KordaMentha and ANZ's conduct regarding Timbercorp-Holt Victims:

– Example of Consumer Protection Failures

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Introduction

1. The long over-due *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* has been holding hearings since February 2018. Victims are not surprised by the revelations which are shocking the public. No politician should be surprised given the countless senate inquiries, parliamentary committees and reviews which have been held. These resulted from victims' reports over decades coming to a head when ASIC ignored the 'gift-wrapped' documentation from brave whistleblower Jeff Morris who exposed CBA financial planner Don Nguyen and media coverage including exposés from Gold Walkley-award winner Adele Ferguson.

2. HNAB-AG made considerable efforts over 7 years prior to the Royal Commission to draw attention to systemic issues in the banking and finance industry, the need for a *Retrospective Financial Redress Scheme of Last Resort* for victims left without recourse due to grossly inadequate consumer protections and legislation which protects industry and lack of avenues for accountability and measures necessary to radically transform industry culture and safeguard Australians.

3. Multi-lender/multi-product white-collar crime may be difficult to examine at the Hayne Royal Commission because it is so vast and complex. We hope the conduct of liquidators will be examined as the experience for victims with KordaMentha underscores many disturbing issues. We have written to the government emphasizing the necessity to hold a thorough investigation if KordaMentha and ANZ are not scrutinized regarding Timbercorp Group, Timbercorp (In Liq) and KordaMentha's Hardship Program established in 2014.

4. This document outlines key concerns which have been communicated to parliamentarians in person, by letter, through submissions to various inquiries and reviews and in testimony to these.

5. HNAB-AG represents 140 victims of unconscionable conduct related to industry's collaboration with Peter Holt's firm of accountants and advisors. We are a free, voluntary group run by, and for, victims.

6. At least 500 people were placed in multiple agricultural investment schemes including Timbercorp; BT margin lending; SMSF and investment loans. Institutional responses over 9 years – and longer for earlier victims - compound devastating personal impacts as well as financial losses. Resources failed to provide adequate accountability, proper or any redress or necessary reform. We were pleased to assist in preventing the dilution of the FOFA Reforms and to meet with, and provide substantial information to, the Ramsay Review in 2016 and 2017 on EDR schemes and redress. We regret Government has not pursued action on Professor Ramsay's Panel's final report but tacked it onto the Royal Commission despite repeatedly recognizing consideration of a Redress Scheme of Last Resort, and a retrospective one, does not require holding such an inquiry.

7. The word *'victim'* references the conduct of the offender or culprit rather than the individual's response to being targeted prey, disregarded or inadvertent collateral damage and injured or wounded in some manner. It is this conduct consumer protections must be designed to address and respond to inevitable issues that will fall through cracks. Currently, the system is full of gaping chasms.

8. It is crucial consumer protections be scrutinized. These are patently inadequate at best. At worst, they enable unscrupulous industry individuals and organizations and permit re-victimization. This results in largely unrecognized, invisible, devastating personal, family and social consequences ultimately affecting all Australians.

9. We focus, in particular, on victims' experiences of **Managed Investment Schemes** and the role of liquidators. Since forming over 7 years ago, we have actively endeavoured to engage with Liquidator of Timbercorp Finance, Craig Shepard and KordaMentha principal, Mark Korda, its Hardship Program and two successive subcontracted so-called 'Independent Hardship Advocates' (IHA), Catriona Lowe and Stephen Blyth. A third, Sigrid Haslam, commenced this year. Liquidators and 'hardship' programs such as KordaMentha's warrant radical reform of consumer protections.

10. A firm of liquidators has provided information about statutory and common law obligations and discretionary authority. They report the view of a *"cowboy culture"* amongst some of their fellow liquidators. As with financial advisors, it is a result of inadequate regulation. A liquidator does not even have to be a qualified accountant or expert in related issues.

11. We are lucky to have the help of various concerned industry members who have been extraordinarily helpful. We wish to acknowledge their generous and kind assistance. We are also thankful to a great many senators, local Federal MPs, ministers and shadow ministers and the Leader of the Opposition who have listened to, and helped victims of industry's collaboration with Peter Holt's firm and are concerned about manifold traumatic related consequences including reports about KordaMentha.

12. There are ample examples among our members of serious concerns about treatment within, and external to, KordaMentha's hardship program, its advocates and lawyers who 'explain' the Deed without giving legal advice.

13. Firstly, we will highlight key factors which have been obfuscated in testimony to the ***Senate Inquiry into FMIS*** by these parties and ANZ. It impacted understanding, conclusions and subsequent recommendations pertaining to HNAB-AG, our members and concerns.

14. It also permitted the conduct to persist unchecked. It led to a portrayal of HNAB-AG members and representatives as being the problem due to a shortfall in expectations. It appears to suggest an *"adversarial"* attitude is attributed to us although it is not clear if it meant KordaMentha or both parties separate to the advocate. Smoke and mirrors abound. It has silenced victims and rendered us invisible and it seems discredited at times.

15. There are distinct parallels with the treatment of victims of institutional responses to sexual abuse. In response to disclosures and reports authorities often make assumptions, give greater credence or have undue faith in colleagues and professionals or fail to recognize the necessity to be informed and engage meaningfully with victims. Cover-ups occur. Deflection occurs. Denial in plain sight of facts occurs.

16. To illustrate we will outline pivotal facts. We also provide recommendations for consumer protections in general which would have safeguarded people from Timbercorp's misconduct and that of its incentivized advisors. Reform regarding liquidators does not appear to have received much attention: we make suggestions we believe require urgent attention. We specifically make recommendations about KordaMentha and its conduct. We believe Timbercorp, KordaMentha and ANZ should be examined by some forum or mechanism able to attribute accountability based on ethical conduct - not legal loopholes – and award redress. It must require offenders and their most senior executives to participate

in a Restorative Justice-style program to be exposed face-to-face with their impacts on victims.

17. We fervently hope the *Senate Inquiry into Consumer Protections in Banking, Insurance and Finance Sector* (2017-2018), other committees, panels and reviews as well as the recently launched *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* will give due attention to the experiences of victims: there is no substitute for trauma-informed, genuine, direct consultation with people who have been affected. We have witnessed the gamut from mildly incorrect, to staggeringly inaccurate claims, often delivered with professionalism and bluff by industry and associated parties.

Executive summary

18. Confusion about the word 'victim' reflects issues of personal and social responsibility are poorly understood. The word references the conduct of the offender or culprit - rather than the individual's response to being targeted prey, disregarded or inadvertent collateral damage, and injured or wounded in some manner. By definition, a victim does not have choice or power or is rendered powerless. People who survive, or thrive, do due to effort, choices and hopefully, but not always, assisted by supports - and often a large dose of luck.

19. Australians are being victimized, and re-victimized in responses to misconduct, by failures in existing protections while industry is safeguarded and enabled in extraordinary ways. As a victim, along with others, we choose to be activists or warriors for truth, accountability, reform and redress. However, the toll in this pursuit over the past 9 years is immense.

20. A classic example of failures of consumer protections and grossly inadequate regulation is KordaMentha, its hardship program and ANZ in relation to the liquidation of Timbercorp.

21. Victims are subjected to a horrendous, unreasonable and protracted process – often with little or no mercy even disclosing related, or additional, serious personal or family suffering or tragedy.

22. Salient facts regarding specific commitments to Holt victims have been lost and deflected by smoke and mirrors in industry's testimony. Abandonment of victims by former senators

Sam Dastyari and Nick Xenophon compounded matters signalling a green light. In brief, these are:

(i) ANZ, the largest vote-carrying creditor, testified to the ***First Annual Bank Review*** Holt victims should not be pursued. Our experience of ANZ in response to the liquidator's pursuit makes a mockery of CEO Shayne Elliott's statements about the bank's contrition, learning from scandals and commitment to change. The charm offensive to portray a respectful and reformed banking culture is in overdrive due to the Hayne Royal Commission into financial misconduct.

(ii) Under statutory and common law obligations KordaMentha has discretionary power to 'compromise' (i.e. waive) debt - partially or in full. A liquidator can override guidance from creditors which usually encourages recovery of *greater* amounts of debt - not l*esser*, or to refrain from pursuit. KordaMentha overrides ANZ's willingness to accept no recovery regarding the Holt subgroup.

