

Considerations for a fair-go Retrospective Last Resort Financial Redress Scheme - Victims lament opportunity lost in limited scope of Hayne Commission

Australia was denied the impressive scrutiny of Rowena Orr and Michael Hodge over wide-ranging crucial aspects of the banking and finance sector at the Hayne Commission. It failed to reveal the vast extent or nature of misconduct. The public remains at risk. Existing victims are ignored. Cross-partisan genuine engagement with victims is needed for meaningful action.

Victims of serious misconduct remain silenced and forgotten. Systemic corruption exposed in banks and financial institutions covered a limited, narrow, band represented by only 27 victims called as witnesses. Shocking unconscionable strategies to target and deceive remains hidden.

Australians were deprived of the chance to understand how misconduct occurs, is enabled by regulators, lawyers and other corporate parties or the breadth and depth of severe impacts. It can be no less catastrophic, traumatic or indeed fatal than other betrayals and violations of trust and abuse of power exposed in royal commissions in which victims are central and valued.

Hayne Commission did not call victims of gross financial misconduct or related parties e.g.

- multi-lender/product misconduct via collaboration with 'independent' third parties
- agribusiness MIS (issues unaddressed in class actions and limitations in senate inquiry)
- BT Margin Lending and industry relationship with 'wealth' products of lenders
- insolvency practitioners, liquidators, administrators, associated parties
- lawyers, advocates, EDR schemes, auditors, regulators' role re the above; and the ATO.

Loss of opportunity to raise awareness means the community and authorities are left without information to design measures imperative to minimize misconduct, ensure best-practice safeguards, establish meaningful accountability or proper financial redress and victim supports.

Financial literacy - while important - would not, and did not, protect responsible, intelligent people from deceptive, fraudulent and sophisticated misconduct enabled by grossly inadequate consumer protections. The spotlight on those abusing a position of trust, power or expertise must not be re-positioned or deflected: it fuels victim-blaming. It re-victimizes.

Victims are easy targets to blame, discredit, misrepresent and silence as exposed amply by evidence in institutional responses to sexual abuse, family violence and other scenarios.

Devastating life-altering personal impacts on relationships, family, friends, work, career, plans, goals, with dire physical and psychological health impacts, well beyond cataclysmic decimation of life-savings, retirements and loss of homes, were not highlighted. Those most affected remain invisible and ignored. The toll of being largely stonewalled over 10 years on is immense.

These consequences are directly relevant to considerations for a retrospective last resort financial redress scheme and necessity, as Labor notes, for restitution (for direct, indirect and compounding losses) as well as compensation (for incalculable losses plus pain and suffering).

A fair financial redress scheme must factor in the following concerns: Meaningful responsible financial redress is vital for victims and an ethical strong economy

To minimize occurrence of misconduct, hold offenders responsible, change industry culture and safeguard the community, a financial redress scheme must achieve 2 key objectives:

- 1) disincentive in penalty set at multiple of profit made and/or benefit gained (3-10 times)
- 2) restitution for financial losses plus compensation for immeasurable losses and suffering.

Elements for responsible retrospective financial redress scheme of last resort for individuals:

- 1) **restitution** for direct, indirect and compounding losses as well as **compensation** for incalculable losses and immeasurable pain and suffering – stipulated as tax-exempt
- 2) **if cap imposed it must be realistic for recovery** i.e. no less than \$2million restitution to rebuild with compensation matching or no less than \$1million cap – note: those people least financially affected, potentially rightfully receive 100% of financial impact while **a cap re-victimizes people most affected** (hence requiring design of additional measures for loss exceeding cap: see 14)
- 3) **assist claim preparation** with free independent competent accountants or professionals
- 4) **extend timeframe to lodge case where special consideration warranted** (e.g. due to physical or mental health; access to help to prepare material; complex multi-lender/product cases etc.)
- 5) **ensure genuinely independent body** to assess and award cases with dignity and respect and **transparent scrutiny of concerns about professionals involved** mindful seniority and reputation does not ensure immunity from error, cover-up, misconduct or attempt to discredit victims
- 6) **consider cases failed by system** including agribusiness MIS (where relevant misconduct was not examined in a class action or inquiry and/or Deeds were signed under duress, threat of court)
- 7) **include cases thwarted or denied possibility of engagement or pursuit** e.g. BT Margin Lending
- 8) **exclude any previous / impending redress being deducted from cap** unless full redress achieved
- 9) **act swiftly and compassionately** and ensure provision of **competent trauma-informed training** in expectations and engagement with victims and for appropriate operation of scheme (e.g. issues of re-traumatization and struggle with daunting task to prepare or lodge claim - especially multiple / complex aspects – and /or fear of further betrayal by inadequate decision or process)
- 10) **include impact of lawyers and associated parties** enabling industry and thwarting victims
- 11) **include victims reporting misconduct to ASIC, authorities or lawyers before 1/1/2008** who were **failed by the process due to unethical conduct** in ways falling below community expectations (particularly if unable to rebuild or recover due to age, ability to work, health etc.)
- 12) **a restorative justice-style program** involving direct offenders and top-level executives (i.e. CEO and Board Chair) to bear witness to the human face and toll of misconduct / white-collar crime, thus facilitating essential change in culture and providing dignity to victims' experiences
- 13) **publish a permanent user-friendly record** of financial institutions and members culpability – include efforts to help or hinder redress and accept responsibility
- 14) **other: e.g. null and void victim bankruptcies**; provide **additional measures if cap imposed** given regulation failures of successive governments over decades and about 30 inquiries - (e.g. waive payment of income tax assessed as due until loss recouped; waive stamp duty for a home; etc.)
- 15) **formal apology to victims** given role of decades of successive governments as well as industry.

Corporate malfeasance is an insidious invisible crime with grave impacts as serious as other forms of abuse of power in many scenarios. The nature and extent remains unrecognized .

Democracy requires trust in society's major institutions and power structures. The Hayne Commission's report and scope failed victims. Dignity and respect via authorities partnering with victims is necessary for recovery and to strengthen industry and integrity of government.