

# **Comments related to the INTERIM REPORT**

## **Review of the financial system external dispute resolution and complaints framework**

### ***(Ramsay Review)***

Submitted: January 2017

Susan Henry, Naomi Halpern and Kathleen Marsh  
On behalf of:

Holt Norman Ashman Baker Action Group (**HNAB-AG**)  
PO Box 5043 Moreland West LPO  
MORELAND WEST VIC 3055  
Email: [hnabactiongroup@gmail.com](mailto:hnabactiongroup@gmail.com)  
Website: [www.halttosafeguardyourfinances.com](http://www.halttosafeguardyourfinances.com)

## Comments related to INTERIM REPORT

1. These comments regarding the Interim Report are provided on behalf of the Holt Norman Ashman Baker Action Group (HNAB-AG).

He was a qualified accountant, former ATO-auditor and financial adviser.

2. We notice that HNAB-AG is not listed in *Appendix 2: Consultation of the Interim Report*. Neither are the names of those invited to meet with the panel or provide a written submission. We realize this may be an oversight or concern for privacy. We wish to clarify we give permission for this, and our previous submission, to be made public and welcome the opportunity to be listed as Holt Norman Ashman Baker Action Group and / or as individuals.
3. Thank you for the opportunity to provide further comment by way of the chance to peruse the Panel's interim report.

The carnage in terms of suicides and traumatic stress-related disease is just not as swift or apparent. Nor is the connection to various outcomes readily obvious or visible. Victims are not located together in the one spot, at the same time. This makes it invisible like most domestic and family violence or sexual abuse. The personal impacts beyond the financial extend to all areas of life with devastating consequences for those struggling to deal with it. It has serious long-term consequences on children and extended family, relationships and social life, work and career as well as health - apart from financial aspects on life in general and retirement or the possibility of it occurring at all.

4. We have read much, but not examined all, of the report since its availability last month (due to major surgery and ongoing pressing concerns related to white collar crime requiring attention). The Panel has done a thoughtful job of an enormous and critically important task. We support the recommendations proposed although have serious concerns about ASIC's role. We also believe certain points would benefit from further elaboration and others from underscoring what may not always be grasped by others not exposed to or educated in the impact on victims or, dare we suggest, glossed over or minimized by those with vested interests.
5. We appreciate the term *consumer* covers both the public who have not been subjected to incompetence, misconduct, negligence, or fraud as well as those who are *victims* of white collar crime. The latter may constitute minor forms of activity with minimal impacts through to severe fraud and criminal activity with unimaginable impacts on every aspect of life beyond financial decimation or ruin resulting in loss of home and bankruptcy.

6. However, at times it is relevant to distinguish between the two so as not to foster denial and minimization of the fraud and misconduct by focusing on the targeted person outside of being subjected to these activities. Dignity for victims, and acknowledgement of the gravity of what has been inflicted, is deserved. The word *victim* focuses on being targeted as indeed is at issue. In the context of industry misconduct the word *victim* is relevant. In the context of the person's recovery and choices to heal and rebuild his or her life, *consumer* may be adequate. Some may prefer the term *survivor*. However, others feel they want to do more than survive and that the term blames those who are overwhelmed, struggling with the trauma in which they are placed, or become ill due to the severe stress or who suicide.
7. We agree that the notion of tension between schemes providing competition is not a convincing argument to not have a single ombudsman scheme. Indeed, it is disturbing this 'incentive' should be seen by those stakeholders as useful: any EDR scheme should be sufficiently competent, robust and ethical to provide a quality service. If it needs competition to motivate optimum performance there is a fundamental problem which suggests it is not well designed, implemented or meeting its purpose.