(iii) KordaMentha principal, Mark Korda, in acknowledging the Holt subgroup are victims of fraud, gave testimony to the ***Senate Inquiry into FMIS*** of commitment to *"as much empathy"* as permitted under law – this equates to full waiver. He also testified creditors voted unanimously in 2009 to grant discretionary waiver of any amount over $20,000. Yet liquidator Craig Shepard refuses to exercise his discretionary authority with Holt victims.

(iv) In testifying on Mr Shepard's behalf, Mr Korda cites legal duties to creditors and liability for breach. He ignores entirely, KordaMentha is absolved of risk by those same vote-carrying creditors who encourage non-pursuit of the Holt subgroup.

(v) Obfuscation, misleading and inaccurate testimony relates to key aspects of the hardship program. KordaMentha's advocates do not act on cases on the basis of this testimony.

(vi) However, Catriona Lowe, the first hardship program advocate, eventually resigned in 2016 citing strongly disagreeing with the liquidator's demands in a significant minority of cases. We raised this concern – along with others - some 18 months beforehand.

(vii) Her resignation drew no response from ANZ who had lauded her expertise, or former senator Sam Dastyari who chaired the important landmark ***Senate Inquiry into FMIS***.

(viii) Perplexingly Sam Dastyari sought no feedback from victims, and provided no response to concerns we forwarded, after the November 2014 Special Hearing on Timbercorp. However, Hansard notes considerable engagement with KordaMentha and its hardship advocate. It appears this inevitably influenced the committee's understanding, conclusions and formulation of recommendations regarding our concerns.

(ix) Former senator, Nick Xenophon agreed to assist by, at least, seeking fairer and consistent treatment in facilitating meetings with KordaMentha in December 2015, and in June 2016 regarding the Deed which does not provide certainty, closure and contains errors in statement of fact. His assurances through to 2018 have not seen commitment. Minor amendments to the Deed occurred but concerns and cases remain unresolved or were settled in despair.

(x) KordaMentha promotes *"offering"* 1 hour with a *"free independent lawyer"* for those concerned about signing the Deed. John Berrill merely *"explains"* the Deed: it is not legal advice in an individual's best interests. Being led to believe Peter Holt's explanations or interpretations could be trusted, is why hundreds of people are caught in KordaMentha's torturous grip. It is alarming any lawyer or the liquidator thinks it reasonable.

23. We have been informed creditors have been paid in full and ANZ, KM and its lawyers are making massive multi-million dollar profits from Timbercorp and expect to continue for at least a further 5 years. We have been told by an insider, in the year leading up to Timbercorp's collapse, instructions to destroy evidence would be known to KordaMentha which onsite, with others, was providing advice.

24. CBA, Bankers Trust, Elders, Rural Bank, countless subsidiaries and products, AMP, ATO and ASIC as well as ANZ and external administrators like KordaMentha, are the finance sector's equivalent of church hierarchy and institutions enabling, participating with and / or

covering up paedophile clergy and others. Moreover, industry incentivizes and reward offenders.

25. These matters warrant thorough scrutiny. Urgent radical reform and redress is necessary. Power structures must listen to victims and act decisively with vision and humanity.

Liquidator KordaMentha

26. Our experience of KordaMentha is consistent with the report released in December 2017 by the ***Select Committee on Lending to Primary Production Customers***. It noted *"indifference on display by certain receivers during hearings, and the vague, elusive answers given..."* and that KordaMentha's representatives *"at the hearing and subsequently to questions on notice, demonstrated a [sic] unwillingness to provide clear and direct responses."*

27. The committee expressed alarm about attitudes and its view of a *"lack of self-awareness as an industry, obfuscation of responsibility, and dismissive approach to complaints about inappropriate receiver conduct…"*

28. Since 2014, HNAB-AG representatives have made concerted efforts to alert power structures to concerns regarding liquidator KordaMentha's conduct and its hardship program advocates. Yet KordaMentha has continued largely undeterred and unhindered. Indeed, it continues to feature in major liquidations. This year it has been appointed administrator for QUINTIS (originally TFS Sandalwood).

(A) Survey reports serious lack of confidence in KordaMentha

29. A survey of our members regarding QUINTIS concluded on 6 February 2018, reveals that of those who have encountered KordaMentha in relation to Timbercorp (In Liq), or knew people who had, 22% expressed being *"extremely concerned"* and 78% had *"no confidence in KordaMentha and hold the utmost concern"* regarding KordaMentha in dealing with this latest MIS to collapse.

(B) Salient facts pertaining to statutory obligations and discretionary authority of external administrators

30. An independent liquidator firm has advised the law pertaining to liquidation and insolvency practitioners (external administrators) requires acting in the best interests of creditors in exercising their legal duties according to statutory and common law obligations. A liquidator may be liable for legal action if he or she breached statutory duties to serve the interests of the creditors in winding up a company. The law grants external administrators the discretionary authority to 'compromise' (i.e. waive in full or part) debt for amounts under $100,000. For greater amounts they are required to seek approval of creditors or to make the case to a court. Vote-carrying creditors can guide or encourage a liquidator's actions but they cannot instruct. A liquidator has the legal right to override a creditor's view. This usually occurs when the creditors want more, not less or no, money but encouragement of non-pursuit is included. It also occurs if a creditor has a conflict of its own with the liquidator.

(C) Salient facts pertaining to ANZ – largest vote carrying creditor of Timbercorp Finance

31. Following protests at the ANZ AGM, 18 December 2014, an impromptu meeting was granted directly afterwards with members of HNAB-AG, Timbercorp Growers Group Inc, AGAG, the Western Australia Group and ANZ Deputy CEO, Graham Hodges, Gerard Brown and other staff. Gerard Brown wanted to record the meeting but declined when Timbercorp victims agreed on the condition we could have a copy. All victims groups underscored agreement victims of Peter Holt should be treated separately given the misconduct related to his firm.

32. Out of this first meeting, Gerard Brown duped Holt victims into meeting with KordaMentha's 'Independent Hardship Advocate' Catriona Lowe the following day. Mr Hodges later agreed with our understanding of the purpose of the meeting which was denied by Mr Brown despite email documentation that he did not refute beforehand. Mr Hodges reported Ms Lowe *"went ballistic"* about the deception. He agreed with our expectation she would report to ASIC misconduct that emerged in her work in the program. It was on this basis we met with her. She did not accept that remit.

33. A follow-up meeting was held between HNAB-AG representatives and ANZ on 8 January 2015 with ANZ Deputy CEO Graham Hodges and Gerard Brown. ANZ reluctantly permitted electronic recording at our request. Mr Hodges carefully worded his comments that ANZ, as the largest vote-carrying creditor, had guided liquidator Craig Shepard at KordaMentha to

treat individuals in the subgroup of Timbercorp who are victims of Peter Holt, as a *"specific and special group"* and *"as swiftly as possible," "very generously"* and *"incredibly compassionately."*

34. A further meeting was held with four HNAB-AG representatives on 26 February 2015 with ANZ Deputy CEO Graham Hodges and Rob Lomdahl. Mr Hodges made it clear he understood the Hardship Program was designed because of our activism in order to process Holt people *"with compassion"* i.e. to pay a nominal amount, if any. He agreed to take up with KordaMentha our understanding and experience this was not occurring.

35. Months later, survey data in May 2015 indicated the reverse was occurring. Reports and observations to date do not reflect this guidance is typically respected.

36. More specifically, on 5 October 2016, ANZ Deputy CEO Graham Hodges unequivocally clarified to Matt Thistlethwaite MP, at the **First Annual Review of the 4 Major Banks**, ANZ's view Holt victims should not be pursued or foreclosed upon. KordaMentha does not have to accept ANZ's guidance - and has not. However, its reasons for pursuing Holt victims, in light of ANZ's stance, are peculiar and nonsensical. The liquidator has been absolved of responsibilities to creditors regarding waiving debt of Holt victims thus no risk is posed of being pursued for breach of related duties. (See also data allegedly from COI indicating debt has been recovered with massive profits made, page 25.)

