

Chapter 5

Geared investment

I was promised I would never use one cent of my money.¹

5.1 Long after their collapse, the legacy of failed agribusiness MIS continues to cause untold trouble for some investors. Recent developments have not only shed light on familiar deficiencies in the marketing and operation of these schemes but have brought to light even greater flaws especially around the borrowing arrangements investors used to finance their venture. Indeed, for many investors the loan agreements they entered into to fund their MIS have compounded their problems.

5.2 In this chapter, the committee recognises that when growers combined leverage and investment, they exposed themselves to higher risk, as gearing accentuated any loss stemming from the failure of the investment. Cognizant of the increased risk, the committee looks closely at the way in which agribusiness MIS promoters and financial advisers arranged finance for the investors.

History of predatory lending

5.3 Before the committee starts its consideration of the financing arrangements offered to investors, it refers back to its June 2014 report which dealt comprehensively with the emergence of poor lending practices from about 2000 to 2008/09. At that time, the committee concluded that since 2002, and undoubtedly well before, some unscrupulous people in the financial services industry in Australia exploited inadequate consumer credit laws to engage in imprudent, even predatory, lending activities.

5.4 In summary, the committee found vulnerable people were targeted and encouraged to take out loans they could ill afford, potentially placing their home ownership in jeopardy. In many cases, the unwitting borrower discovered later that information on their loan application forms had been fabricated and signatures forged. The committee concluded that such practices, which were allowed to continue unchecked for many years, reflected badly on the brokers, the lenders and ASIC. It highlighted the vulnerability of unwary and trusting borrowers, who were taken advantage of by unprincipled and self-interested brokers and lenders. It should also be noted that the committee referred to the improper lending practices associated with Storm Financial and the ensuing harm caused to investors when that company collapsed. Notably, these irresponsible lending practices emerged and took hold

1 Cited in Ms Kathleen Marsh, *Submission 47*, example 2, p. [1].

during the period that growers were also taking out loans to fund their investments in agribusiness MIS.²

Investment lending

5.5 A significant number of growers used borrowed funds to purchase their interest in MIS projects. In many cases, entities associated with the RE provided direct finance to growers, while other growers entered into their own arrangements with financial institutions to obtain finance.³ The committee's focus in this chapter is on the financing arm of the respective RE that provided funds for the schemes' investors and the advisers who facilitated the loans.

5.6 In the context of these schemes, Mr Mark Rantall, Financial Planning Association (FPA), spoke of 'a cocktail of structure' that really came into play when leverage was added to an already complex financial product. Put simply, when the schemes failed to perform to expectations, people who were over-leveraged had 'a real problem' meeting their repayments.⁴ Thus the anguish and financial loss suffered by those who had invested in the failed schemes was compounded many times over by the loans they took out to fund their venture. Not only were they left with a worthless investment but a sizeable loan and interest that had to be repaid. Their distress was epitomised by one couple who stated:

It was crushing enough to know the MIS projects would never mature as promised in time for our retirement, but absolutely gut-wrenching to then be informed we had taken out 12 huge loans from Timbercorp Finance. We were in total disbelief seeing an amount of approximately \$240,000 owing at the time of collapse.⁵

5.7 A number of growers now burdened with a debt for which they had nothing to show also faced increased interest rates and some, on legal advice, stopped making repayments on their loans.

Cash flow negative/positive

5.8 The FPA noted that the lending arrangements were wrapped into the agribusiness investment and that they evolved over time.⁶ It explained further that the arrangements could have been principal and interest; interest only; and:

...ultimately, towards the end of the MIS situation, those products often morphed into something where there was an initial interest-free or interest-

2 Senate Economics References Committee, *Inquiry into the performance of the Australian Securities and Investments Commission*, June 2014, chapters 5 and 6, paragraphs 6.1–6.7.

3 See *Non-forestry Managed Investment Schemes*, Issues Paper, 2008, paragraph 19.

4 *Proof Committee Hansard*, 6 August 2015, p. 25.

5 *Confidential Submission 37*, p. 2.

6 Mr Neil Kendall, *Proof Committee Hansard*, 6 August 2015, p. 25.

only period, with principal and interest deferred. So it is not a static product per se.⁷

5.9 Tax concessions were generally a consideration in the total loan structure. From the Bendigo and Adelaide Bank's perspective, the tax treatment often formed 'an integral part' of an investor's 'tax and cashflow management strategies'.⁸ The ANZ observed that borrowing may have assisted investors in Timbercorp 'to maximise taxation benefits'.⁹ For example, one grower understood that in the short term he would not have much financial benefit from his investments, apart from a reasonable income tax return. This return, however, would never cover the MIS fees.¹⁰ Mr David Huggins also saw the tax incentive in a different light from the banks and referred to the downside of these concessions for retail investors, submitting that:

...the tax treatment of these financial products (being able to claim the amount invested as an *up front* tax deduction) served as a means to lure clients into making what was, in reality, a highly speculative investment—the issue being that the loan used to make the investment would have to [be] paid back with interest (for example in my Client's case in equal monthly instalments over a 15 year period) in circumstances where it was always highly doubtful as to what return would be received from the investment and when that return would be received.¹¹

5.10 In essence, the borrowing arrangements allowed a retail investor, who did not have the funds, to borrow almost the total amount to finance their agribusiness venture. It was not uncommon for growers to borrow up to 90 per cent of the investment or gear their entire investment in agribusiness MIS.¹²

5.11 Typically, the loan was based on the assumption that the project would be cash flow negative for the first few years, then subsequent returns from the harvest proceeds would be used to pay down the debt.¹³ Investors had no reason to suspect they would default on their repayments because of assurances that the cashflow from the harvest would pay off the debt and eventually produce a reliable and secure income stream. According to one such investor, he was shown 'clear forecasts'

7 Mr Neil Kendall, *Proof Committee Hansard*, 6 August 2015, p. 25.

8 Bendigo and Adelaide Bank, Response to *Submission 52, Submission 63, Submission 175 and Submission 176*, dated 24 December 2014, p. [3].

9 *Submission 145*, paragraph 33.

10 *Confidential Submission 37*, p. 4.

11 *Submission 118*, p. 6 (emphasis in original).