### **Last resort compensation scheme must also be retrospective and provide assessment through a new ombudsman scheme**

8. It is essential that all victims, particularly those of the most serious white collar crime, not be relegated to oblivion now that the problem has been recognized by many in the industry and amongst parliamentarians - amidst those who seek to minimize or deny it. To this end, ethically, redress must be *retrospective*. Ensuring there is responsibility applied for their previous actions may also result in offending industry members and organizations learning as a result. Otherwise they are effectively rewarded. They learn they can get away with it and only have to change behaviour once discovered - and years afterwards, once subsequent repercussions eventually force it. *Retrospective compensation* is likely also to increase shareholder concern for ethical practice and apply pressure for assurance through specific procedures being implemented to mitigate risk.
9. We note the Panel reported that many, but not all, stakeholders supported establishing a compensation scheme of last resort to address *unpaid determinations*. We documented in our submission why a scheme must include assessment of cases not yet heard and therefore, cases without determinations. Otherwise those most affected are yet again victimized.
10. We understand the *Terms of Reference* specifically prevented the Panel from making recommendations related to compensation. This does not engender confidence or trust that government is concerned about the welfare of, or impact of misconduct, negligence and fraud on, victims and their families. It reinforces the sense that the government is instead focused on the interests of banks and industry as the priority - and effectively at any cost, including people's lives and well-being. This is deeply disturbing. It is unacceptable.

11. We understand the Panel was permitted to make observations and we support these. We seek to underscore that it is ethically necessary and economically prudent in the long term to ensure victims of white collar crime are returned to the position they were in, or should be in (given compounding losses extend over years due to being pursued for placement in deceptive debt and also the lack of access to avenues for redress and abandonment by power structures).
12. In addition, *restitution* should be distinguished from *compensation* which by definition relates to impact. Compensation should include the years of anguish to resolution, compounding trauma, personal distress, pain and suffering including in pursuing justice or accountability for what would be fair and reasonable in a democratic society respecting ethical practice and due rights of victims.

### **'Compensation' and monetary limits**

13. We agree that monetary limits on compensation should be increased and currently bear little relationship to products.

Responses of  
industry and government to unconscionable conduct, where advantage is taken of imbalance of power, knowledge, influence and trust - if fair and ethical - would provide meaningful and genuine accountability.
14. It is not enough that stakeholders support *unpaid determinations* be covered in a compensation scheme. Apart from people being too distressed and out of their depth to go to FOS, of those who did amongst members of HNAB-AG, only two were taken on that we know of. Whereas many were refused assessment by FOS on the basis of:
  - i) its cap (at the time of \$150,000 of loss)
  - ii) Peter Holt refused to provide documents to enable assessment
  - iii) the necessity for a finance professional with industry expertise to prepare the material plus having nowhere to go beyond lawyers who often understood even less than the victims (and charged exorbitant fees or were reluctant to help given the victim's lack of capacity to pay - due to the very reason he or she required assistance).

### **Funding for compensation and restitution**

15. In our view, from an ethical standpoint it is not possible to reasonably justify that thousands of victims of white collar crime should be expected to bear the often life-long financial, and deeply traumatic personal, cost of failures of successive governments and industry to protect consumers. This is particularly the case when, had simple measures been required to be implemented, almost all subjected to agribusiness MIS, margin lending and superannuation misconduct, related to banks and products utilizing Peter

Holt's firm, would not be in this position. Such measures have been outlined in our previous invited submission. At the most basic level these include:

