

Victims excluded from eligibility for ‘Compensation’ Scheme of Last Resort on the basis of the very reasons that drove advocacy for accountability, safeguards, and restitution and compensation: those worst affected remain abandoned

After years of advocacy, participation in senate and parliamentary inquiries, hundreds are ineligible for financial redress in the Compensation Scheme of Last Resort that commenced July 2019. They include victims of lenders and products who enabled and incentivized Melbourne-based Peter Raymond Holt, a CPA accountant, financial adviser and former ATO-auditor. HNAB-AG is aware of only 3 who obtained a FOS determination (due to inadequate eligibility parameters). Devastating extensive misconduct emerged in 2008 - although earlier victims existed and reported to ASIC and lawyers. Significant misconduct by industry after 1 January 2008 is also excluded from the Scheme.

This is despite specific concerns that drove and magnified the call for a royal commission (and some 30 inquiries). The Hayne Royal Commission is to be commended for what it scrutinized. However, it did not cover key and crucial aspects of industry - including our experiences. It called only 27 victims before one Commissioner. The coalition government voted against a royal commission 26 times.

Under the government’s scheme there is no restitution. Compensation is capped at only \$500,000. This fails to reflect a victim’s loss of home, lifesavings, retirement with financial ruin, hardship or forced bankruptcy and related harrowing personal impacts. In stark contrast, reflecting significantly better engagement with victims, in 2018, **Labor proposed** restitution (for financial losses) capped at \$2million *as well as* compensation (for personal injury) at \$1million: we would have been eligible.

Exclusions of eligibility in the Compensation Scheme of Last Resort to our knowledge include:

1. Mr Holt is not a member of AFCA* and no longer holds a FA licence (post a 3 year ban by ASIC).
2. Mr Holt is not eligible to be a member of AFCA having entered insolvency (again, as in the past, along with utilizing various other strategies) to secure assets from beyond his victims’ reach.
3. Misconduct will only be considered if it *occurred* after 1 January 2008 – this ignores much *emerged* that year as a result of the GFC triggering mass exposure of systemic corruption.
4. In 2008 the vast majority of our losses exceeded FOS’s cap of \$150,000 so victims, then ineligible to apply to be awarded a determination, cannot now seek redress in the new Scheme: homes, life-savings, retirements were lost plus deceptive placement in overwhelming debt.
5. Deeds requiring acceptance of responsibility to extract from deceptive – and even unknown – placement in debt, disqualify victims as eligible (even when an organization has acknowledged Mr Holt’s misconduct in testimony to senate hearings / parliamentary committees or by ASIC).
6. Inability to obtain a judgement given – even major – law firms were disinterested in pursuing:
 - a) Mr Holt once establishing he held grossly inadequate professional indemnity insurance or
 - b) banks or product issuers given their “deep pockets” (and tactics of delay, contacts, industry knowledge etc. in contrast to victims in turmoil without emotional or financial resources)
7. A pattern of misconduct (before or after 1/1/08) also appears not to be considered relevant.

Examples of misconduct since 1 January 2008 are also excluded

8. As it seems not then considered to be a ‘Financial Product’ providers of Margin Loans were not required until 2010 to hold an Australian Financial Services Licence or thus be a member of FOS

(now AFCA): at this point it is unclear to us if BT Margin Lending held an AFSL when serious misconduct occurred, including in 2008, separate - and in relation - to Peter Holt's activities.

9. Liquidators of collapsed products/lenders are not members of AFCA and fall under ASIC – this does not provide redress. Confidence in ASIC is low (ASIC eventually issued a 3 year ban for Mr Holt despite meeting its criteria for a 10 year-Life Ban. Serious concerns re other aspects exist).

[*Membership of AFCA is mandatory for those who hold an Australian Financial Services Licence that authorises the provision of 'Financial Services' to those who are 'Retail Clients'. However, it excludes large sections of industry.]

No dignity, respect or fair-go for victims in parameters of Last Resort Compensation Scheme:

- at best: full and fair redress for smaller losses for some i.e. generally those victims *least* affected
- at worst (typical): compounds cataclysmic personal and financial impacts on those *most* affected
- disregards peril to victims plus wider community and national economic ramifications:
 - older Australians do not have time or opportunity to rebuild / start over and recover
 - singles (divorce common in trauma), despite a lifetime of hard work no longer owning a home face poverty on pension: if any super remains, women worse-off (averaging 47% less than men)
 - marked physical / mental health consequences (research includes suicidality, reduced longevity)
 - family and social impacts (includes intergenerational trauma: parenting affected, withdrawal or loss of support systems, forced relocation, inability to work, career trajectory, world view etc.)
 - grave financial and profound personal impacts for those *most affected relative to their situation*
- undermines society – loss of trust in institutions and moral compass of leaders: data is ignored (as well as victims' voices) that must inform a Scheme e.g. research in prestigious JAMA in 2018 shows older people experiencing a negative financial shock, losing 75% or more, and particularly their home, are at serious risk regarding physical and mental health including suicide and early death
- further victimizes: *no restitution* for those re-victimized by system's grossly inadequate consumer protections; *compensation potential* for some - but nowhere to go for many victims a decade later.

Reward and protection – the disturbing message signalled to industry:

- crime pays: proceeds of crime retained – deny, minimize, delay, victim-blame and re-traumatize
- pressure politicians / government to protect culprits over the Australian public because if scrutiny occurs it will be so far down the track, accountability and redress for victims will be token - if at all.

The Hayne Royal Commission did not scrutinize key aspects of industry despite reports related to:

- multi-lender/product misconduct via collaboration with 'independent' third parties
- agribusiness MIS (key issues unaddressed in class actions and limitations of 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.

CALL FOR URGENT STRONG POLITICAL ACTION WITH MORAL COMPASS

Victims of white-collar crime demand informed, prompt, fair, compassionate action on misconduct:
1) revision of Scheme's parameters: inclusion of restitution not mere compensation for only some
2) establishment of measures to assist, especially those most affected, until full restitution and fair compensation is provided (e.g. waive payment of tax and stamp duty, interest-free loans, etc.)