12 See, for example, name withheld, *Submission 102*, p. 1 and name withheld, *Submission 97*, p. [1].

13 There are numerous accounts of investors being led to believe that the scheme was designed to be initially cash flow negative with harvest proceeds then kicking in to become cash flow positive. See, for example, name withheld, *Submission 76*, p. 1; *Confidential Submission 59*, p. 1; *Confidential Submission 155*, p. 2; and *Confidential Submission 164*, p. [1].

indicating that 'after a few years there would start to be a small return and then the return would gradually grow later in the investment'.¹⁴ Another investor explained:

In order to access this product, Great Southern Investments was issuing loans to pay for the product. The product was supposed to provide a cash flow to pay for the loan, and eventually pay the loan off and provide a residual income once the loan had been paid off. As was recommended to us, I invested \$42,900 (my wife invested \$31,200).¹⁵

5.12 One grower gave a similar explanation of the rationale behind the loan structure:

The project I entered into and borrowed money on was designed to be cash flow negative for the first 5 years, then harvest proceeds from [the] 6th year onwards, in my case around 2010/2011, become cash flow positive paying down the loan.¹⁶

5.13 Likewise, one couple informed the committee that the loans they would take out to fund the purchase were to be covered from years two onwards by the returns from the grapes as well as the Navra share fund. They stated:

The first couple of years there would be [a] small shortfall until the Grapevine returns kicked in—but with the tax deductions we'd get from the product ruling (as this was supported by the government), plus the returns from his share fund this would be covered. It sounded like we couldn't lose.¹⁷

5.14 Mr Peter Mazzucato was presented with a similar loan structure for his almond scheme. He noted that in order to invest, he needed to take out a substantial investment loan with Timbercorp Finance, explaining:

The way it was sold to me was that it would be cost flow negative for 2 years after which the income from the sale of the almonds would reduce the cost. The cost would become cash flow positive after about 4 years and then provide an income for 23 years. This really appealed to me so I was keen to go on board.¹⁸

5.15 Consistent with the experiences of many other growers, the mother of two young children was led to understand that her and her husband's loan arrangements would be self-funding:

14 See, for example, name withheld, *Submission 94*, pp. [1] and [2].

15 Name withheld, *Submission 68*, p. 1.

16 Name withheld, *Submission 76*, p. [2].

17 *Submission 56*, p. [1].

18 *Submission 40*, p. [1].

The short-term dividends would cover the loan repayments, and the long-term dividends would cover our retirement.¹⁹

5.16 The couple's goal was 'always long-term financial independence'—that is independence from government support as they aged.²⁰

5.17 Generally, the loan, provided by the financing arm of the respective RE, was part and parcel of a total investment package so that poor, inaccurate, misleading advice and bad adviser behaviour carried over to the loan arrangements. Mr Jayantha Anthony noted that his accountant, who advised on the Timbercorp investment, also facilitated the refinancing of his properties so that he could get extra money to pay part of the Timbercorp loan owed.²¹ Mr Dinu Ekanayake, who may have to sell the family home to meet his loan obligations, was under a misapprehension about the risks involved in the loan agreement for investing in MIS due, he reasoned, to misleading information:

I have purely invested for this project based on Cash flow sheet which Timbercorp issued to all investors, they have not adequately showed the risks (it was an excel worksheet which was in their web site). According to that sheet we need to pay until 2013 and [the] rest of the loan term is self paid by the project proceedings.

Then even [if] we lose, in this case we as investors were only liable to pay until 2013 as they have indicated in the cash flow sheet in their site. Other amount is to be covered from the project itself.²²

5.18 On behalf of his client, a lawyer explained the arrangement his client entered into and why, in his opinion, it was inappropriate:

- (1) On 28 May 2009 and pursuant to financial advice provided to him by the Accountant, my client agreed to make the Investment and to borrow \$229,200 to do so. In this regard, the Employee completed the Finance Package document on my Client's behalf so that finance could be provided by the CBA.
- (2) In my view, the Investment was grossly unsuitable (for multiple reasons) for my Client. In this regard, the Accountant failed to provide my Client with a Statement of Advice (contrary to the Corporations Act) in circumstances where a properly drafted Statement of Advice ('Statement of Advice') would have informed my Client as to the following matters:
 - (i) that there was no reasonable financial justification for my client to make the Investment;
 - (ii) the financing of the Investment would involve my Client locking himself into an arrangement whereby my client would be required to

19 Name withheld, *Submission 201*, p. [1].

20 Name withheld, *Submission 201*, p. [1].

21 *Submission 29*, p. 1.

22 *Submission 21*, p. 1.

- pay back the loan used to make the Investment in monthly instalments (at an inflated interest rate) over a 15 year period;
- (iii) that there were substantial (and multiple risks) associated with the Investment such there was a substantial risk that the Investment could fail leaving my Client in the position (which he now is in) of having to pay back the entire amount borrowed to make the Investment (with interest) over a 15 year period from his own resources; and
 - (iv) the Employee (and/or persons or entities associated with him) would receive \$22,920 by way of a commission payment (that is, 10% of the amount invested by my Client—it may be that a higher commission payment was received—10% was the base amount of commission paid by these schemes).
- (3) My client would not have made the Investment if he had been informed of any of these matters and, in particular, he would not have made the Investment if he had understood the size of the repayments he would have to make (over a 15 year period) [or] if he had understood that a commission payment of \$22,900 would be received by the Accountant.²³

5.19 For investors, this strategy of borrowing to invest in an MIS appeared reasonable on paper—that within three or four years they would break even and thereafter proceeds from the sale of the crops would take care of any repayments.²⁴ For example, according to one grower, his family did the research, read the product information given to them by their financial advisor, which all seemed positive. He explained:

There were no questions raised as to the long term viability of this scheme. This investment was supposed to be long term with the profits helping us to pay off our loan with Timbercorp finance.²⁵

5.20 Another grower noted that he initially borrowed about \$70,000 to buy almond lots where the almonds would be grown and then harvested and sold for a return. He understood that the return would come gradually over many years. He stated:

I was shown clear forecasts of this indicating after a few years there would start to be a small return and then the return would gradually grow later in the investment.²⁶

5.21 Growers simply could not understand how they found themselves in a situation whereby they had to pay back a loan for something that no longer existed and, in some cases, was 'never even planted'.²⁷

23 David Huggins, Huggins Legal, *Submission 118*, p. 3.

24 See, for example, Mr John McDonald, *Proof Committee Hansard*, 12 November 2014, p. 3; and *Confidential Submission 37*, p. 4.