- i) meaningful informed consent (simple, plain language over 1-2 pages devoid of jargon and legalese as per examples in Appendix D and E of our previous submission)
  - ii) provision to the borrower of the fully completed loan application by the adviser / industry member well before meeting for signing
  - iii) provision of loan approval by the bank directly to the borrower before meeting for signing
  - iv) signing loan documents in the presence of all parties (borrower, lender, adviser / industry member, product issuer) with an independent witness not related to the industry
  - v) provision of hard copies of the signed documents to all stakeholders at the time of signing (i.e. multiple original copies not one and not a photocopy or electronic copy which is more able to be manipulated or doctored)
  - vi) provision of all statements direct to the client as well as adviser
  - vii) electronic recording of advice and agreement meetings and interviews
  - viii) disclosure of remuneration prior to pursuing a loan or product.
16. We wish to underscore the relevance of the Panel's comments about compensation schemes existing to protect certain classes of loss, both in other areas of the financial services, and other, sectors in Australia.
17. Banks already provide redress by way of full *restitution* in instances of *credit card fraud*: banks do not pursue the victims for the amount of debt in which they are placed by hackers and fraudsters who misuse and abuse their credit card details. If the banks did not, it is likely no one would use a credit card facility. Hence the industry is motivated to fund staff to detect, as soon as possible, and endeavour to avoid, this type of activity.
18. One of the authors has twice had (a major bank) detect credit card fraud on a MasterCard. It was used by the criminal overseas. The card was not safe despite new chip technology heavily promoted by banks. Within minutes of it being accessed, she was phoned by the bank – once on a Sunday - to inquire whether she was in Canada to ascertain whether fraud was involved.
19. However, no such efficiency or strategy existed regarding concern for activity from within the same bank, and in its collaboration with the external adviser with whom it worked, which resulted in the loss of her home, lifesavings and assets and leaving her on the brink of bankruptcy for over 8 years.
20. The fact the bank has been less than proactive, responsive or helpful, far less willing to reinstate losses when it comes to in-house activity or in collaboration with external advisers utilized to bring in business, reinforces the nature of the problem. If banks and industry did not profit from these activities they would already have strategies and procedures in place as they do with credit card fraud.

21. Of note is that bankruptcy of one of the authors is only now in the process of being averted, due to the considerable efforts of Sarah Henderson MP – not industry. While it is her job and it should not be exceptional professionalism or conduct, Ms Henderson stands out as one of a few parliamentarians who is doing her job to help people. Her integrity and personal qualities distinguish her from her colleagues; some who have promised assistance to victims and failed to follow through, or abandoned victims after some initial efforts. Unfortunately, her colleagues in the Liberal party do not respond to requests to meet in order to discuss what led to victims' situations or provide the assistance all desperately require - or indeed, to benefit from insights and practical suggestions to safeguard the community in future.
22. We note the Panel outlines there are circumstances in which the Australian Government can provide financial assistance (and we are aware of isolated instances to the Liberal Government's credit. MPs such as Ms Henderson have made substantial efforts with no public applause or notoriety whatsoever. Minister for Finance, Senator the Hon. Mathias Cormann and his former parliamentary secretary the Hon. Michael McCormack also received no public acclaim for their assistance in an aspect of isolated circumstances.) However, all victims deserve swift, compassionate help with proper redress.
23. The Panel also referred to a scheme in the UK which exists to pay claims arising from bad investment advice or misrepresentation if an authorized investment firm is unable to pay these. Given the role of the Australian government in setting regulation, we believe it has ultimate responsibility to ensure payment of claims. This relates, in our view, to holding industry organisations involved in white collar crime responsible to fund redress.
24. We appreciate concern about taxpayers being burdened with funding claims. However, nor should victims be burdened with the consequences of failures of power structures (industry, regulatory and government). Indeed typically victims are expected to pay tax yet receive no assistance whatsoever for crimes committed against them which successive governments enabled.
25. Complaints to ASIC and government existed long before the GFC exposed the extent of white collar crime in 2008. Industry members concerned with ethics and protection of the community, as well as law firms, are known to have raised concerns which were not acted on by ASIC leaving the public vulnerable to activity which could have even averted. It is not complex or expensive to implement procedures which would protect all stakeholders from the sort of white collar crime to which we were subjected. This is the tragedy. It is inordinately frustrating. Funding is government's responsibility to put in place: the banks and financial sector has profited from victims.
26. The Panel noted that some may hold concern about *moral hazard issues* in introducing a compensation scheme of last resort in terms of '*riskier advice*' and '*less diligent*' consumers. However, as noted, these could readily be reduced to a minimum by utilising *genuinely meaningful informed consent* (designed in consultation with consumers and former victims) and procedures as outlined elsewhere here and in our previous submission. In

our case the spectrum of diligence of clients of Peter Holt and his firm of many staff, was entirely irrelevant. Further, if as penalty, organizations involved were *fined a multiple of losses incurred or which were placed at risk*, it would deter riskier activity that might be based on an expectation others would cover losses for risky bad advice, negligence or fraud.