37. Given ANZ's testimony, HNAB-AG wrote seeking reimbursement of settlements which the bank is profiting from given KordaMentha refuses to accept guidance against pursuit. ANZ's replies did not respond to our initial request or the follow-up letter. Colin Neave, to whom we wrote, did not reply: instead Gerard Brown responded ignoring the letter's purpose.

38. After our request on 31/1/17, and follow up in February, ANZ CEO Shayne Elliott and Deputy CEO Graham Hodges sought to change their stance at the **Second Annual Review of the 4 Major Banks** and obfuscate the issue in March 2017. They were successful. Questions are asked by parliamentarians who do not always have the time or resources to be properly briefed. Victims or representatives are not permitted to be present to assist.

39. We understand from Senator Katy Gallagher, Shadow Minister for Financial Services, who kindly followed up on our behalf, ANZ said the bank would not permit Colin Neave, in his newly created position as Fairness Officer, to be involved. We had written to Mr Neave specifically given statements both he and CEO Shayne Elliott made in Fairfax, 15/12/16.

40. Earlier incidents illustrate ANZ's attitude. Having been invited to contact ANZ after the meeting of 8 January 2015, on 31/1/15 we informed Graham Hodges of escalating concerns regarding suicidality. He emailed, and Gerard Brown phoned, with the disturbing advice to encourage people into the hardship program and to contact the advocate, Catriona Lowe. She is not a trauma counsellor or therapist. The program was part of people's distress.

41. On 24 August 2015, in meeting with Mr Hodges (who had appeared reluctant to engage for some time) he refused to look at, or discuss, the survey data or reports related to the liquidator and Catriona Lowe, the IHA, dismissing these as she was *"the best in the business."* As had occurred before, he agreed to look at the cases of the two men Susan Henry accompanied, but to date, neither of their cases have been concluded 2.5 years later.

42. Despite Mr Hodges' implication at the meeting Ms Lowe's reputation rendered our data or reports irrelevant or inaccurate, there was no response whatsoever, no concern expressed at all, on her resignation notified in May 2016 or her warning letter the previous March. Reasons she cited confirmed some of the complaints – among others – we had made since early 2015, approximately 18 months earlier.

43. In testimony to the ***Senate Inquiry into FMIS*** regarding the Hardship Program (*Bitter Harvest* report, page 163, 11.31) in relation to HNAB-AG and victims of Peter Holt, Mr Hodges, "*informed the committee that through his discussions with this action group, members of the senate economics committee and others, the bank had worked 'to support a more accessible, transparent and empathetic hardship program for Timbercorp investors'… and that the Holt Norman affected… were given special attention.'"* This was not supported by reports to HNAB-AG as Mr Hodges had been informed. Nor was it the experience of our representatives.

44. He also indicated KordaMentha regularly updated him and stated, "*While we only have limited ability to influence those outcomes we are encouraged by the quick and fair settlements that are occurring."* Mr Hodges knew, directly from HNAB-AG, this was not occurring. (This testimony is equivalent to power structures being told a church claims settlements or outcomes are quick and fair for victims of sexual abuse when these are brokered by that church or those representing, or associated with, their interests.)

45. ANZ did not offer to reimburse settlements demanded of Holt victims or assist those forced into bankruptcy regarding Timbercorp debt (prior to or after the hardship program). As

noted the bank has also refused our request this occur given its position. ANZ profits from Craig Shepard's refusal to accept their encouragement or guidance.

46. Details of relevant facts of serious concern are available on request related to ANZ Chairman, David Gonksi; Group General Manager of Corporate Affairs, Gerard Brown; and elaboration regarding CEO, Shayne Elliott and Deputy CEO, Graham Hodges, see document titled *"ANZ Conduct – CEO, Deputy CEO, Chairman & Senior Executive."*

47. We noted the charm offensive in the weeks in the lead up to the ***Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry***. ANZ CEO Shayne Elliott seeks to portray the image of care, contrition, reformed culture and willingness to cooperate. This has not been our experience of the Timbercorp ordeal. It would be refuted in thorough examination of correspondence, materials and speaking with victims and independent related parties. Further, by chance we have met ANZ employees who provided disturbing comments about the bank's culture and activities. They report efforts to discourage staff from submitting to the Hayne Commission. Nor do they expect to be able to testify without employment repercussions either within ANZ or the industry.

(D) Salient facts pertaining to KordaMentha – Liquidator for the Timbercorp Group

A. Mark Korda – KordaMentha principal

48. The FMIS report 'Bitter Harvest' notes (page 170, 11.52), Mark Korda informed the committee *"at a meeting in June 2009 the voting creditors passed a resolution unanimously that authorized the liquidators* (KordaMentha) *to, among other things, compromise a debt to the company* (Timbercorp Finance - TFL) *if the amount claimed was more than $20,000."*

49. In other words, as the law permits, the creditors extended Timbercorp Finance liquidator Craig Shepard's usual statutory discretionary authority to waive debt under $100,000 to any amount whatsoever beyond the normal cap. However, the creditors stipulated amounts under $20,000 – on which the liquidator could normally decide himself – were to be pursued. (Pursuing those with a small debt of less than $20,000 may be questionable use of creditors' fund given the legal fees and remuneration to the liquidator - and as current law permits debt of any amount under $100,000 to be waived under discretion without creditors' approval.)

50. Mr Korda outlined liquidators could be legally liable for breaching duties to creditors in the FMIS Inquiry report, (page 170, 11.52) if not serving their best interests in realising the assets of the company or assisting in its winding up. However, vote-carrying creditor ANZ has expressly absolved KordaMentha of any responsibility for not pursuing debt related to Holt victims. Mark Korda's testimony, and that of the advocate and ANZ, omits crucial context and relevant information.

51. In testimony to the FMIS hearing in August 2015, Mr Korda agreed with chair Sam Dastyari that Holt victims had been subjected to fraud.

52. In relation to his acknowledgment, Mr Korda committed to treat the Holt subgroup of Timbercorp *"with as much empathy as we can within the law."* The most empathy the law permits is full waiver at the liquidator's discretion. As noted above, in the case of KordaMentha's hardship program Craig Shepard has been given authority to exercise discretion of any amount over $20.000. Mr Korda fails to acknowledge the creditors had explicitly encouraged separate treatment of the Holt subgroup – and that he committed to the maximum legal empathy which equates to fully compromise (waive) the debt. Yet Craig Shepard has not honoured this commitment.

53. People having the means to pay, or not, is unrelated to being subjected to fraud and deception for which Mr Korda committed as much 'legal' empathy as possible. Not only has this not occurred but people in traumatic personal distress and severe financial hardships, or worse, have been pursued relentlessly.

54. Mr Korda also testified on 6 August 2015 at the FMIS hearing (Hansard pages 14, 15, 17, 19, 21, 23, 55) that:
    (i) cases are typically concluded within 2 weeks of providing information and those with a 'serious issue' (mental health concerns) were finalized in 1-2 days as deemed required by the IHA
    (ii) Craig Shepard accepts the IHA's advice enough information has been provided and her proposal to conclude a case
    (iii) conclusions range from waiver to less than the principal with interest not being an issue in the hardship program
    (iv) the gag clause has been removed from the Deed of Settlement since December 2014 where it *"causes grief"* – i.e. people do not have to sign a confidentiality agreement

(v) *homes will not be sold and people will not be bankrupted (*people had to even if KordaMentha itself cannot sell their home)

(vi) the hardship program has been available since the end of litigation in April 2014 and has been substantially enhanced by Catriona Lowe

(vii) KordaMentha is open to suggestions to improve the hardship process to ensure it takes the significant trauma and distress into consideration

(viii) there is no limit to the amount of people needed to be employed to finalize cases

(ix) Holt clients who are victims of fraud and misconduct will be treated "*with as much empathy as we can within the law.*"

Each of these claims by Mark Korda is grossly misleading or inaccurate.

55. Mr Korda is not the liquidator for Timbercorp Finance Limited (TFL) under which the Hardship Program sits. That role belongs to Craig Shepard. However, of concern he provided testimony for TFL, not Mr Shepard. Mark Korda is the liquidator for Timbercorp Securities Limited. (This has the appearance of a conflict of interest regarding who admits claims i.e. who judges who owes what.)