25 Name withheld, *Submission 18*, p. 1.

26 Name withheld, *Submission 94*, p. 1.

27 Name withheld, *Submission 98*, p. 1. See also *Submission 103*, p. 1; and *Confidential Submission 81*.

Borrowing for annual fees

5.22 Furthermore, under their agreement some growers were required to fund annual fees but were not made aware of this obligation. For example, one adviser reassured his client that no additional funds would be required 'as the profits made on the investment projects would maintain the management fees etc'. Similar to other accounts given to the committee, this adviser claimed that the scheme was presented as a low risk investment and the client should not be concerned about having to make repayments.²⁸

5.23 One investor indicated that she had no idea of management fees until everything 'went bad', and there were loans with no source of funds to pay for them.²⁹ She was not alone in assuming incorrectly that the management fee for her scheme was a one-off payment. Mr Brett Lawtie received an account from Timbercorp for approximately \$9,500 for the yearly maintenance of trees. He explained that he 'was paying for trees that had not been planted'. To make matters worse, his financial advisor had not informed him about this yearly ongoing fee.³⁰ In summary, Mr Lawtie stated:

...we made about a year or so worth of repayments, for trees that were allegedly not planted, charged a yearly maintenance fee for trees that were allegedly not planted, and now being pursued by Korda Mentha on behalf of the ANZ bank, which we have been with for 30 years for an amount nearly \$20,000 more than the original loan.³¹

5.24 One couple stated quite clearly that they were under the impression that the deposit and repayments of the \$24,000 and \$42,000 were the only payments they were required to make with the scheme becoming self-funding after about three years. But, according to the couple:

This scheme was completely mis-represented to us in that Peter Holt [their adviser] neglected to advise us that there was also a management fee each year for a period of 15 years, being \$12,000 per annum on the Mango trees and \$22,000 on the avocado trees and probably escalating as the years go by.³²

5.25 As at September 2009, and at the age of 70, they owed Timbercorp \$130,000 in management fees with an ongoing liability of 13 years of fees still in the pipeline.³³

28 Name withheld, *Submission 153*, p. [2].

29 *Confidential Supplementary Submission 156.1*.

30 *Submission 1*, p. 1.

31 *Submission 1*, p. 1.

32 *Submission 43*, p. 2. See also *Confidential Submission 92*, p. [1]; *Confidential Submission 130*, p. [2]; *Confidential Submission 131*, p. 1.

33 Ray Wilde and Maree Wilde, *Submission 43*, p. 2.

Like so many others in similar positions, they faced being left with 'no money, no home and no prospect of a reasonable standard of living'.³⁴ As one grower observed:

Maintenance costs were escalating dramatically and beyond my expectations.³⁵

5.26 A number of these highly leveraged investors found themselves caught in a trap of having to borrow further to pay for annual fees. Some investors did not understand that the yearly management fees would become additional loan commitments 'to sustain the overall investment'.³⁶ In this regard, it would appear that the practice of re-financing loans to pay for annual outlays was commonplace, which pushed some growers further into debt.³⁷ For example, one such investor received a bill from Timbercorp Finance to the tune of \$10,000 for ongoing costs of maintaining the plots, which 'came out of the blue and was completely unexpected'. He explained:

Not having this sort of money, I had no choice but to accept Timbercorp finances offer of a loan to repay the money each month which added to my cost for this scheme each month.³⁸

5.27 Another grower explained that on his adviser's suggestion, his management fee of approximately \$26,000 was taken as a separate loan for tax advantages.³⁹ Along the same lines, another investor informed the committee that she was not told that she needed to take out further loans for management fees nor did she understand the implications of this MIS.⁴⁰ Yet another stated that management fees meant 'additional loans through Timbercorp Securities at a later date'.⁴¹ A 54-year old father of three was under the same misapprehension. He stated that a couple of months after signing the contract, he received a bill for approximately \$18,000 for operational costs. In his words:

I was so shocked as no one had mentioned that to me!! I didn't want to take out a further loan so paid this amount upfront. Then another few months later I received another bill for around the same figure!! I did not have the cash to pay this one up front, so had no choice but to take out another loan with Timbercorp.⁴²

34 Ray Wilde and Maree Wilde, *Submission 43*, p. 6.

35 Ms Sandra Cordony, *Submission 169*, p. 4.

36 Mr Troy Lott, *Submission 101*, p. [1]; name withheld, *Submission 131*; *Confidential Submission 156*, p. [2].

37 Mr Troy Lott, *Submission 101*, p. [1]; name withheld, *Submission 131*; *Confidential Submission 156*, p. [2].

38 Mr Shane Richards, *Submission 108*, p. [1].

39 Mr Ken Grech, *Submission 123*, p. 1.

40 *Confidential Submission 38*, p. 1.

41 Ms Michelle Johnson, *Submission 139*, p. [1].

42 Name withheld, *Submission 103*, p. 1.

5.28 His case typifies the experiences of many others whereby the investment arrangement was structured in such a way that additional funds would be required to cover ongoing maintenance fees and associated operating costs often resulting in a refinancing of the loan.

5.29 One couple explained that they did not want to over stretch themselves so decided to borrow \$45,000 to fund the \$50,000 investment in five almond lots, which in their assessment was something they 'could do easily'.⁴³ A month after being accepted into the almond scheme, this particular couple received an invoice for \$10,000 towards maintenance cost for the year (2008–2009), for which finance was again organized through Timbercorp finance.⁴⁴

5.30 Likewise, another couple, who borrowed money to invest in almond trees, received a letter for a management fee for their almond lots of \$12,700. They stated:

We did not have this money so had to re borrow from Timbercorp Finance.
The loan agreement date was the 28th October 2008.⁴⁵

5.31 Another investor had a similar arrangement whereby he borrowed more money to pay for yearly maintenance fees. He explained that in September 2008, he received an invoice for the 2008 licence fee and management costs which equated to \$19,800, payable by 31 October. Put simply:

Again I had no choice but to borrow from Timbercorp to cover these costs.⁴⁶

5.32 The cumulative effect of these management fees and maintenance costs was substantial for retail investors. For example, only a few months after becoming a grower, one investor discovered that she had to pay additional costs for the maintenance of the plantations. Subsequently, two more loans of \$30,000 each were added which made the repayments onerous but her adviser explained that 'this was just the way the scheme was set up and that it would all be ok'.⁴⁷ Indeed, one grower wrote of his surprise at having to fund considerable annual fees:

What the prospectus did not detail, nor my financial planner point out, was that there were significant, if not outrageous annual growers' fees to be paid, so outrageous that I kept having to borrow more money each year to pay them.⁴⁸

43 Name withheld, *Submission 97*, p. [1].

44 Name withheld, *Submission 97*, p. [1].

45 Mr Troy Lott, *Submission 101*, p. [1].

46 *Name withheld, Submission 98*, p. 1.

