efforts for which we are immensely grateful.

   However, the claim process reinforced the need for urgent reform in respect of deficits in insolvency legislation and disadvantages to financially unsophisticated victims. The seasoned liquidators and their lawyer described "*never seen anything like it*" regarding documents and that the process was "*torturous*" – … which may convey a glimpse of the experience for victims.

The liquidator took successful legal action against an agribusiness holding deferred payments for HNC P/L. A total of $865,000 was awarded plus costs. After liquidator fees and costs, a meagre share of approximately $650,000 remained for distribution to "*creditors / claimants*" i.e. Holt-victims):

a) 18 cases were admitted and proved – this constitutes a tiny 3.6% of the number of known Holt-victims
   [Note: As of August 2021, one case is not yet resolved so the balance is still to be distributed]
b) Direct losses *only* were eligible – and *only* incurred via HNC P/L (In Liq.)
   – 18 people received a mere 8 cents in the dollar for these losses only
c) Excluded from eligibility were:
   (i) other significant direct losses
   (ii) substantially greater indirect, and compounding, losses before, and since, HNC P/L entered insolvency on 11 January 2011
   (iii) personal injury: devastating and wide-ranging
d) Range lodged: $57,000 - $1,705,450
e) Range admitted: $2,612 - $1,616,034
f) Range paid: $225 - $147,520
g) Most had elements rejected related to placement by licence holders Holt acted for or, in effect, represented (reinforced by related documentation including his firm's contact details on correspondence sent by him)
h) 2 were rejected as a Deed of Settlement had been entered into prior to liquidation of HNC P/L
i) 1 was rejected having received a *"*"*full*" payout from AFCA's Legacy Complaints (*we understand a few with nous lodged *parts* of their case under FOS cap).

[Note: By way of illustration, had the minimum number of known 500 Holt-victims all lodged a claim and the pool been divided equally (instead of proportionally), each would have received a paltry $1300. Moreover, it is now evident early surveys significantly under-reflected direct losses at a few thousand to a few million dollars. In 2015, among 86 surveyed (of a staggering 500+ known Holt-victims placed) in 1 MIS **only** (and bearing in mind most were placed in ***numerous*** so-called "*investments*") the range of losses for this group of 86 was $17,000 - $1.6m (totalling $27m).]

3) **ASIC Security Bond; Professional Indemnity; FOS; Lawyers; Legacy Complaints**

Redress available to Holt-victims has been zero to patently negligent and inadequate – it goes nowhere near effective remedy or real assistance:

a) Legislation failures required Peter Holt's firm to pay a **grossly inadequate $20,000 as an ASIC Security Bond** in the event of "*a complaint*"…(singular)
   – The Bond, plus interest of $12,000, would have been returned to Peter Holt had G.S. Andrews and Associates P/L not kindly notified us
   – Despite HNAB-AG having pursued ASIC (which eventually engaged briefly re Mr Holt) they did not notify us of a Bond or our right to claim (later advertising in a newspaper: no-one else either saw it or claimed)
   – Obtaining the Bond was a disturbing ordeal over 2.5 years highlighting serious deficiencies of such processes on many levels
   (NOTE: Almost all recipients agreed to contribute $19,000 of the Bond to running costs of HNAB-AG as we are a non-subscription voluntary group run by, and for, victims of IFA. The liquidator used $12,000 interest towards costs of managing Peter Holt's insolvency.)
b) Legislation permitted Holt's firm to hold **only $2million Professional Indemnity insurance** – despite managing millions of dollars for 500+ clients
c) **FOS awarded only 5 determinations** (see above) and **refused to take further Holt-victims** when Peter Holt refused to provide documents….
d) **Lawyers** focused on Mr Holt not the larger complex picture; significantly delayed advice; were not keen to proceed with action due to concern no money was available in *no-win/no-fee* and given victims' decimated financial situations; and were not willing to proceed to set a precedent despite a noble public stance "*rogue*" advisers must be held to account

e) **Legacy Complaints** excludes Holt-victims from eligibility beyond a handful with unpaid FOS determinations: disturbingly, exclusions are for the precise reasons that drove years of activism for retrospective financial redress
f) **"CSLR" focuses on future** cases of IFA: it does not include past victims.

The Morrison government has blocked retrospective financial redress for Holt-victims.