56. Mr Korda has not responded to date to a letter we sent on 27/8/15 – or to follow up – regarding his testimony stating willingness to look at suggestions to improve the hardship process to take significant stress into account, and to discuss unsubstantiated evidence he gave or to ensure we understood certain statements. He attended a meeting in December 2015 facilitated by Nick Xenophon but has provided no opportunity to respond to us.

B. Craig Shepard – Liquidator for Timbercorp Finance Limited (TFL)

57. Subsequent to the special Timbercorp Hearing, the very day after the first meeting of our representatives with Mr Shepard and Andrew Ryan on 13/1/15 at KordaMentha, they sought to alter an agreement. Unreliable, disingenuous engagement has persisted.

58. In addition, Mr Shepard agreed to let us make our case for waiver to the TFL Committee of Inspection (COI) in a written submission. He refused to permit a face-to-face meeting even with one representative. A written refusal claimed to be from the COI was emailed from Mr Shepard. It was composed in the email body, not provided as an attachment or with any verification it came from the COI. On requesting clarification, Mr Shepard said he drafted it on behalf off the COI as he knew their position.

59. Mr Shepard said he also had a legal responsibility to *"mum and dad debenture holders"* - again, he refused to permit a meeting with their representative, claiming it was impossible along with making a written submission.

60. Craig Shepard refused to accept encouragement and guidance from ANZ, the largest vote-carrying creditor, regarding how Timbercorp-Holt victims should be treated (details available on request in summary document titled "ANZ CONDUCT, CEO, DEPUTY CEO, CHAIRMAN & SENIOR EXECUTIVE": 8 January and 26 February 2015 and, in particular, 5 October 2016). It is his legal right to override a creditor's view – however, independent liquidators advise this usually occurs when the creditors want more, not less, or no, money. It also occurs if a creditor has a conflict of its own with the liquidator.

61. Mr Shepard has not honoured commitments or claims Mr Korda made on his behalf to the FMIS Inquiry on questioning about Timbercorp Finance and its hardship program. Mr Shepard repeatedly cited his statutory duty to act in the interests of creditors in response to why he will not waive the debt of Holt victims when asked in light of:
    a. ANZ's position
    b. the view of representatives of other victims' groups stated to Graham Hodges after the ANZ AGM 2014
    c. Mark Korda's testimony
    d. his discretionary authority under statutory and common law obligations.

    His obligations are understood. However, he steadfastly deflects and ignores he has been explicitly encouraged by those same creditors to exercise his discretionary statutory authority with Holt victims.

62. He has also not honoured decisions or commitments regarding cases in meetings facilitated by, then senator, Nick Xenophon in December 2015. These include certain example cases used to illustrate typical concerns. These were discussed on the general basis of the hardship parameters and not the specific commitments made to the Holt subgroup.

63. A further 2 meetings facilitated by Nick Xenophon in June 2016 regarding amendments to the Deed of Settlement in order to provide closure, certainty and address errors in statement of fact, achieved agreement from Mr Shepard regarding only minor aspects. He refused to extend these to Holt victims who are not members of HNAB-AG (some 500 in total are reported by KordaMentha; they do not necessarily know of our existence or may

be too distressed to engage). Nor are these to be extended to any other Timbercorp victim. Mr Shepard agreed to provide a letter to our members who had already signed a Deed issuing them with the same legal protections. This matter remains unresolved at 22 February 2018.

64. Through to February 2018, on repeated requests to finalize efforts and help desperate people struggling with serious levels of suicidality, Nick Xenophon has continued to assure us of his commitment commenced in December 2015. Other than a phone call with KordaMentha in September 2016, to our knowledge nothing further has occurred. Mr Shepard has done nothing more in the absence of Mr Xenophon's input.

65. Evidence exists of Craig Shepard's unreasonable demands and intimidation tactics including prolonging cases and aggravating significant distress. HNAB-AG representatives have specific knowledge of settlements. Catriona Lowe agreed, in responding to our invitation to attend an HNAB-AG meeting on 1 March 2015, we could provide assistance to our members in preparing and negotiating cases due to their distress levels and financial overwhelm. However, people do not need to reveal their final settlements: their relief, or stress levels, are written on their faces and bodies. The same applies to hearing about demands on others in discussion of distraught people in our meetings. Consequently, we are directly, and indirectly, aware of marked inconsistencies in demands and conditions imposed by the liquidator on people in comparable, or even worse off, circumstances - financially and in terms of mental health.

66. HNAB-AG endeavoured to highlight inconsistencies and other concerns in providing information to the FMIS Inquiry chair, Sam Dastyari. Ms Lowe had denied concerns about inconsistencies in the liquidator's treatment. Later these were confirmed as fact – at least in a *"significant minority"* of cases in Ms Lowe's view. None is acceptable. She cited in her resignation, notified in May 2016, that continuing in the hardship program would *"lend an implied endorsement to the outcomes achieved…"* which she no longer accepted as she *"strongly disagreed"* with the liquidator, Craig Shepard in *"a significant minority of cases."*

67. This did not raise an eyebrow from ANZ or Senator Dastyari, the former Chair of the Senate Economics Committee Inquiry into FMIS. It received coverage in Fairfax media. And certainly – more alarmingly – despite repeated efforts from HNAB-AG to highlight concerns. Nor did KordaMentha indicate concern or respond in a manner suggesting Mr Shepard

would be held accountable. Nor did it appear to effect change with her replacement advocate, Stephen Blyth.

68. Mr Shepard has waived some debts where bankruptcy was the alternative. Demands have reportedly ranged up to up to 97% of doubled or trebled exorbitant penalty interest rate debt. He demanded more from someone in the hardship program: a demand of 85% is applied to people deemed not eligible for hardship considerations and *excluded* from the hardship program. We underscore, inconsistencies are sizeable.

69. After unresolved negotiations around the Deed in September 2016 Mr Shepard refused to negotiate any further with HNAB-AG.

70. Mr Shepard would not review cases of people who settled at 85% (some losing homes and enduring significant hardship or entered bankruptcy) prior to the formation, or notification of, a hardship program. He categorically refused: thumping the table in meeting with one distraught couple for whom retirement is no longer possible. Bullying and intimidation tactics are disturbing.

71. Many examples exist warranting a full and transparent investigation with a view to holding KordaMentha accountable, to design consumer protection reform and provide redress. [Note, we have met non-Holt victims of other products who were told it was illegal to form an action group: people accepted the 'advice.']

C. Catriona Lowe – 'Independent Hardship Advocate' (IHA) for Hardship Program

72. On first meeting Ms Lowe on 19 November 2014, and on attending a HNAB-AG meeting on 1 March 2015, she expressed considerable compassion for victims. She held the belief she could broker better deals via the hardship program given the limitations of the legal system which, we all agreed, does not always provide justice. We do not doubt her position. Nor do we doubt that, at least later on, behind the scenes she made efforts to hold KordaMentha to account regarding senate testimony and ethical conduct. However, certain facts related to her own conduct are of concern. Moreover, this assisted Craig Shepard to persist unhindered and unchecked. (Had she resigned earlier, before the hearing in August 2015, concerns may have been pursued at the FMIS Inquiry and victims given due credence.)

73. Ms Lowe did not prioritize clarification of information we reported which had a direct material impact on her work in proposing to conclude cases of Holt victims. She took 5 weeks to speak with ANZ Deputy CEO, Graham Hodges. We had to followup to obtain a commitment of when she would do so. She was first informed at an action group meeting to which we invited her on 1/3/15. We formally requested in writing on 6/3/15 that she speak with ANZ when no feedback had occurred.

74. In April, she reported his view was consistent with hers indicating ANZ's stance was not as we reported. Of concern, she did not take up the offer to hear the openly electronically recorded meeting we had with Mr Hodges which would have confirmed our view either before she spoke with ANZ or after regarding our response to her claim.

75. Correspondence demonstrates, increasingly, Ms Lowe did not seek or welcome our input, assistance or feedback until after Nick Xenophon's involvement in December 2015.