47 *Confidential Submission 81*, p. [2]. It should be noted that in this case the adviser has been convicted of theft from a client and ASIC and Association of Financial Advisers (AFA) have barred her for life from providing financial advice, but, as noted by the investor, all came too late for her and the rest of the adviser's clientele.

48 Name withheld, *Submission 96*, p. 1.

5.33 Mr Peter Mazzucato, who purchased three investments, each with a loan attached for a total of \$111,000, also learnt that he had to pay additional costs for the maintenance of the plantations. He explained that although the repayments and fees were becoming a burden, he had reliably paid the investment each month as required paying off approximately \$30,000. He comforted himself with the fact that 'in only another year or so, I would have an income which would offset the loan'.⁴⁹ But the anticipated income from the investment that 'was going to provide relief did not eventuate' and, instead, he found himself with a huge debt and no income.⁵⁰

5.34 As a final example, but still only one of many, an investor explained the 'rude shock' she received when the first invoice arrived. In her words:

The accountant knew I would get this invoice and when I called up to query why I had received it, he just advised me that I had paid the initial investment amount in June, but that this was the management fee, 'Just sign up for another loan through Timbercorp'. This was fully expected by him, and yet no-one had made this clear to me before I signed up.⁵¹

5.35 According to the investor, the loans, including funds used to pay for the unexpected annual fees, 'were passed off as if they were "de rigueur"—just part of the investment...'⁵²

Approval process—loan application forms

5.36 For investors, trust played a central role in their decision to invest in an agribusiness MIS including entering into loan arrangements to fund their investment. But it would appear that in some cases this trust was misplaced. A number of investors cited irregularities in the process for arranging their loan such as signing incomplete or blank application forms and not receiving documentation.

5.37 Examples of other anomalies included the adviser inserting inaccurate statements, such as inflated income and underestimated liabilities, in application forms. As one submitter, who invested in Great Southern, described:

The loan documentation was filled in by my advisor in which I stupidly signed, however there were many areas that were left blank (and probably filled in later by the advisor to get the loan through). It was obvious by my level of earnings that I would not be able to pay the loan and the only way to pay the loan was by selling my house. I received no documentation stating as to what was going on as all correspondence was sent to Peter Holt

49 *Submission 40*, pp. [1]–[2].

50 *Submission 40*, p. [2].

51 Name withheld, *Submission 151*, p. 2.

52 Name withheld, *Submission 151*, p. 6.

who did not pass this correspondence on—that is if there was any documentation.⁵³

5.38 One investor described how her husband signed blank forms, which his financial adviser filled in but the details were falsified. She recalled that the adviser 'filled in my sole trader ABN form and forged my signature'.⁵⁴ Yet another stated that his long time accountant helped him fill out the loan application forms, which, in the accountant's handwriting, made reference to high incomes. According to the investor, there were two such entries that were 'obviously untrue'. The submitter contended that his accountant should have known otherwise when he made those statements regarding income status.⁵⁵

5.39 Ray and Maree Wilde referred to their loan documentation relating to finance for a 2007 Avocado scheme, which contained gross understatements in relation to liabilities and expenses—loans of \$200,000 when, at the time, they were \$534,586; living expenses recorded as \$15,000 in that financial year but were \$47,897.⁵⁶ Mr Troy Lott spoke of being given blank loan documents to sign, which his adviser indicated he would fill in later.⁵⁷ Similarly, another grower indicated that his documents were mailed out to him to sign, requiring him to fill out or arrange proof of his particulars.⁵⁸ Another cited documentation that was incomplete, inaccurate and/or falsely witnessed.⁵⁹ Mr Peter Mazzucato explained the loan process:

We arranged for a meeting in the following weeks to then conduct a questionnaire so that he could provide a statement of advice. The planner coached me through the questionnaire so that my profile matched the requirements for the investment. I was totally naive to why this was necessary. I did not realise that he was protecting himself by being seen to be compliant. As I did not think that there was any risk, it was simply a formality that required to be done to expedite the loan.⁶⁰

5.40 One of the most troubling allegations concerned investors being unaware of loans taken out in their names.⁶¹ Some claimed that although they understood they had

53 *Confidential Submission 38*, p. 1. See Mr Con Solakidis, who stated the documents mailed out to him did not require him to 'to fill out or arrange proof of particulars of myself or have anything witnessed. I was just asked to sign where the Yellow tabs indicated to sign'. *Submission 119*.

54 Name withheld, *Submission 162*.

55 *Confidential Submission 39*, p. 2.

56 *Submission 43*, pp. 2–3. See also, name withheld, *Submission 121*, p. 1; name withheld, *Submission 162*, p. [1]; *Confidential Submission 93*, p. [1].

57 *Submission 101*, p. [1]. See also name withheld, *Submission 186*, p. 4.

58 Mr Con Solakidis, *Submission 119*, p. [2].

59 *Confidential Supplementary Submission 156.1*, p. [6].

60 *Submission 40*, p. [1].

61 See name withheld, *Submission 100*, p. 8; and name withheld, *Submission 121*.

signed for one or two loans they were tied to multiple loans.⁶² Mr John McDonald explained his bafflement on discovering that he had 12 loans when he had only bought five Timbercorp products:

Apparently the forms I was signing, I later learnt, were not just buy-in forms but were loan applications. I was borrowing money I did not know I was borrowing. It can be argued that I signed these forms and no-one held a gun to my head. Some will argue that there is a loan application and it has your signature on it, so it is a loan application. It is hard to argue against that, except for the fact that it all came down to trust over years—two decades even—of signing forms without having to read them and having total faith in the financial adviser. I had got into that bad habit.⁶³

5.41 A group of investors suggested that all loan correspondence was sent to their financial adviser, a Mr Peter Holt, at his office address and not received directly by them at any time.⁶⁴ Mr Bernard Kelly, a client of Mr Holt, also told the committee that he had five loans, which he did not know existed. He indicated that other people filled in most of the information on the loans, which were signed by witnesses he did not know.⁶⁵ A third client of Mr Holt, experienced the same situation. In this case, the couple signed what they thought were three loans for Timbercorp, but discovered they had eight.⁶⁶ Yet another of Mr Peter Holt's clients indicated that all documentation from Timbercorp was sent to the offices of Holt Norman Ashman Baker & Company and he did not see copies of the loan documents.⁶⁷

5.42 One investor referred to their loan documents as 'incomplete, pieced together and addressed to his adviser's office'. A financial adviser who gave evidence stated that clients were asked to sign 'blindly and with no-follow-up'.⁶⁸ According to another submitter who was also rushed to sign documents to invest in Timbercorp:

...our Adviser never gave us a Statement of Advice and he had no authority to proceed with the investment, we received the SOA 18 months later and we signed a backdated 09/June 2004 SOA in December 2005, we totally trusted them we thought they were looking after us we know now that instead they were only lining their own pockets.⁶⁹

62 For example, one investor stated that he thought he had signed for two loans but found he had five owing over \$200,000. Name withheld, *Submission 121*, p. 1.