27. We note AMP is referenced as not supporting the awarding of *non-economic losses*. It is doubtful that any but the most scrupulous and ethical industry body would support restitution and compensation for non-economic impacts as well as direct financial losses. Unless this occurs standardly, there is no incentive for much to change.
28. The authors are aware of a case handled by \_\_\_\_\_ over recent years which warrants submissions and action on its own as a single product case. This has not occurred due to the priority of multi-lender / multi-product misconduct (resulting in the necessity to make a claim). In addition to harassment and incompetence, there are grave concerns about thwarting the claim. Escalating distress included falsely accusing the claimant of receiving a pension. The distinct sense is there was a strategy to intimidate and intensify distress to the point the claimant would withdraw the claim to reduce aggravated trauma. These comments barely scratch the surface of the issues involved.
29. As part of accountability we strongly recommend there be industry and government *funding for research* into the far-reaching trauma of white collar crime on victims and also vicariously on whistle-blowers and investigators (journalistic and other). Some preliminary discussions between HNAB-AG with Australian and international trauma researchers has commenced.
30. The impact has economic repercussions not only for the victim but the wider community given the health, social and work related consequences. This includes severe stress-related impacts from disease to deaths (cancer, cardiac, gastro-intestinal and immune system etc; well-being concerns through to severe mental health issues, suicide attempts and completions). It involves family breakdown, separations and divorce with consequent far-reaching financial, personal and family impacts. It can result in the commencement of, or escalate existing, family violence and sexual abuse or old trauma histories.
31. All of these factors have serious impacts on children, from unborn babies to young adults who are dependent on parents or starting out independently.
32. It also impacts older adults highly distressed about aging or elderly parents' well-being and financial circumstances when their home has to be sold, savings are diminished or wiped out and placement in deceptive debt occurs.
33. Even with strong emotional and practical support from family it leaves people with no dignity, mortified at financial dependence and constraints and susceptible to stress-related disease, depression, anxiety and suicidality.
34. In our opinion it is essential there be *strong safeguards and incentives for whistle-blowers* to come forward in both *IDR and EDR processes*. Not one person has

come forward in relation to Peter Holt. He had many staff. Some left any association with him years before we learned of this decision. They did not report him, his partners or other staff to ASIC. How much of this is due to no confidence ASIC would act, or to acceptance of it being industry culture (even if removing themselves from participating) and how much is related to fears about the very real and substantial costs to whistle-blowers, is unknown.

### **Panels for complex cases only – multi-lender/multi-product**

35. We note the Panel recommends complex cases would go before a panel comprising an industry representative, consumer representative and a scheme ombudsman. We are pleased with this recommendation although remain concerned that implementation, definition, audit and competence are aspects which could cause it to fail victims. We wholly support those with concerns regarding reliance on the understanding, competence (and possible bias) of only one ombudsman hearing a case. Only the most simple and straightforward cases may possibly not be at risk in that scenario. Human error and unconscious bias are a reality beyond unscrupulousness.
36. Fundamental to the optimum working of a panel (or a single ombudsman) is the necessity for thorough training in trauma dynamics and impacts. Qualification for such a role in assessing cases should entail proper exposure to information about trauma as well as directly engaging with victims, or at least hearing victims' experience of discovery, attempts at redress and the ongoing impact. It should also be part of ongoing professional development. Further, we strongly suggest panel members and all ombudsmen be required to participate in a *restorative-justice style program* with a victim and offender/s.
37. The experience of our members with consumer advocates or representatives is that unless they have had personal experience of extensive and complex white collar crime, they are no more able to understand, anticipate or respond to the related concerns and issues than any other individual in society.
38. What distinguishes those who are helpful is *high empathic, along with high sympathetic, qualities*. This results in integrity. Some with high empathic skills use this to manipulate victims for their own purpose or agenda (e.g. to accept a settlement or desist from a course of action). Sympathy is distinct from empathy, in that sympathy (as with compassion) results in care about impact on the person, not simply an ability to empathize i.e. to recognize, feel or have awareness of impact. Like any skill it can be utilized to benefit others or to disadvantage and cause harm in benefitting only the empathizer. Sales and advertising utilize it as do some politicians. A master manipulator or con-artist is well able to empathize but has little or no sympathy or compassion.
39. Reports from our members indicate that financial counsellors, consumer advocates as well as industry members, lawyers, parliamentarians and their advisers often cause considerable grief due to their lack of empathy - *or worse* when shown empathy but lack of sympathy. At times this results in increased suicidality due to deep despair and hopelessness escalating.