76. Ms Lowe sought to ignore or deny the relevance of Mr Korda's testimony to our representatives and individual cases. However, she volunteered at the meeting facilitated by Nick Xenophon in December 2015, she was grateful for his involvement and had been frustrated by efforts to bring closer together KordaMentha's demands and expectations with testimony provided.

77. Throughout Ms Lowe had not agreed to take up concerns regarding testimony which directly related to advocating for Holt victims. She defended KordaMentha. She denied its relevance stating it was open to interpretation. She portrayed the problem as being people not understanding the Hardship Program was not a "compensation scheme." We are not aware of anyone who held that confusion. People understood the liquidator stated cases were determined on the basis of the position people were in, not the reason for it. However, that 'position' under the hardship parameters included personal as well as financial considerations. Moreover, it is directly related that as noted earlier, in June 2009 specific creditor guidance and statutory legal authority permitted the liquidator significant discretionary power including waiver of debt of any amount over $20,000. (Usually it is under $100,000 with the liquidator required to seek creditor approval for amounts over that or make a case to a court.) Holt victims deserving treatment as an exceptional subgroup has been testified by ANZ and Mark Korda. This was relevant to her advocacy.

78. Ms Lowe sought to convey to the ***Senate Inquiry into FMIS*** dissatisfaction with her, and the Hardship Program, stemmed from unreasonable or unrealistic expectations of HNAB-AG representatives and members (Report, Bitter Harvest, pages 170-2, 11.62 and 11.55 – 11.64).

79. It appears she participated in leading the FMIS committee to believe there was an *"adversarial mind-set… undermining the work of the IHA"* (11.62). The implication appears to be this mind-set relates to HNAB-AG representatives and / or our members. Persistence and determination to seek fair treatment, have commitments honoured and expose questionable conduct does not equate to being adversarial. This is a grossly unfair accusation if it is levelled at us.

80. Ms Lowe gave testimony that there was "*a profound mismatch between the expectations of applicants to the program and the liquidator, as to what the program should deliver"* (Bitter Harvest, 11.57). Our expectations were based on factual discretionary authority of the liquidator, under his statutory duties, and supported by the largest vote-carrying creditor ANZ. The problem was the liquidator's conduct and refusal to assist Holt victims within the scope of, testimony about, and guidance to, his role. Concerns about Ms Lowe related to her complicity and / or unwillingness to advocate for people on the basis of factual information and discretionary legal authority. (It has been suggested Mr Shepard is furious about HNAB-AG's activism. It appears to be the case some have been, and are being, penalized.)

81. Ms Lowe expressed concerns about some of the liquidator's demands in her submission lodged in January 2016. This was well past the opportunity for these to be responded to, and elaborated on, by the cases involved (or indeed those who had settled under duress) or our representatives at the August 2015 Hearing.

82. In two situations, it was discovered (by accident due to lack of transparency in the process) Ms Lowe had used substantially incorrect, and inflated figures, in assessing her proposal of what they should pay. We all make errors. We do not blame her for that although mechanisms for checks should have been in place. Given the financial hardship in which these people had been placed, this expectation is even more reasonable. Of primary concern, she did not adjust down the amount she proposed these people pay to settle.

83. In another case, at the December 2015 meeting, HNAB-AG representatives had to argue for waiver for an individual (known by Ms Lowe to be suffering related significant mental health difficulties). This was on the basis, not only of his financial circumstances, but also by way of making amends (in a very minimal way) for KordaMentha having erroneously obtained a court judgment against him. They made an error and pursued him without his knowledge despite his involvement in the hardship program. Despite the significant and protracted trauma he was put through, Ms Lowe proposed he pay $3000. She must have been aware, as a lawyer, he could have taken legal action against KordaMentha and deserves compensation. She knew he was in no mental state to do so. KordaMentha agreed with our proposal of waiver on behalf of this man. However, they have not closed his case to date. (See Stephen Blyth for an update paragraph 92.)

84. Many examples have been reported which highlight concerns about Ms Lowe's conduct.

85. On 10 March 2016 Ms Lowe alerted those in the hardship program that concerns existed she could not resolve with KordaMentha and her intention to resign if it was not progressed. Ms Lowe handed in her resignation on 18 May 2016 leaving in June. As noted above, she denied concerns about inconsistency in treatment of people by the liquidator, yet her resignation cited concern continuing in the hardship program would *"lend an implied endorsement to the outcomes achieved…"* which she no longer accepted as she *"strongly disagreed"* with the liquidator, Craig Shepard in *"a significant minority of cases."*

86. Her resignation did not raise an eyebrow. The green light glowed brightly for KordaMentha.

D. Stephen Blyth

87. We first met Stephen Blyth in June 2016 at the Consumer Action Law Centre (CALC) before he commenced as the replacement IHA. CEO Gerard Brody kindly provided a room for Nick Xenophon to facilitate two meetings between Craig Shepard and Andrew Ryan with HNAB-AG representatives and many members. The door was open and staff came in and out. Mr Blyth declared himself as within hearing shot after we expressed concerns about Catriona Lowe's role. She had worked at CALC, enjoyed a strong reputation, and was known to him.

88. Two HNAB-AG representatives, Kathleen Marsh and David Jakimuik, met with Mr Blyth at length to outline concerns regarding the hardship program and liquidator. He expressed

appreciation. However, willingness to engage and advocate on salient facts was, again, not forthcoming.

89. Mr Blyth stated he could not foresee any circumstances under which he would resign. This was alarming given the reasons for Ms Lowe's resignation. It was viewed as suggesting either he had confidence in a superior ability to obtain a fairer treatment from Craig Shepard, or in his capacity to pressure people into arriving at settlements - and that he would not be concerned about, or take a stance on, inconsistencies.

90. On directly requesting clarification of his experience of inconsistency regarding cases, he maintained he had not seen any.

91. Mr Blyth sat in on the meeting with many of our members and KordaMentha facilitated by Nick Xenophon. To our knowledge he has not pursued the matter with KordaMentha or he accepted being unsuccessful in finalizing amendments to the Deed. We are aware the Deed was viewed as part of the role of the first IHA who made some changes. These did not address our concerns or that of independent liquidators and many lawyers.

92. Regarding the case noted above in the section about Catriona Lowe (paragraph 83), it was still not concluded by Mr Blyth when he resigned 31 December 2017 (citing not enough work). This man now must deal with the third advocate, Sigrid Haslam. Moreover, Mr Blyth suggested the person should sign a letter drafted by KordaMentha to end his case. This was incorrect: the document he was encouraged to sign agreed to Discontinuance. It is a legal mechanism to hold off legal proceedings until a possible future date to recommence at the liquidator's desire. It is not waiver as agreed to in December 2015, 2 years earlier. It does not provide closure or certainty.

Note - On seeking permission to cite this person's case, he expressed distress about the far-reaching and profound trauma impacts on his life – persisting today – which have been markedly compounded by KordaMentha and now three of its hardship advocate (IHAs). No forum has given due appreciation of impacts. Contrast the compassionate focus on, and dignity afforded to, the victims, in Prime Minister Julia Gillard's announcement of a Royal Commission Into Institutional Responses To Child Sexual Abuse with that into financial misconduct by Prime Minister Malcolm Turnbull and Treasurer Scott Morrison. We rated no mention. It is hoped the Hayne Commission will prioritize a way to keep the impact on people firmly at the heart of the matter whilst filtering data about financial abuses and

unconscionable conduct from a trauma-informed position. Power structures must not persist in rendering victims side-lined, invisible and irrelevant. We are in a unique position to help albeit debilitated and traumatized.

93. Stephen Blyth may not have known what Discontinuance entails, although this would be surprising given his previous association with CALC. However, as the advocate, he had a responsibility to ascertain the meaning. Instead, he misled the man whom he knew was not in the most robust mental health after the past 9 years of wide-ranging fall-out from white collar crime in addition to unrelated recent family tragedy. Further, an email shows Mr Blyth criticized this man for not liking the wording of KordaMentha's letter in response to his (repeated) requests for a simple statement of closure - as has been provided to at least one other Holt victim (Susan Henry). [The third advocate has not met pleas to conclude his case.]