63 *Proof Committee Hansard*, 12 November 2014, p. 3.

64 *Confidential Submission 154*, pp. [2] and [3].

65 *Proof Committee Hansard*, 12 November 2014, p. 4.

66 Mrs Meredith Byrne, *Proof Committee Hansard*, 12 November 2014, p. 5.

67 Name withheld, *Submission 93*, p. [2].

68 Mrs Kerree Bezencon, Chair, Timbercorp Grower Group, *Proof Committee Hansard*, 12 November 2014, p. 40.

69 Name withheld, *Submission 45*.

5.43 Granting a power of attorney to advisers could offer a partial explanation for how investors could unknowingly enter into a loan agreement.

Power of Attorney

5.44 In its 2014 discussion paper on the establishment and operation of managed investment schemes, CAMAC observed:

To assist the RE in acting as agent for scheme members, it has been the practice with some common enterprise schemes for the application form signed by any person seeking to become a scheme member to contain a grant of a power of attorney to the RE.⁷⁰

5.45 According to the evidence, investors, in some cases, signed over a power of attorney, which their adviser then used to arrange loans. A number of submitters suggested further that they were required to sign a power of attorney in order to obtain the finance to secure their vinelots.⁷¹ One couple explained that in October 2008 they were issued with another loan through Timbercorp Finance to pay the management fees for the following year. They claimed:

We never filled out an application for the loan, it was regarded as part of the ongoing finance package, at no stage prior did we receive any documentation to review before or after they were signed under power of attorney? We did receive an explanation and terms for this loan after the event. We then made 11 of the monthly payment instalments, at which point the Timbercorp Group of companies went into liquidation.⁷²

5.46 One couple referred to their adviser's use of power of attorney and how they were kept in the dark about subsequent loans:

We were unaware of the specifics regarding subsequent borrowings in our name following our initial investment. Subsequent borrowings were authorized by a Power of Attorney that we knew nothing about and that was obtained deceitfully. We had no discussion, agreement or informed consent in regard to a Power of Attorney.⁷³

5.47 Recounting a similar experience, another investor stated that he first sighted the loan agreement, signed on his behalf by two Great Southern directors, approximately nine months after he signed the application form in the PDS—the only document bearing his 'physical signature'. He explained that his financial adviser completed the application form and mailed it through to Great Southern Finance:

70 Corporations and Markets Advisory Committee, *The establishment and operation of managed investment schemes*, Discussion paper, March 2014, p. 18.

71 Name withheld, *Submission 91*, p. 2. See also name withheld, *Submission 61*, p. 1; name withheld, *121*, p. 1; and *Confidential Submission 80*, p. 5; *Confidential Submission 85*; *Confidential Submission 92*, p. [1].

72 Name withheld, *Submission 95*, p. [2].

73 *Confidential Submission 134*, p. [2]. See also, *Confidential Submission 59*, p. [2].

The Loan Deed was later 'executed' on my behalf under a POA [power of attorney] by inserting 'pictorial' signatures of Messrs Young and Rhodes.

...

At no stage during this process was I afforded the opportunity to review the Loan Deed (and carefully consider any onerous clauses) executed on my behalf. A copy of the Loan Deed was simply mailed to me as a fait accompli under the POA.⁷⁴

5.48 Ms Naomi Halpern, spokesperson, Holt Norman Ashman Baker (HNAB) Action Group, told the committee that recently she obtained all her loan documents from Timbercorp, which she had never seen. She then learnt her adviser had power of attorney:

That is how he was able to put me into several loans over several years. It was witnessed by someone I had never met.⁷⁵

5.49 Based on its knowledge of agribusiness MIS, ASIC informed the committee that:

...REs may require a Power of Attorney to be provided in order to allow the RE to enter into a variety of agreements and leases on behalf of the investor to give effect to the scheme.

The use of Powers of Attorney in this manner is practical in nature, as it would be expensive and impractical to expect a grower to enter into individual management and lease agreements with all the parties concerned.⁷⁶

5.50 ASIC noted, however, that it has published on its MoneySmart website the following advice: 'Power of attorney warning—Don't give your adviser power of attorney. Reputable advisers won't ask you to do this'.⁷⁷ The Financial Planning Association (AFP) stated emphatically that granting a power of attorney to an advisor to sign someone into a loan should not be a practice at all: that it was inappropriate.⁷⁸ Powers of attorney are governed by state legislation.

Committee view

5.51 It is difficult to comprehend how the financial services industry in Australia could have tolerated such lax and, in some cases, unethical lending practices. They included exposing clients to unacceptable levels of risk; withholding vital information and documents; falsifying documents; locking clients into lending commitments they

74 Name withheld, *Submission 44*, pp. 2–3.

75 *Proof Committee Hansard*, 12 November 2014, p. 8.

76 ASIC, answers to question on notice, No. 3, 2 October 2015.

77 ASIC, answers to question on notice, No. 3, 2 October 2015.

78 Mr Neil Kendall, *Proof Committee Hansard*, 6 August 2015, p. 26.

did not understand and, in some cases, did not consent to; and improper use of a power of attorney. But instances of this conduct in the agribusiness MIS sector provides yet another example of poor behaviour, including predatory lending, evident in Storm Financial and Opes Prime and the infamous low doc loan saga described at length in the committee's 2014 report.

Irresponsible lending

5.52 Based on the evidence, investors were allowed to borrow a substantial proportion of the loan—90 to 100 per cent for example.⁷⁹ Even those who clearly indicated that they were not in a strong financial position were encouraged to borrow. Many of the investors argued that they should never have been granted a loan: that their financial circumstances indicated that the repayments were beyond their means. They asked about the lenders' due diligence obligations.