(12) **An example: Armageddon – and failures of redress with grossly unrealistic cap**

It was not until 2021, with the kind, patient, considerable, pro bono assistance of a former FICS decision-maker that I was able to finalize some – not all – of my direct losses through one of Peter Holt's companies. Some 13 years later, calculations of indirect and compounding losses are markedly more substantial than the ruinous direct losses.

My home (which had substantial equity) had to be sold to pay out some of the deceptive placement in overwhelming debt that emerged in 2008. It still threatened to bankrupt me (despite being not my fault) for 9 years requiring gruelling efforts to avert this outcome and seriously affecting my health. Real estate estimations indicate my former home is now worth 12 – 17 times the proposed CSLR cap of $150,000 and well over 3 – 5 times the Legacy Complaints cap of $542,500.

Additional to the loss of my home, even more occurred in direct losses through so-called *"independent"* adviser mismanagement and deception via collaboration with numerous lenders and product issuers who incentivised and enabled Peter Holt. Money for *"investments"* was effectively stolen, as was my savings being suddenly and unexpectedly required in 2008, to prop up placement in debt through negligence, deception and fraud.

Various unrelated independent industry members examining my documents have described it as: *"an abyss"; "you were totally stitched up"; "it is an utter scandal"; "there are no words"*...

Even if I were to be eligible for the full cap of Legacy Complaints, quite apart from the so-called *"investments"*, I could not buy my home back – or anything like its quality and location. Moreover, I could not buy in the area or similar (or in many places) for $542,500 - far less for the CSLR cap of $150,000. Predictions are property will rise up to 20% this year… Add to this, being in your 60s and refused a home loan because of financial circumstances caused through no fault of your own.

Nor would eligibility for either scheme restore to anywhere near the position I worked my entire life for, and would have been in, had IFA not been enabled by "*inadequate"* legislation and protection.

By far the most devastating aspect has been that had proper effective financial redress been in place in 2008, it would have averted compounding financial impacts and subsequent truly devastating personal, family, social, career and health consequences.

The cataclysmic financial losses are not the least of it. No amount of $millions – *even if available in compensation* – would make up for the 13 years to date of intense trauma, pain and suffering, or personal injury. However, it would help to go forward.

(13) **Thirteen years later….** – typically, Holt-victims are:
1) trying to cope with immeasurable trauma, either:
   a) actively "*trying to forget*" what happened and subsequent failures of institutional responses in accountability or financial redress, and / or
   b) in subconscious efforts to minimize, rationalize and deny the extent of impacts – or even self-blame – while evidencing marked mental health symptoms (depression, anxiety, insomnia, post-traumatic stress, suicidality)

2) battling to try to cope financially – and personal, social and health impacts
3) struggling with despair, hopelessness, powerlessness, betrayal, loss of trust of "*experts / professionals / advocates*" and particularly government, resulting in significant physical and mental health impacts, including suicidality especially among (but not exclusive to) those who lost the most relative to their situation (not necessarily dollar amount) and / or personal consequences
4) re-traumatized by:
   (i) inordinate delays in establishing avenues of financial redress – or none
   (ii) exclusions and failures to establish any, far less, effective fair redress
   (iii) years of intense rolling repercussions compounding initial IFA discovery
   (iv) lack of accountability for Peter Holt, lenders, product issuers, liquidators, regulators and related parties etc. as well as politicians
   (v) limited understanding of complex IFA by politicians, industry, media
   (vi) lack of any real, or genuine, engagement by recent governments
   (vii) those with vested interests seeking to delay, avoid, deflect, ignore related serious wide-ranging concerns and blame or discredit victims
   (viii) so-called "*independent*" in-house or subcontracted consumer / hardship advocates, lawyers, related programs or "*resolution*" schemes for products, lenders, liquidators, insurance companies etc.
5) disillusionment with power structures enabling vested interests, conflicts of interests and unethical, inhumane, institutional responses to IFA
6) ***however, we are eternally grateful to industry members with integrity*** offering pro bono help as Holt-victims have no public champion or whistle-blower.

(14) **False threat of scheme *"viability"* unless capped – feeds corruption over integrity**

To deter IFA as well as meet victims' rights, the perpetrators and enablers – including successive governments – must be held to account to fund proper redress. This includes those who have benefitted on the backs of innocent victims by engaging in IFA, or directly enabling in cover-up, or indirectly through complacency in regard to inadequate or non-existent consumer protections. Funding can, and must, come via:

1) The gargantuan profits of industry lenders and organizations previously (and subsequently) found to have engaged in IFA (e.g. banks, lenders, AMP etc.).