94. Mr Blyth was no more successful typically with cases to our knowledge including those over which Catriona Lowe resigned. Some settled in despair after hoping Nick Xenophon would fulfil his commitment reiterated since December 2015. All suffer significantly. One man reports being heavily pressured and manipulated, with words put in his mouth and advantage taken of personal information disclosed: he acquiesced to paying a substantially higher amount than Ms Lowe assessed despite significant hardship and mental health difficulties. He was known to KordaMentha to have attempted suicide. (Recent communication indicates his suffering has been compounded since the settlement.)

95. There are many more cases of concern related to Mr Blyth's work.

96. In testimony, the advocates, liquidator and ANZ present numbers of settled cases as evidence of satisfaction with the program. It does not equate – and they know that. People have no real choice but to settle or be taken to court when they cannot hold out any longer for fairer treatment or commitments to be honoured. Regret has been expressed about gratefulness extended to advocates on settling their cases. Relief it is over and gratitude for any assistance toward it is not the same as feeling they were treated well or reasonably.

E. John Berrill – KordaMentha appointed "Free Independent Lawyer" re Deed

97. Mr Berrill is a lawyer we understand was recommended by Ms Lowe to KordaMentha. He is promoted by KordaMentha as a *"free independent lawyer"* for people with concerns about

signing the Deed of Settlement. The liquidator pays for 1 hour – but only to lawyers on its list. The devil is in the detail: it is not provision of *legal advice* – which is required to be in the best interests of the individual. It is merely an *"explanation"* of the Deed. Being led to trust explanation and interpretation posited as fact and relevant to ones welfare - with inadequate mechanisms to identify otherwise - is how Peter Holt's victims were placed in Timbercorp and other products. No consumer protections existed by way of meaningful informed consent to prevent deceit and unconscionable conduct.

98. This 'service' dupes many people into a false sense of security. It permits the liquidator to be seen to be generously going beyond the call of duty in *'offering'* legal advice as this is what is provided from a "lawyer" while protecting themselves with the disclaimer.

99. Reports indicate Mr Berrill merely reiterates Craig Shepard and the advocates claims i.e. the Deed is standard and people should sign it or be taken to court. Early cases recounted Mr Berrill presented a history of Timbercorp's collapse. Victims were all too familiar with the ordeal after at least 6 years and report listening in stunned silence.

100. Genuinely independent lawyers, and an independent liquidator, advise KordaMentha's Timbercorp Deed is not standard. Further, it does not provide closure or certainty and contains errors in statement of fact. Indeed, it permits KordaMentha to reopen a case, years into the future, without evidence or going through usual channels. It requires people to relinquish recourse to a defence. It could allow KordaMentha to demand the full debt plus umpteen years into the future of exorbitant penalty interest payment.

101. While KordaMentha deny they would do this, victims have learnt from industry and this particular liquidator: its word or 'interpretation' or 'explanation' of legal documents cannot always be trusted. It is appalling the liquidator has tried this tactic at all – particularly in light of knowing the history of victims of industry's collaboration with Peter Holt, including Timbercorp. KordaMentha and its hardship program have not instilled confidence in their word or conduct to date: in fact, it is to the contrary. As noted earlier, 100% of those surveyed reported being either extremely concerned about, or holding the utmost concern and no confidence in, KordaMentha's recent involvement with QUINTIS and their TFS sandalwood projects.

102. Nor has Mr Berrill provided the service that would be reasonably expected of a lawyer i.e. acting in the best interests of the individual. He is not tasked to fulfil that role – thus he operates in the best interest of KordaMentha. He permits KordaMentha to promote him on one hand as a lawyer, and then to deny that role on the other, with a disclaimer his function is merely to "explain" the Deed. (There is an ethical issue here in our view. Mr Berrill's response to a senate committee about this is packaged to sound reasonable.)

103. KordaMentha could have paid for a genuinely independent lawyer of the individual's choice (or a certain amount toward it) if the aim was to provide assurance about a 'standard' Deed. Ethically, Mr Berrill could have taken a stand. He is complicit in providing dubious assurances to powerless and traumatized people.

Unconfirmed reports regarding KordaMentha's conduct

104. A former member of staff at Timbercorp contacted HNAB-AG in 2017 with information about the year prior to collapse in April 2009. He claims there were instructions not to back up certain data on computers and to delete or shred information. He said he had not come forward before because he feared he would not be believed given his own Timbercorp debt. In addition, he had been struggling with the personal and family trauma the repercussions had on his life.

105. He said before the collapse, KordaMentha along with other companies on site provided advice and endeavoured to assist in an administrative role. He reports KordaMentha would have been aware of the activities regarding data stored in Richmond and strategies related to technology traces.

106. This man worked in IT. He also had a background in agriculture placing him, in his view, in an informed position to conclude KordaMentha had no expertise or intention of assuring the viability of the various plantations and crops. He believed KordaMentha had no interest in anything other than debt recovery.

107. A good year before Timbercorp collapsed, in the timeframe it denies as of concern; Susan Henry was also informed by a friend at the time he had heard Timbercorp was "in trouble" from an acquaintance. He has declined to provide the man's name or allow communication.

Reported data obtained October 2017 from COI source

108. In October 2017 a trusted source provided information allegedly obtained from the Committee of Inspection related to Timbercorp Finance which outlined information the COI provided to ASIC (details available on request in document titled: 'KORDAMENTHA, ANZ AND TIMBERCORP: INFORAMTION PROVIDED BY SOURCE CONNECTED TO COI').

109. In brief, it claimed KordaMentha has collected $359million and the bank received $253million despite only having a secured charge of $248million – in other words having profited rather than lost money. It stated, in 2017 alone, KordaMentha had collected $33million ($15m paid to the bank, $8m to KordaMentha's lawyers and $4m to KordaMentha) with similar profits expected to be made for a further 5 years until 2022. We understand another $20m - just in relation to Timbercorp Finance - is anticipated profit for each of the next 5 years.

110. Reportedly $106million to date has been paid to KordaMentha and lawyers.

111. It is alleged related to this source the liquidator has no intention to resolve matters. Massive profits appear to be an incentive. Certainly, KordaMentha is making money by re-victimizing the Holt group despite acknowledging they are victims of fraud and committing to treat them with as much empathy as the law permits.

112. Should this data be accurate, it may indicate why KordaMentha protects Craig Shepard in pursuing debt related to the Holt subgroup, and why ANZ has not been vocal in protesting its guidance is being ignored by the liquidator or acting on concerns about the first advocate's resignation who, was deemed by ANZ as *"the best in the business."*

113. This appears to highlight serious failings of consumer protections.

Salient facts pertaining to Senate Inquiry into FMIS and involvement of 2 senators

114. The ***Senate Inquiry into Forestry Managed Investment Schemes*** was a critically important, landmark examination for which thousands of victims are profoundly grateful. Its findings must result in concerted efforts to address concerns related to consumer protections attributable to successive governments, through the regulatory system, EDR, IDR (including hardship programs), products, lenders and advisors.

115. However, conclusions in the report *Bitter Harvest* regarding HNAB-AG and our members experience with KordaMentha do not reflect understanding of, or give due attention to, crucial matters which would inform aspects of consumer protection requiring reform related to external administrators. Conclusions related to our concerns drew heavily from testimony from ANZ, Mark Korda and Catriona Lowe which appears to be accepted as fact.

116. After the special senate hearing into Timbercorp in November 2014, former senator Sam Dastyari, and his advisor Cameron Sinclair, did not seek feedback or respond to survey data and updates regarding KordaMentha's Hardship Program. Nor was there a response to invitations to hear direct from victims, including again last year before his resignation after he agreed to briefly meet our representatives in Canberra in October 2017.

117. While Naomi Halpern and David Jakimuik spoke at the second hearing in August 2015 it was at their request, not the chair, Sam Dastyari's invitation.

118. Sam Dastyari should be credited with bringing about what could have been a potentially significant and helpful mechanism had KordaMentha acted ethically and Craig Shepard exercised his discretion under statutory obligations, guided by ANZ and honouring commitments made in testimony by Mark Korda. The senator's perplexing change of attitude and willingness to help was profoundly disillusioning, demoralizing and distressing: it signalled a green light to KordaMentha to proceed unhindered and unaccountable.