5.53 One couple explained that they would not have been able to afford to take on the investment, even if they wanted to because, as their tax returns bear out, they had jointly earned \$82,000 in 2005 and \$95,000 in 2006. Their adviser's recommendation was that they invest \$126,000 in the 2007 scheme between them, all funded via Great Southern Finance.⁸⁰ In their situation, the loans were unaffordable or irresponsible. It was not, however, an isolated case. Mr Andrew Peterson, former general manager of distribution at Timbercorp, was of the view that many of the investors should never have qualified for a loan:

If you were going for an individual loan at Timbercorp Finance, all you had to put in was your individual pay slip and your assets and liabilities. There was no request for a rates notice, no request for an ITR, a tax return... Timbercorp Finance was approving it very quickly.⁸¹

5.54 He contrasted this practice with that of the bank where, as an example, a client going to the ANZ for \$100,000, would be asked 'for a rates notice if you own property, your ITR [income tax return], everything'.⁸² Evidence also brought to light other irresponsible even negligent lending practices.

Full recourse loans

5.55 All of Timbercorp Finance's loans were 'recourse'.⁸³ A recourse loan holds the borrower personally liable. With a recourse loan, repayment may come from the

79 Name withheld, *Submission 97*, p. [1]; name withheld, *Submission 102*, p. [1]; *Confidential Submission 36*, p. [8]; *Confidential Submission 81* and see paragraph 5.4.

80 Name withheld, *Submission 56*, p. [1]. See also name withheld, *Submission 100*, p. 11.

81 *Proof Committee Hansard*, 12 November 2014, p. 13. Mr Peterson was general manager of distribution at Timbercorp from September 2004 to December 2009.

82 *Proof Committee Hansard*, 12 November 2014, p. 13.

83 KordaMentha, additional information on behalf of Timbercorp Finance, dated 4 December 2014, p. 5.

proceeds of the asset being financed or the sale of specific collateral, or from the resources of the borrower if, as in the case of some agribusiness MIS, the scheme's cash flows proved insufficient. In other words, lenders could pursue the borrower for the outstanding amounts owed—even after the lender has taken collateral. Thus, if a borrower defaults on a recourse loan, the lender can bring legal action against the borrower, garnish wages, levy bank accounts, and use other methods to collect the amount owed.⁸⁴

5.56 For the growers, their full recourse loan meant that their personal assets could be used to discharge their debt if they were in default of their loan—that the collapse of their scheme did not relieve them of their obligations under these loans.⁸⁵

Understanding risks of recourse loans

5.57 In 2010, a group of researchers pointed to the nature of agribusiness MIS loans whereby the scheme operator provided 'full recourse', high debt-to-investment ratio loans to investors to fund their venture or arrange such loans. They noted:

Sophisticated investors may be aware of substantial risks associated with the investment such that project returns may be inadequate to repay obligations on such a loan. But such loan-investment packages are not always *marketed* as 'high risk' (despite disclosure of the risks).⁸⁶

5.58 According to ASIC, the fact that these loans were full recourse is significant because:

...it indicates that the risks associated with the investors' 'property' resulting from the actual investment in the forestry scheme were perhaps too great for financiers. This resulted in them seeking alternative security from the borrowers.⁸⁷

5.59 Some investors were not only unaware that a full recourse loan usually indicated higher risk but that they had entered into such a loan. Indeed, many of the borrowers suggested that they did not fully comprehend the loan arrangements with many assuming that the loan was held against the actual investment and thus their liability was limited to the trees or plants. According to one couple, their loans were

84 Internal Revenue Service, 'Recourse vs. Nonrecourse Debt', http://apps.irs.gov/app/vita/content/36/36_02_020.jsp; Law Dictionary: What is full recourse loan? (Black's Law Dictionary), <http://thelawdictionary.org/full-recourse-loan/> and NAB's website, <http://www.nab.com.au/personal/loans/personal-loans/super-lever/limited-recourse-borrowing> (accessed 3 December 2014).

85 *Submission 34*, paragraph 59.

86 Christine Brown, Colm Trusler and Kevin Davis, 'Managed Investment Scheme Regulation: Lessons from the Great Southern Failure', 29 January 2010, p. 10, http://kevindavis.com.au/secondpages/workinprogress/Great_Southern_JASSA-v2-28-1-10-3.pdf (9 December 2014).

87 *Submission 34*, paragraph 60.

obtained fraudulently without being alerted to the fact that their personal assets were exposed to the risk of being used to discharge their debt in the event of default.⁸⁸ In some cases, growers indicated that they were misled and told that the loans were non-recourse.⁸⁹ For example, an investor with Great Southern stated that her adviser led her to assume that GS would loan her the money and, importantly, that it was a limited recourse loan. She has since learnt that 'the loans were never limited recourse (despite being assured they were), the lender was not GS but Bendigo Adelaide Bank and for my own financial security I should have been screened according to ordinary lending scrutiny/practices'.⁹⁰ She explained further:

Had I received the loan application form I would have at least had the chance to learn this! I would have also liked to have the opportunity to fill out the paperwork and my understanding of it.⁹¹

5.60 A number of submitters referred to the assurances they were given that their home would not be at risk: that the security was confined to the asset tied to the loan.⁹² For example, one submitter informed the committee that they were told they were borrowing from Timbercorp and had to put their Timber Lots and Almond Lots as collateral but it was never mentioned that they were borrowing from any banks or putting their house in jeopardy.⁹³ Another couple certainly had no idea that if the grapevine returns failed to materialise they would 'lose title to any assets and have to pay the loans anyway, including interest and penalties'.⁹⁴

5.61 Another couple stated that initially they were very wary of investing and asked many questions. They were assured that there was no personal risk, everything was fully insured and that their homes would never be 'on the line' as the trees themselves were collateral for the investment. The couple now live in fear of being sued.⁹⁵

5.62 One investor was told that should the investments fail there would be nothing more to pay. He noted that Great Southern employees actually stated this in the information sessions.⁹⁶ Another stated that his understanding was that the loans were secured against the agricultural land and future income from the crops and, hence, he

88 *Confidential Submission 134*, p. [4].

89 *Submission 109*, p. 1; Mr Brad Pearce, *Submission 111*, p. 1; name withheld, *Submission 168*, p. 1; *Confidential Submission 125*, p. [1] and Mr Neil White, *Proof Committee Hansard*, 12 November 2014, p. 32.

90 Name withheld, *Submission 52*, p. 1.

91 Name withheld, *Supplementary Submission 52.1*, p. 2.

92 *Confidential Submission 115*, p. 3; *Submission 95*, p. [1].

93 Name withheld, *Submission 45*, p. 1.

94 Name withheld, *Submission 56*, p. [2].

95 Name withheld, *Submission 95*, p. [3].

96 Name withheld, *Submission 168*, p. 1.

'was not exposed to being left with zero assets or zero income and then having to repay these loans personally'.⁹⁷ On behalf of her clients, who had invested in Great Southern, Mrs Susie Bennell stated that, without exception, they were reassured by their advisers that their homes would 'always be safe'.⁹⁸ Many investors were under the same misconception.