## Increased transparency and accountability

40. Crucial to meaningful reform is increased transparency and accountability. We reiterate the need for a \_\_\_\_\_ as part of this goal. Victims deserve to be treated as human beings with lives and feelings: not case numbers or statistics in industry misconduct or remedy ledgers.
41. We anticipate the funding of a \_\_\_\_\_ may be argued against based on cost. However, the gains from an effective measure to educate and change the industry culture would outweigh the cost. Cost would also quickly be recouped. Particularly if offenders were required to fund the cost and penalties were a multiple of losses incurred, or potentially incurred where caught in time, the financial incentive combined with exposure to the human suffering at their hands, would have a significant effect on any reasonable person. It may not deter narcissists, psychopaths or sociopaths but may help identify such individuals within an organization due to repeat offending. This would be useful.
42. An *ombudsman style approach* rather than the legalistic and adversarial forum of a *tribunal* (which can result in protracted appeals and system manipulation) is preferable if accountability is the goal and purpose. The law is not about justice. Legalistic mechanisms favour those with deep pockets, contacts and knowledge of the system: this does not promote accountability. It further disadvantages and re-victimizes those it purports to assist. At its best the legal system is essential to democratic society. However, it has patently failed victims of white collar crime and at worst enables offenders to continue to devastate lives. We can provide examples should it be helpful.
43. We note that the Panel believes ASIC should be involved in regulatory guidance. On this count we strongly disagree. In our experience ASIC is part of the problem both in terms of being a \_\_\_\_\_ and also in terms of its competence, willingness and interest in dealing with concerns reported to it by HNAB-AG and earlier victims of collaboration with Mr Holt's firm. We are also aware of industry members and law firms who have made reports to ASIC about which nothing was done both in past, and recent, years.
44. We refer the Panel to the outline of our experience of ASIC in Appendix A of our submission. Extraordinary examples are noted. These include providing outright misleading information to a parliamentary committee (e.g. ASIC testified it was consulting with HNAB-AG regarding \_\_\_\_\_ in considering criminal charges. In reality, one meeting was granted in which we were informed there would be no consultation or transparency about its investigation or decision. Quite simply, ASIC described to the parliamentary committee refusing to consult with us as *the consulting* it was engaging in). Months later, ASIC chose not to pursue charges claiming a lack of evidence satisfactory to a court. However, it did not accept our offer to assist in compiling evidence. We postulate the multi-lender multi-product complexity was not an attractive proposition to ASIC. It is difficult to be confident ASIC genuinely examined data when it sought none from us, utilizing material related to only a few cases lodged some years before. This appears common.