119. We cannot state more strongly, our recognition and appreciation that parliamentarians are limited in being able to help victims for a variety of reasons including lack of resources, time, jurisdiction and substantial workloads.

120. However, it appears from Hansard in relation to the August 2015 hearing that Sam Dastyari engaged in considerable discussion and feedback with the liquidator and the IHA. Yet, as outlined, after the November 2014 hearing, he did not seek or respond to feedback from victims as to the progress with KordaMentha and its hardship program.

121. Consequently, in relation to concerns reported by HNAB-AG certain statements in the FMIS report suggest failure to engage with us resulted in:

(i) inadequate and inaccurate understanding and documentation of concerns

(ii) conclusions formed in contradiction to available facts or these being ignored, minimized or dismissed

(iii) limited ability to identify and outline recommendations for reform as well as to intervene in questionable conduct or facilitate solutions for specific concerns related to the Holt group.

122. As an example, contrary to Mark Korda's testimony regarding compromising debt, there is no risk whatsoever of breaching obligations to creditors, given vote-carrying creditor ANZ has expressly encouraged non-pursuit of the Holt group and as in June 2009 creditors had extended the discretionary authority to debt of any amount over $20,000 for Timbercorp victims. (Usually it is any amount under $100,000 with requirement to seek creditors' permission or make a case to court for larger amounts.)

123. These pivotal facts have been obfuscated by KordaMentha and the 'Independent Hardship Advocates" (IHA). ANZ could also have been clearer in its testimony to senate hearings. It was further compounded by Ms Lowe, the IHA, who claimed problems were due to a *"profound mismatch between the expectations of applicants to the program and the liquidator, as to what the program should deliver."* (Bitter Harvest, p 171, 11.57.) Our expectations of what the program and liquidator could, and was authorized to, deliver were correct. The issue is her unwillingness to act according to ANZ's position and KordaMentha's testimony.

124. Mr Xenophon participated in 3 meetings with HNAB-AG and KordaMentha in December 2015 regarding cases, and 2 in June 2016 regarding the Deed with a phone call the following September. He has continued, including this year 2018, to provide assurances of commitment to follow up matters but nothing further has eventuated. His initial involvement had great effect in mobilizing the liquidator. Further, Ms Lowe communicated concerns and soon after, in March 2016 openly issued a warning she would resign if issues with the liquidator were not resolved. She eventually gave her resignation in May 2016.

125. As with Sam Dastyari's lack of engagement after 2014, being left in limbo by Nick Xenophon for well over 2 years appears to have emboldened KordaMentha to persist and aggravate concerns of Holt victims. We have no avenue for recourse.

126. The only avenue for assistance has been parliamentarians. This has literally helped save lives, given much needed hope and brought about the Royal Commission we hope will deliver necessary outcomes and responses. Certain parliamentarians from various parties have provided tremendous assistance, often with no publicity, glory or accolades. We cannot thank these people enough for their integrity and efforts.

127. Bitter Harvest recommendation 13 (11.63 and 11.64, page 172) is based on an incorrect assessment and conclusion. The recommendation is KordaMentha continue to resolve outstanding loans. No mention or understanding is outlined as to the facts which indicate waiver is supported, and possible, for the subgroup of Holt victims.

128. Further, in 11.64 it is recommended *"spokespeople for HNAB-Action Group consult with KordaMentha and the Independent Hardship Advocate on implementing measures that would help restore confidence, faith and good-will in the hardship program."* This is like asking victims who have reported activities of paedophile priests, and further complained about internal programs in dealing with their cases, to ignore the reasons for their lack of confidence or faith in good-will and endeavour to implement measures to *"restore"* these - even though those complained about did not offer these from the outset.

129. The recommendation fails to appreciate:

(i) the power imbalance between victims with the liquidator and its hardship advocate – it would require genuine engagement from KordaMentha and the IHAs

(ii) KordaMentha refuses to be guided by ANZ or to exercise its discretionary authority related to honouring its own commitments in testimony

(iii) the IHA was not able to engage the liquidator sufficiently (and later resigned as a result)

(iv) the difficulties were, and are, not related to unrealistic expectations held by HNAB-AG but endeavouring to pursue accountability for statements and commitments in testimony

(v) HNAB-AG representatives responded to concerns regarding lack of confidence, faith and good-will in the program: we did not create the concerns

(vi) the IHA did not welcome or encourage our input or assistance from early on (until after Nick Xenophon's involvement) and Craig Shepard's engagement has largely been disingenuous for which there is ample evidence.

130. ANZ Chair, David Gonski cited this recommendation in turning off the microphone and shutting down our representatives from endeavouring to inform shareholders at the 2016 AGM of the reasons for our appeal to the Board. Mr Gonski would recognize, as a seasoned industry executive, it was an entirely unrealistic expectation, even if well-intentioned by that senate committee. It is unacceptable and disturbing from a chairperson.

131. Equally concerning, this recommendation was also cited by ANZ's Gerard Brown when we requested the bank reimburse settlements of Holt victims given the testimony to the First Annual Bank Review this group should not be pursued or foreclosed on.

Limitations of senate inquiries, reviews, committees, panels and class actions

132. KordaMentha and ANZ's role related to Timbercorp warrant a thorough investigation. Class actions, senate inquiries and other forums have not permitted pivotal information to emerge or be addressed. Legal action is not always about justice: it serves those with deep pockets, industry conducts and knowledge of technical loopholes.

Existing consumer protections regarding liquidators and associated parties

133. We understand we could report KordaMentha to the **Australian Securities & Investment Commission** (ASIC) but previous experience with the regulator has not engendered confidence. (Information available on request. This is detailed in Appendix A, page 124 of our submission to the *Senate Inquiry into Consumer Protection in Banking, Insurance and Finance Sector*, March 2017 with earlier concerns also reported to the *Senate Inquiry into the Performance of ASIC* in 2013 as well as other related submissions.)

134. We are aware of the **Australian Restructuring Insolvency and Turnaround Association** (ARITA) but understand from independent liquidators industry holds little confidence our efforts would amount to meaningful action. Moreover, having spent over 9 years endeavouring to have industry held accountable and encountered disinterest and/or

hostility from other bodies such as CPA Australia, ATO etc. we are not encouraged to spend time and energy trying to engage ARITA to obtain meaningful action. Enough has been spent with little, or no, outcome and substantial toll. We are not funded and this is not our career. We are victims of massive multi-product, multi-lender white collar crime – and new concerns even are being encountered for some of us 9 years on. We are struggling with the impacts on our own lives.

135. No meaningful avenue exists for complaints about KordaMentha's Hardship Program (recently rebranded as the "Borrower Assist Program") or to have cases competently and genuinely assessed. We are unaware of any meaningful consumer protections related to liquidators and associated parties (e.g. the "independent hardship advocates" and "free independent lawyers").

Summary of conduct by KordaMentha and its hardship program

136. Consumer protection failures enable KordaMentha and its Hardship Program to:

- provide misleading and inaccurate testimony to senate hearings and elsewhere
- dishonour commitments made in testimony
- pursue 'debt recovery' despite acknowledging fraud and deception in relation to Timbercorp-Holt victims and committing to treat this subgroup with as much empathy as the law permits (full waiver)
- pursue deceptive placement in debt of this subgroup of Timbercorp despite encouragement from largest vote-carrying creditor ANZ Holt victims should not be pursued or foreclosed on
- treat Timbercorp-Holt victims contrary to ANZ guidance: *"swiftly as possible," "very generously"* and *"incredibly compassionately"* through to unequivocally agreeing they should not be pursued
- exert undue duress and take advantage of people's level of trauma or that of their families
- falsely blame victims for delays and misrepresent context
- persist in extraordinarily protracted and onerous negotiations taking years or many months or weeks at best
- inflict duress and inordinately protracted negotiations even when suicidality or actual attempts have been disclosed

- engage in marked inconsistency in comparable, or even worse-off, cases in terms of financial situation and other serious factors such as mental health
- override recommended settlement proposals of the so-called "Independent Hardship Advocates"
- permit or encourage the advocate to avoid accusations of inconsistency by pressuring people to "offer" a proposal to settle rather than making an actual assessment
- persist and escalate activities even after the first advocate resigned citing not being willing to be seen to endorse the program given strongly disagreeing with the liquidator about a *'significant minority'* of cases
- fail to ensure the Deed of Settlement provides closure, certainty and does not contain errors in statement of fact
- fail to finalize Deed amendments long sought and formally commenced in June 2016 and limiting these to only HNAB-AG members, not all Holt victims (500 are reported), or all Timbercorp victims.