5.63 Clearly, these borrowers felt that their adviser had 'badly misled' them by indicating that the loans were non-recourse.⁹⁹ In their view, they should have been made aware of the risks. One grower suggested that the real risk of being exposed to debt recovery should the MIS collapse was obscured from them. They explained:

The inherent risk associated with the taking out of a loan was never talked about in our meeting because we understood the investment we had made provided us with an asset to trade our way out of trouble if it eventuated.¹⁰⁰

5.64 One investor also spoke of the adviser's failure to disclose risks that, in the grower's view, were 'high and many'.¹⁰¹ He suggested that some of the risks were spelt out in the PDS and others such as financing risk 'famously weren't'.¹⁰² An investor with Gunns underlined this same point:

The PDS told investors about risks—showing investors that they may do a bit better or worse than forecasts suggested—BUT entirely failed to mention that you could lose 100% of your investment plus be pursued for a loan.¹⁰³

5.65 Many growers struggled to come to terms with the prospect of having to repay a loan for something that was never delivered. One grower drew the following parallel:

I liken it to buying a car from Holden with them providing the finance. You go to pick it up and they say 'Sorry, we don't have a car for you anymore and by the way, you now owe Ford the money for it!'¹⁰⁴

5.66 Mr Michael Bryant, a former Timbercorp employee, understood why growers thought their loan was non-recourse, that their house would be safe, and the loan low risk. He informed the committee that all the presentations he saw conducted by business development managers and the senior executive conveyed the impression

97 Name withheld, *Submission 93*, p. [2].

98 *Proof Committee Hansard*, 6 August 2015, p. 6.

99 Grant and Karen Lillecrapp, *Submission 109*, p. 1.

100 *Confidential Submission 134*, p. [3].

101 *Supplementary Submission 186.1*, p. 2.

102 *Supplementary Submission 186.1*, p. 2.

103 *Confidential Submission 141*, p. 2.

104 Mr Scott Gannon and Ms Julie Gannon, *Submission 114*, p. 1.

that liability was limited. He explained that if you walked away from such a presentation:

...as somebody who was new to the process, you would have believed that the only thing that was at risk was the investment asset that you thought you were investing in.¹⁰⁵

5.67 Mr Craig Stranger, Managing Director of PAC Partners, understood that the managers of at least one leading MIS company were of the view that:

...if the Company failed, then respective MIS investors would be fully protected. In hindsight this is clearly not the case.¹⁰⁶

5.68 The liquidator for Timbercorp, KordaMentha, informed the committee that to avoid any doubt, Timbercorp Finance's rights under the loan agreements did not extend to the right to sell a borrower's home in the event they failed to make repayments and breach their obligations under the loan agreements.¹⁰⁷ But, as noted throughout this chapter, borrowers were still liable for any outstanding loan and some had sold, or feared they would have to sell, their home to meet their obligations.

5.69 Plainly, many growers who made submissions to the inquiry held the common view that their liability was limited to their lots—they signed a document that they understood was for a non-recourse loan.¹⁰⁸ Moreover, evidence from some financial advisers involved in selling the schemes indicated that even some of those actively recommending such investments did not know that the loans their clients were taking out to fund the investment exposed the clients to liabilities that went way beyond their investment.¹⁰⁹

5.70 Many submitters, unaware that the loans were full recourse, maintained that they would not have taken out such a loan if they had known of the associated risks. For example, one couple indicated:

We do not recall being scrutinised for such, & were therefore sold products that were way outside what would have normally been appropriate. We maintain these were sold as a non-recourse loan & were certainly not made aware of power of attorney clauses...these 2 points certainly would void our involvement.¹¹⁰

5.71 In addition, they stated:

105 *Proof Committee Hansard*, 12 November 2014, p. 18.

106 *Submission 16*, p. 1.

107 KordaMentha, additional information on behalf of Timbercorp Finance, dated 4 December 2014, p. 3.

108 Neil White, *Proof Committee Hansard*, 12 November 2014, p. 39 and *Confidential Submission 124*, p. 2.

109 Mr Neil White, *Proof Committee Hansard*, 12 November 2014, pp. 38 and 40.

110 Name withheld, *Submission 61*, p. 1. See also name withheld, *Submission 121*, p. 1.

We are a husband and wife who took on the GS recommendations of our NAVRA financial advisor, with the intention of creating an income stream 10 years down the track and not being reliant on government pensions in our senior years. We genuinely went with the advice with the clear understanding GS was a stand-alone loan against the GS asset only and, like hundreds of others in our ERA group case, we still maintain we have been misled.¹¹¹

5.72 Likewise, one grower with Timbercorp stated clearly:

When we purchased our investment in [the] Timbercorp scheme, our intention [was] it would be for our future retirement (I am 68) we were assured that the investment was its own security, and we would not be personally liable for the loan. In hindsight we would not [have] invested in Timbercorp if the representative had not assured us of this, although we will not lose our home we have to sell our holiday house which was to fund our retirement not to pay off a Timbercorp debt.¹¹²

Pressure selling

5.73 Not only were potential investors in agribusiness MIS presented with complex loan arrangements but many were urged to sign-up to such a commitment without time for proper consideration. As early as 2003, ASIC commented on the sales techniques used to sell agribusiness MIS. Importantly, at that time, ASIC's findings confirmed anecdotal information that:

...some promoters do employ high-pressure sales tactics, encouraging investment in schemes using promotional material that focuses on the before- and after-tax savings. In many cases, accountants invited clients to these promotional seminars, but failed to give appropriate warnings to their clients about the suitability of the scheme for their individual circumstances.¹¹³

5.74 Despite these early concerns about the marketing of agribusiness MIS, the practices continued. Some submitters referred to the highly persuasive even 'hard sell' promotional techniques advisers and product issuers used to entice people into investing in the schemes.¹¹⁴ For example, Mr Jayantha Anthony explained that he was 'given the information by a crooked Accountant and was signed the very next day with

111 Name withheld, *Submission 61*, p. 1. ERA Legal represented a certain group of investors who objected to the proposed Great Southern deed of settlement.

112 Name withheld, *Submission 32*, p. 1.

113 ASIC, Report 17, *Compliance with advice and disclosure obligations: Report on primary production schemes*, February 2003, p. 19.