2) Levy all members (steep enough to cause rethink of complacency to focus on safeguards, reform, monitor, audit, repercussions of ignoring problems).

3) Review of obscene executive and CEO salaries / bonuses; creditor and shareholder dividends acquired from IFA; tax reform of multi-nationals etc.

4) Funnel some of the billions misused by government in rorts or scandals e.g.:
   (i) $4.8 billion in Urban Congestion Fund (includes #carporkrorts)
   (ii) $660 million in Commuter Car park (#carporkrorts)
   (iii) $100 million to Sports Clubs (#sportsrorts)
   (iv) $27 million more paid than $3m value of the Leppington Triangle
   (v) Businesses, not in need, refunded PAYG – without application in 2020
   (vi) $4.6 billion JobKeeper to 157,650 firms with higher sales in first 3 months
   (vii) **$13.03 billion was paid in JobKeeper** to hundreds of **companies** with **increased sales**, some higher than in 2019 (Parliamentary Budget Office data): this went in profits, dividends or executives bonuses of major ASX-listed companies due to **no mechanism designed to claw back funds – along with no transparency** (i.e. a public register as in other countries including New Zealand) – resulting in many **companies refusing to repay**: e.g. Harvey Norman, Nick Scali, Seven West Media, Super Retail Group, ARB 4x4, Lovisa etc.

(viii) Donations made by industry to political parties or politicians.

(15) **Indicators of lack of financial redress commitments…. Unconscious bias?**

1) Inordinate delays in establishing redress or prioritizing retrospective redress.
2) Exclusion criteria / eligibility parameters which don't understand, or ignore, reported activities that drove the call for a scheme and fail human rights.
3) Lack of trauma-informed practice and processes.
4) Threats of "viability" of redress scheme to rationalize imposing a (wholly inadequate) cap.
5) Terminology that dehumanizes and:
   a) avoids facts of financial abuses causing severe human toll and trauma: (e.g. "*poor*" conduct / "*misconduct*"; "*malfeasance*"; even "*white-collar crime*"; "*victimless crime*"; "*compo*" etc.)
   b) deflects reality of IFA and accountability failures in institutional responses: (e.g. "*compensation*"; "*independent*"; "*consumer advocate*"; "*lost*"; " *resolution*"; "*borrower*"; "*creditor*"; "*hardship*"; "*settlement*"; "*dividend*"; "*last resort*" etc.).

(16) **Conclusion**

The Coalition voted 26 times against a royal commission. Once the inevitability was obvious, the major banks forced the Turnbull government's hand. A brief timeframe, the terms of reference, and calling only 27 witnesses, excluded hundreds and more victims who drove the call. The 2018 Hayne royal commission did not scrutinize wide-ranging complex and sophisticated IFA or subsequent actions of unscrupulous liquidators of collapsed MIS. Nor did it address lenders and products held at arms length under the law where so-called "*independent*" third-party advisers were involved despite having collaborated and incentivised then failed due diligence.

Following decades of failures, then Treasurer, now Prime Minister, Scott Morrison, together with current Treasurer, Josh Frydenberg, and related ministers, have continued to kick the can down the road for years – and right into oblivion for people like Holt-victims (and others, even when ASIC pursued and achieved a jail conviction). We are obstructed and excluded by design.

Treasury's proposal patently fails to ensure any or effective remedy, hold perpetrators accountable or deter IFA. Innocent Australians are re-victimized by being required to subsidize failures of successive governments. The proposed CSLR reflects authorities either do not understand and / or do not wish to address the related serious matters.

Politicians, industry and commentators must demand government and institutional responses to victims are humane, ethical and responsible. Future, and retrospective, financial redress, including in a last resort scheme, must ensure proper remedy.

Among far too many, Holt-victims rendered invisible have endured severe economic, social, health and personal impacts, devoid of government or experts determined to tackle IFA or ensure dignity or help for those affected and alienated from community understanding – for over 8 times as long as the nation has struggled with COVID-19.

Failures of Government integrity, leave the most-financially devastated subsidizing, or excluded from, a financial redress last resort scheme – trivialized as "*compo*" – with an unrealistic insulting cap erroneously rationalized for it to be "*viable*." This is in the face of billions wasted in political rorts and scandals, as well as made in industry profits while paying obscene executive salaries and bonuses. It demands a moral compass and urgent, responsible, meaningful **#FairFinRedress**.