Lack of confidence in new system for consumer protections – involvement in establishing AFCA

137. We welcome a one-stop shop body and hope the design and competence of staff at the new ***Australian Financial Complaints Authority*** will assess cases fairly regarding accountability and award and enforce proper redress. However, we are not confident as we understand Catriona Lowe and John Berrill are involved in its establishment. We have outlined above our direct experiences and noted reports have been made to us in their roles with the liquidator. While we provided input through the invited submissions and meetings with Professor Ian Ramsay and his Panel in 2016 and 2017, we are unaware of AFCA having any direct consultation with, or participation of, victims in designing, establishing or participating in its future operation. We have offered assistance: as we have to the banks which have not been taken up. AFCA's staff must be of the highest calibre, competent and trauma-informed if people are to be helped and industry held to account. We understand it is to commence on 1 November 2018.

138. The Minister for Finance, Kelly O'Dwyer was informed in person in a meeting in October 2017 about concerns regarding the involvement of Ms Lowe and Mr Berrill. We are unaware of any action taken or concern. The lack of direct engagement and involvement

with victims in AFCA's development does not instil trust or confidence in the new one-stop shop body. A funded Financial Services Victims and Whistleblowers Advisory should be established in an advisory role to industry and parliamentarians.

Recommendations

(1) **Consumer protection in general**: [Summary available on request in document titled "Overview of Commitments Required for Responsible Bank & Finance Industry: Knowledge, Accountability, Transparency and Integrity (KATI)."]

A. Redress:

1) **Urgent establishment of a Financial Redress Scheme of Last Resort** funded by industry providing retrospective ***restitution*** *(for direct, indirect, compounding losses)* ***and compensation*** *(for incalculable losses, pain / suffering)*. Caps on time or redress provide no disincentive to industry and re-victimize victims. These should be eliminated. If it is forced, any time-limit imposed regarding misconduct emergence should not be after 1 January 2008. Outside this, certain cases warrant special consideration. The government has further delayed redress, shelving the Ramsay Review recommendations by tacking it on to the Royal Commission despite repeatedly noting a Scheme did not require one. A scheme should be funded by the banks, offenders and their organizations and other mechanisms HNAB-AG recommended to the Ramsay Review in our meetings and submissions (See HNAB-AG Ramsay Review submission, June 2017).

B. Reform:

2) **Cap CEO salaries and bonuses plus inversely link to misconduct**: cap as per the Greens' proposal; inversely link to substantiated misconduct (by independent industry assessment or courts) rather than profit: where ethical conduct determines remuneration industry culture would radically change.

3) **Meaningful informed consent** (see examples Ramsay 2017 submission; Appendix Ci and ii).

4) **Regular, genuinely independent, unannounced, random competent audits across all aspects of industry**. This includes external administrators. Means to request an audit should also be available.

5) **Restorative Justice-style program** to educate and change industry culture and provide dignity to victims to aid recovery.

6) **Whistleblower protections and redress for impacts (financial and personal)**.

7) **Reform legislation to access assets secured beyond creditors' reach where financial misconduct arises**. It should not require legal confirmation (given the time and means to delay) where independent industry professionals assess its occurrence based on victims' documentation (or lack thereof) and particularly where large numbers substantiate a pattern of unconscionable conduct.

8) **Ensure free, accessible, recourse for complaints about, and specific requirements of all industry groups including external administrators** (liquidators, insolvency practitioners).

9) **Liquidators should not be able to pursue debt recovery of victims of financial misconduct / white collar crime**.

10) **Fund a Financial Misconduct Victims' Advisory** to assist industry and parliamentarians.

C: Penalties:

11) **Impose meaningful penalties** which are a multiple of losses incurred to victim and / or benefit gained to offender/s.

12) **Zero tolerance** of offenders and enablers to work in the industry will build trust and alter culture.

13) **Establish user-friendly easy access to a permanent record or registry of offenders** to warn and create mechanisms to monitor conduct. No evidence suggests offenders pose no risk a given number of years later or in a different role or industry. It could include willingness to co-operate and make amends and reparation or otherwise.

14) **Hold accountable complicit senior executives and those with responsibility for enabling** via personal fines, prison sentences and banning.

D: Related:

15) **Ensure resources to enable, and enforce, parliamentary committees to act on complaints about misleading and inaccurate testimony**.

16) **Ban political donations to parties or individuals**.

17) **Ensure requirements for journalistic responsibility and integrity**.

18) **Establish a properly resourced, competent, ethical and genuinely independent implementation body** to ensure recommendations are implemented.

(2) Regarding KordaMentha and ANZ re treatment of Timbercorp-Holt victims:

A. The experience of Timbercorp victims, including the Holt subgroup, be utilized in designing reform in respect of external administrators in relation to:

1) **governance practices** (e.g. existing statutory and common law obligations, business ethics: integrity, accountability, dispute resolution etc.).

2) **incentivisation practices** (e.g. ensuring ethics, not profits through debt recovery, is at the fore and / or that crops or plantations or businesses are given the best chance to succeed with advice from, and direct involvement and supervision of, independent

experts in the field not funded by, recommended, selected or associated with, the external administrator).

3) **risk management** (e.g. meaningful informed consent in plain language on 1 A4 sheet as to what is necessary for a consumer to know in order to be treated fairly and identify when and how to seek recourse including in relation to a hardship program or IDR scheme; easy free access, and education about the existence of a professional register of qualifications and misconduct listing people who have been sacked or banned).

B. It is recommended KordaMentha and ANZ be invited to make reparations or accept an investigation commence with a formal permanent public record of declining to do so related to the concerns expressed below:

1) KordaMentha be held accountable and required to honour senate testimony provided to treat the group comprising Holt victims, who Mark Korda acknowledged, were victims of fraud, with as much empathy as they can under the law - which is full waiver of debt. Those cases not yet concluded should be immediately waived with restitution paid to those who have been required to settle the demand within 60 days. To assist towards indirect and compounding losses from money demanded it should also include payment at the same penalty interest rate KordaMentha charged over at least the time from when ANZ indicated how Holt victims should be treated in February 2015 if not June 2009 when creditors granted discretionary waiver for debts over $20,000. Redress that is a multiple of loss incurred to a victim and / or benefit gained to the offender will change industry conduct and is warranted here.

2) In addition, KordaMentha be held accountable and required to pay meaningful compensation for the related incalculable financial losses and the pain and suffering victims have been put through including efforts to obfuscate or deny relevant testimony.

3) Both KordaMentha – including its Hardship Program – and ANZ be held accountable for refusing to engage with HNAB-AG representatives in a genuine manner, in good faith or even at all, including reports from victims and survey data, and for providing misleading and inaccurate testimony to parliamentarians. Compensation to the three primary

representatives involved for substantial work, exacting significant toll, spanning from mid-2014 is fair.

4) ANZ be held accountable to pay compensation for agreeing at the ***First Annual Banking Review*** Holt victims should not be pursued or foreclosed on and then altering its position at the subsequent Review. This followed correspondence from HNAB-AG requesting, in relation to ANZ's stated position, the bank refund settlements demanded by KordaMentha from which it is profiting. ANZ ignored the request and sought to obfuscate. The reply did not come from Colin Neave to whom two letters were sent in his role in the new position of Fairness Officer. ANZ should be held accountable for failures to respond honestly, fairly or responsibly to our efforts particularly related to the conduct of Chairman, David Gonski, CEO Shayne Elliott, Deputy CEO Graham Hodges and Gerard Brown, Group General Manager of Corporate Affairs.

5) Further to seeking the above remedies a formal public apology to Holt victims and HNAB-AG representatives from KordaMentha and ANZ is warranted.

Further details are available on request. Please contact HNAB-AG.