114 See, for example, Mr David Huggins who noted that the entire process from completing an application to making an investment/application for finance and for funds to be drawn down took approximately 24 hours. *Submission 118*, pp. 4 and 7. *Confidential Submission 36*, p. [3].

no time to question as all were rushed'.¹¹⁵ Another submitter indicated that he was sold the investments in MIS through aggressive sale tactics.¹¹⁶

5.75 The same approach applied to arrangements for loans, with one investor stating that she was 'pushed to sign documents quickly' or risk missing out 'on a great venture'.¹¹⁷ Another investor informed the committee that they were told the investment was long term and would produce a moderate return: that there was no personal risk, everything was insured and their home 'would never be on the line'. Against this reassurance, their adviser emphasised that:

...the current subscription was closing in the next week as it was nearly full, we were told it was quite urgent that we decide one way or another.¹¹⁸

5.76 This undue haste to have the investor sign up to the loans was a common story. Robert and Lynne Powell, aged 65, typified the many accounts provided to the committee:

As uneducated investors we took our accountants advice and entered into a Loan agreement in June 2008. We were alone with the Timbercorp Representative when we signed up for the Loan and it was agreed and approved within two days.¹¹⁹

5.77 Another investor spoke of being contacted many times over the weeks following a promotional dinner, which was attended by his accountants/financial advisers and where Timbercorp representatives made a presentation. The investor and other members of his family were asked to invest and told that the contracts were already drawn up. He recalled:

At that meeting the way to finance the investment was discussed and we were told Timbercorp Finance had already approved our loans, there was no need to bother looking for finance elsewhere. The documentation was all ready for us to sign, pre packed into a pretty coloured folder, we were not given copies of these contracts to review prior to signing, and we had no real alternate avenue of information to rely on as it was our financial advisors that were introducing us, prompting us to invest and then telling us what a great deal it was.¹²⁰

5.78 Furthermore, and consistent with the experiences of many other investors, they were not told that their adviser was being paid a commission for the introductions and subsequent signing up of clients. The investors were also told that they 'needed to

115 *Submission 29*, p. 1.

116 Name withheld, *Submission 45*, p. 2. See also name withheld, *Submission 89*, p. [1]; *Confidential Submission 92*, p. [1]; *Confidential Submission 39*, p. 3.

117 *Confidential Submission 82*, p. [1].

118 Name withheld, *Submission 95*, p. [1].

119 *Submission 5*, p. 1.

120 Name withheld, *Submission 89*, p. [1].

make decisions quickly' as the schemes were being closed off in the coming weeks. They signed on the dotted line and started making their repayments.¹²¹

5.79 One couple equated the sales approach to actively chasing down the potential investor to 'complete the paperwork'. They referred to 'the extreme efforts' taken by the adviser to obtain clients' signatures, which, in their case, extended to having the paper work taxied to the investor at his place of work and to have him sign the paperwork 'on the bonnet of the taxi and have the taxi return to the adviser's office'. Based on their experience, there was an underlying sense of urgency to get them to sign the paperwork.¹²² Moreover, some investors were urged to take out loans in the dying days of the schemes. For example, one submitter told the committee that:

The final loan was approved when Timbercorp was facing liquidation. It is no wonder that it was approved within a day and without financials. In previous years it sometimes took Timbercorp weeks to approve loans. This time around, Timbercorp obviously needed money. Lots of it and fast.¹²³

5.80 Mr Bryant, member of the Agriculture Growers Action Group and former officer with a number of agribusiness MIS including Great Southern and Timbercorp, explained that the people advising on the loan arrangements were not bank trained staff. He argued that it would follow that those signing up for the finance would not have received the level of advice and explanation that a bank trained officer could offer. He stated further that to the best of his knowledge:

...there was really no oversight by the finance department at Timbercorp, which ran Timbercorp Finance, on how the representatives out in the field, the financial planners, were writing the loans.¹²⁴

5.81 The evidence before the committee establishes a clear pattern of poor, and at times misleading advice, inadequate disclosure and pressure selling in an environment of over optimism and marketing exuberance. Trust in a reassuring adviser, who glossed over risks, coupled with aggressive selling techniques created an environment at odds with sound, considered decision-making.

5.82 Although in a quite different context, the evidence presented to this current inquiry regarding lending practices bears a striking resemblance to those detailed in earlier reports that have touched on borrowing to invest.¹²⁵ The accounts of hundreds

121 Name withheld, *Submission 89*, p. [1].

122 *Confidential Submission 130*, p. [1].

123 *Confidential Submission 36*, p. [9].

124 *Proof Committee Hansard*, 12 November 2014, p. 16.

125 In its report on the performance of ASIC, the committee detailed the many cases of poor lending practices especially the targeting of vulnerable older people who were asset rich-income poor. It described practices such as brokers falsifying loan application forms. See Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission*, June 2014, paragraphs 5.28–5.29.

and hundreds of people enticed into taking out loans that they could ill afford or for highly risky products cannot be ignored.

Committee view

5.83 The same irresponsible lending practices described in full in the committee's previous 2014 inquiry were similar to those associated with providing, or assisting to provide, finance to MIS investors—deliberate targeting of unsophisticated investors, falsifying information on loan applications, withholding information and documents, downplaying risks, placing undue pressure on potential growers to commit to a loan; overleveraging clients; and failing to undertake due diligence.¹²⁶

5.84 The cases of shoddy lending practices cited in this report only hint at the extent of the practice and the number of people who saw themselves as victims of irresponsible, even predatory, lending. Clearly, many of these borrowers had no idea of the arrangements into which they were entering. As the schemes failed to perform to expectations, investors found themselves with mounting debt. In many cases, they were desperate to stem the losses and salvage whatever they could from the financial mess they found themselves in and, for some, to save their family home. They argued that had they been fully informed about the loan arrangements they would never have agreed to them.¹²⁷

5.85 The committee draws attention to its 2014 findings, highlighting the fact that the practice of providing unsound and inappropriate advice to retail investors and, among other things, fabricating information in loan applications reflected badly on brokers, lenders and the regulator. It exposed the vulnerability of unwary and trusting borrowers, who were taken advantage of by unprincipled and self-interested brokers and lenders. Clearly, there is much scope for regulatory reform in this area of investment lending to retail investors. In chapter 11, the committee continues its consideration of the financing arrangements for investors in agribusiness MIS, with a focus on the banks as lenders.

126 See, for example, Mr David Abraham, *Submission 64*; Mr Troy Lott, *Submission 101*, p. [1]; *Confidential Submission 59*; *Confidential Submission 156*, p. [6]. The author of *Confidential Submission 82* noted the urgency to sign and referred to sections of documents not being completed with assurances from her adviser that 'they would be handled at a later date and that they weren't important'.

127 Name withheld, *Submissions 44*, pp. 3–4.

