

Senator Nick Xenophon—Additional Comments

Government has been MISsing In Action: Time for a Compensation Scheme for MIS Victims

1.1 I commend the Committee for the non-partisan way it has approached this most serious issue and the outstanding work of the Secretariat.

1.2 What is outlined in the Committee's report can, in my view, best be described as a train wreck in slow motion. Government, regulators and financial institutions either saw the train wreck coming, or should have seen it coming.

1.3 There was a seemingly inevitability that Forestry Managed Investment Schemes were going to end in tears.

1.4 The evidence given to the Committee in Melbourne on the 4th of August 2015 by Mr Sam Paton, the respected principal of Agribusiness Valuations Australia, is very telling:

Senator WHISH-WILSON: I want to go to two very quick questions. Unfortunately, we are running out of time. We have looked at lots of different layers, I suppose, of proportioning the blame on why things went astray and led to this catastrophic policy failure. Do you think the government has any role in providing compensation to victims of MIS failures given the role they played in Vision 2020, the tax deductions, the setting up of MISEs and not making changes when people were ringing the bells about the risks?

Mr Paton: Philosophically I guess that, as I alluded to in here, I cannot feel much sympathy for someone who is so naive as to think that that was their get out of jail card getting in an MIS. I do feel sorry for the people who had financial planners hand out the back, ANZ securitising their loans to invest, but I think—

Senator WHISH-WILSON: The buyer beware caveat.

Mr Paton: Yes. Out of all the work your committee has been doing, hopefully one good thing is the focus on the banks. That double standard of saying, 'We'll lend them money even though'—I think the best thing government can do is close this legislation down.

Senator WHISH-WILSON: That was my next question. Are they fixable or are they broken?

Mr Paton: I do not think so. That supply driven model just does not work. If you want to road test it, just say there was something that looked like it needed a kick-start—a new embryonic industry that just

needed a bit of critical mass. If you could name one—and blue gums was not one—all the other industries like pines and grapes were mature. You would go about it a different way where government would make the developers have some skin in the game. As Senator O’Keefe said to me in the 2007 hook-up, if they had some skin in the game—like if Timbercorp had to stump up half the money and have some involvement and risk sharing—it would be totally different. In a nutshell, I do not think the legislation has any beneficial use.

Senator WHISH-WILSON: I would like to thank you for your evidence in speaking out today. What is really important to me is that there is evidence to this committee that the Liberal government at the time was made aware of these risks by people such as you while they were considering over a very long period of time a policy response. It is good to know that that kind of conversation had occurred.

Senator XENOPHON: I have a very quick question that follows on Senator Whish-Wilson’s question about the Ponzi schemes. Without going into what a Ponzi scheme, can I put it to you another way? Is it your view that this was always going to end in tears because it was not a viable way of agricultural production—that it was completely artificial and never sustainable in the longer term?

Mr Paton: Yes, because in my experience you create a supply response where there is underlying demand, and then it evolves on its merits. You keep a sink. The analogy to MIS is that it created, if you like, a supply platform that was always going to fail a bit like in the wool boom. The Australian Wool Corporation ratcheted up the floor price for wool, so it guaranteed growers. It went up from 700c to 870c. The next thing is we had four million bales of wool just like we have a wall of wood we cannot sell. It is a similar analogy. Just leave it to the marketplace to sort out, and keep government out of it.

1.5 Mr Paton was clearly being sardonic in his final comment about the market place being left to sort it out.

1.6 The Government clearly had a role in establishing, by legislation and regulation, an investment scheme that was clearly not sustainable—that was going to eventually fall over like a house of cards.

1.7 As Mr Paton alluded to, Financial Institutions need to be scrutinised for their roles in providing massive lines of credit and loans to these companies, giving ‘mum and dad’ investors a false sense of security that their investment was safe. This was compounded by financial advisors providing poor advice without relevant considerations of the risks.

1.8 Recommendation 17 of the Committee goes in part to the role of the banks in relation to this debacle.

Recommendation 17

The committee recommends that the Banking Code of Conduct include an undertaking that the banks adhere to responsible lending practices when providing finance to a retail investor to invest. This responsibility would apply when the lender is providing finance either directly or through another entity such as a financing arm of a Responsible Entity.

1.9 The committee received very relevant and significant evidence¹ from Catriona Lowe, Independent hardship advocate for Timber Corp victims. The scheme is clearly welcome, and I have seen first-hand how genuine efforts are being made to resolve difficult matters, for individuals in extraordinarily awful circumstances.

1.10 The Senate reference committee report into The Performance of ASIC in June 2014 did discuss issues of compensation in the context of Commonwealth Financial Planning Ltd. Chapter 17 of the Committee's report discussed the issue of a compensation scheme which is also the subject of the current Scrutiny of Financial Advice inquiry. I expect that Inquiry will provide specific recommendations in due course. However, I flag now that victims of Forestry Managed Investment Schemes need to be included in any such compensation scheme. Existing mechanisms for compensation are inadequate and not appropriate. Government should have a role to adequately deal with victims of a scheme that Government should never have allowed to come into existence in the first place.

Recommendation

That a compensation scheme of last resort for victims of 'Forestry Managed Investment Schemes' be established with a combination of Government funding and a contribution from financial institutions. This should be established in parallel with stricter requirements for insurance for financial planners as part of an ongoing compensation scheme for prospective failures of financial advice.

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1 Submission 200.