45. ASIC had received complaints about Peter Holt well before his activities were exposed in 2008. It did nothing to safeguard the public or existing or prospective clients. Had ASIC acted, and acted appropriately, some 500 people would not have become victims of white collar crime, struggling with devastating consequences beyond financial impacts.
46. It has been noted that Fairfax journalist, \_\_\_\_\_, has done more to expose seriously grievous concerns about the industry, as a one-woman band, than ASIC - both before and after its funding cut of \$120million.
47. It is hard to imagine what has led the Panel to have confidence in ASIC to make any difference or become competent and capable of fulfilling the role imagined for ensuring standards of a new ombudsman scheme. Industry members have informed us, and our own experience demonstrates, industry members are not driven to better practice or deterred from misconduct by ASIC. Moreover, they know how to manipulate the system should ASIC become involved. Disciplinary action is light much of the time, if at all, and does not deter extensive serious white collar crime.
48. In our experience, staff at ASIC claimed to believe any ban from providing financial services (including of 3 years) was a serious outcome that would have a marked impact. This naivety is staggering. It is also alarming. Offenders know how to work around a ban or action. Peter Holt has boasted about using the system to secure his assets from creditors reach. He utilized insolvency and bankruptcy while retaining his business, luxury home and life-style. Only this week his former personal bankruptcy Trustee, Andrew Wily (based in Sydney - not Melbourne where Mr Holt lives and works) has again been in the news for concerns about activities in this 'professional' role. He 'resigned' from Holt's case after a law firm began to investigate it as a fake-debt bankruptcy scenario. Mr Wily was able to avert examination or disciplinary action. \_\_\_\_\_ has also been reported to HNAB-AG as being involved in questionable and 'dodgy' insolvency practices. He has been referred countless cases by Mr Holt (including his own) over many years. These people continue to practice undeterred. It is evident ASIC holds no concern to them. They play the system. ASIC does little, if anything, about it.
49. Our experience of ASIC, after persisting for many years, over various aspects of the white collar crime related to Mr Holt's firm and collaboration with banks, has resulted in a decision not to expend energy in reporting other experiences of misconduct which we have since encountered. Time and energy is already heavily compromised while struggling with financial and personal impacts and pursuing activism related to white collar crime and the inadequate responses to it. This is precisely what results in underreporting. One can only question how much the decision we arrived at is fostered by design on the part of ASIC - and indeed other industry complaints forums. ANZ, CBA, BT, AMP, KordaMentha are well known to HNAB-AG as examples who clearly operate to eliminate many complaints, if not all, by conducting business in such a manner to pressure victims to give up, go away and relieve them of responsibility to attend to serious concerns. We are committed to expose issues and safeguard the public via other avenues.

## Comment regarding understanding by parliamentarians and industry of issues related to white collar crime

50. Last year, watching the episode of Annabel Crabb's *Kitchen Cabinet* featuring Prime Minister Turnbull cooking at the home of his daughter, Daisy, one of the author's wondered if he could imagine complete financial devastation of his daughter, through no fault of her own, at the hands of the finance sector. If he *can* understand how that could happen then his lack of response to provide redress for victims, protection for consumers and meaningful penalties for industry is difficult to fathom.
51. If the prime minister *cannot* imagine that his daughter could find herself in this situation, then - unless she is in the industry or has close contacts with the industry with whom she would discuss details of her financial affairs and oversee investments - this is all the more reason a royal commission or similar such investigation with commitment to meaningful reform and redress is required.
52. Any parliamentarian who understands that serious white collar crime can result in obliteration of an innocent person's home and life-savings after lifelong hard work, will recognize there are grave concerns regarding the industry which urgently must be addressed. Years later, is not good enough.
53. Senate inquiries are not enough. We have observed outright false and misleading information provided. Senators are busy and, of serious concern, may well not have the time to give to be fully informed, check information or think to obtain feedback from the victims involved. Some may assume they know all that is necessary to know. Some may have their own agenda or be influenced by politicking. Moreover, there also appears to be little willingness to respond to or investigate reports of concern about testimony even when evidence exists it is inaccurate and misleading. Industry knows this and has little, if any, qualms about playing the system - and making a mockery of it.
54. However, any politician (or anyone) who does not understand how multi-lender, multi-product white collar crime can occur, also makes the case - for precisely the reverse reason - as to why a thorough, independent, unbiased investigation focused on the purpose of designing meaningful reform with proper redress for victims should be one of government's highest priorities.
55. An unstable national economic basis is a recipe for disaster. Fraud and misconduct is a financial cancer. It will persist and grow, undermining the economy and social fabric from various angles. Money directed toward creating an ethical, efficient and robust system, including restitution and compensation, is an investment Australia cannot afford *not* to make - and without further delay.

Thank you to the Panel for considering these comments on the Interim Report. Further details will be provided on request should it be helpful.