

Victims of complex multi-lender/product misconduct excluded from eligibility for financial redress in Retrospective Compensation Scheme of Last Resort ‘Legacy Complaints’ under AFCA jurisdiction

(as understood by HNAB-AG at 30/6/19)

Individual victims	Coalition Scheme - approved to start 1/7/19	Labor’s Scheme - proposed
Restitution:	\$0	\$2million cap
Compensation:	\$500,000 cap	\$1million cap
Misconduct at 1/1/08:	Engaged in / occurring after this date <i>if AFCA member/eligible</i>	Discovered / emerged after this date (GFC exposed misconduct)
Financial advisor / firm’s status with AFCA or product not deemed a ‘Financial Product’ at the time of misconduct and since reviewed etc:	Must be member of AFCA – so does not allow for culprits who are insolvent and/or no longer hold a FA licence or product not deemed a ‘Financial Product’ at time e.g. margin lending – <i>excludes Holt victims as he again – 2008/9 is not the first time his misconduct emerged – used business insolvency, personal bankruptcy and measures to secure his assets beyond reach</i> <i>Note: his bankruptcy involved Graeme Watters and notorious Andrew Wily, John Voitin, Simon Nixon etc. = been in Federal Court more than once related to an alleged fake-debt bankruptcy scheme</i>	Recognize victims have been / are re-victimized by strategies such as insolvency (and phoenixing businesses) as well as personal bankruptcy securing assets beyond creditors’ reach which the regulatory and legal system as well as successive governments enabled for decades despite victims’ efforts to call attention. Also recognizes lenders and products hid behind inadequate legislation and regulation including using so-called ‘independent’ third parties they heavily incentivised via conflicted remuneration and kickbacks
Unpaid FOS determinations – note: in 2008 these capped at \$150,00. Losses beyond were denied consideration = victims worst affected were powerless	These will be considered only for those eligible for FOS – excludes victims without decisions due to drastically low FOS cap: Re-victimizes those worst affected in terms of financial loss (forced bankruptcy, home, life-savings, retirement)	Recognize victims ineligibility because of inadequate FOS cap (\$150,000 in 2008/9 when misconduct emerged for most Holt victims) - FOS discriminated against those most affected by misconduct regarding financial losses – and therefore people’s home, life-savings and retirement leading to wide-ranging impacts across all aspects of life
Unpaid decisions by other EDR schemes or legal action:	These will be considered (under the cap) – but it fails to address law firms would not pursue action where inadequate PI insurance existed and many, including free services, would not take on complex cases or matters	A/A

Continued/-

	where a conflict of interest existed being on retainer or associated with industry culprit e.g. bank, liquidator etc. <i>(Holt had only \$2million PI <u>total</u> for at least 500 clients)</i>	
Deed signed to extract from misconduct (no real option)	Victims excluded if Deed required accepting responsibility for debt (even where organization acknowledged misconduct in testimony to senate hearings e.g. ANZ / KordaMentha re Holt)	Unsure of Labor's position - understand this is recognized as relevant as it is part of systemic failures (resulting in Hayne RC which scrutinized only tip of iceberg and no Holt-industry issues)
Pattern of misconduct and failure of legal system and ASIC to hold offenders accountable or safeguard public with meaningful measures:	Does not appear to be understood or a consideration <i>(Holt was reported to ASIC and a major law firm by earlier victims. Other industry members were aware of his conduct. HNAB-AG eventually achieved having ASIC investigate. An inadequate 3-year ban was imposed despite his conduct meeting ASIC criteria for 10 yr-Life ban. ASIC failed to hold him accountable or ensure proper consumer protections or use our offers to assist with information.)</i>	Unsure of Labor's position - understand this is recognized as relevant – as is apparent in any commitment to expose corruption, safeguard the community and design meaningful measures for accountability, meaningful consumer protections and fair redress
Securing economy and people's financial futures	Ineligible: those victims most affected having been failed by delays and inadequate action by successive governments	This is considered – people most affected would obtain meaningful financial redress even if not full where cap exceeded
Outcome for: a) financial recovery b) rebuilding and healing across all aspects of life affected:	<u>At best:</u> full (and fair) redress for small / lesser financial losses <u>At worst:</u> abandonment of those most affected (worse for older single women without time / opportunity to rebuild) as victims left in hardship through to severe or cataclysmic <u>financial impacts</u> PLUS devastating rolling consequences in <u>all aspects of life</u> e.g. physical and psychological health* (marked mental health impacts including high levels of suicidality) and exacerbating wide-ranging personal, family, social, work, community and career impacts = re-victimization: no respect or dignity or fair treatment especially for most affected	While also imposing caps thus rewarding industry in terms of crime paying (given the cost / benefit analysis is in the favour of misconduct), this proposal <u>recognizes the need for restitution (for direct, indirect and compounding losses) and compensation (for incalculable losses and pain and suffering)</u> - it demonstrates dignity, awareness of marked trauma and vast and dire impacts on victims and their families, the role of industry and decades of denial = proposes a fair go, dignity, hope for healing and finally moving on underpinned by integrity, respect and a moral compass

NOTE - Special consideration: due where victims were failed by engagement with regulators and / or lawyer misconduct (including before 2008). PCOI needed.