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Corporations and Financial Services Committee

Report

SPEECH

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SPEECH

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Mr ROBERT (Fadden) (4.30 pm)—I rise to provide some comments into the inquiry of the Joint Parliamentary Committee on Corporations and Financial Services into financial products and services in Australia. Whilst I do, let me thank the secretariat for their good work; the member for Oxley, Bernie Ripoll, who led the committee; Senator Brett Mason, who was deputy chair; and the Hon. Chris Pearce, the member for Aston, and shadow minister for financial services, superannuation and corporate law.

Hard-earned funds, totalling \$70 billion, of Australians have been lost. In the last 18 months corporate collapses such as Storm, Opes Prime, Great Southern and Timbercorp, as well as other companies, have gone under. No banks have failed. Indeed, of only eight AA-rated, or above, banks in the world, four of them are Australian. Our banking system has proven to be the most robust in the world. Despite the catastrophic loss of equity in savings, with most people's superannuation savings being halved, with many people realising losses through selling down shares, our financial services regime, based principally on chapter 6 and 7 of the Corporations Act and on the financial areas of the ASIC Act, continues to be the strongest and most robust in the world. Over 150 banks have failed and we lost none. Compare that to the crisis of the late eighties and early nineties when more than five banks in Australia failed.

However, there is much that we as a nation and indeed as a parliament—a body of legislators—can learn from the last 18 months. We have already seen some of those lessons being learnt through margin-lending legislation, whereby there is now a requirement upon margin lenders to inform both the client and their adviser of a margin call. Evidence before the committee showed that, in September 2008, there were 2,000 margin calls per day being issued against Australians. It appeared that the vast majority of clients were informed of those margin calls and had the opportunity to make restoration and bring the margins back into loan-to-value ratios. There is one glaring example and that of course is Storm Financial where, for upwards of eight, nine, 10 and, in some cases, 12 weeks clients of Storm were, in many cases, unaware of a margin call requirement—the end case of course being the Commonwealth selling down and closing the Storm index funds and losing over \$5 billion of hard-earned funds of Australians.

The financial devastation that the collapse of the likes of Storm and Opes Prime, Timbercorp and Great Southern has caused cannot be underestimated. Collectively, over \$10 billion of life savings of ordinary Australians was lost. These included pensioners, who were, some say, duped into actually mortgaging their home for an excessive margin loan into a Storm Financial or other product, only to find out they had lost everything. The toll of human wreckage goes into the thousands. Within such an environment—praising God that, indeed, our nation did not fall into recession, in most part due to the way we started, the strength of our financial services regime, the lack of debt and the robustness of that financial services regime—as we now move into growth it is important to look back and learn the lessons of the past and to look at how we as legislators can actually improve the financial services regime. No matter how good it may be, it can improve; hence the inquiry into financial products and services in Australia had that charter and, indeed, has produced 11 recommendations to achieve that end state: to improve the financial services regime.

Whilst the 11 recommendations cover a range of areas, from disclosure to education to working with industry as it seeks to address the issue of commissions, there is no more important, no more wide-ranging recommendation than the first one—that is, that the Corporations Act be amended to explicitly include a fiduciary duty requiring financial advisers operating under an AFSL to place their clients' interests ahead of their own. The committee has recommended that we amend chapter 7 of the Corporations Act to require a fiducial duty of care from advisers, a legal duty of care, a legal responsibility that advisers put the interests of their clients, without fear or favour, before any of their own interests. This will put the legal requirements of financial advisers on a par with lawyers and accountants. It will lift the financial services industry into a proper, robust and professional space with full legal requirements. It will require that advisers duly consider the statement of advice they give, knowing full well that that statement of advice may well be admissible in court because of their fiducial duty of care. It will require advisers to think very carefully about their remuneration structures, especially any commissions or payments they

are getting from a product provider at the back-end, because those remuneration structures, those commissions may well be admissible in a court of law as per their fiducial duty of good faith.

Financial advisers will now need to rethink exactly how they engage with clients, the statement of advice that they provide and what has caused them to come to that statement of advice, and, if need be, they will need to defend that statement of advice. That is a sweeping, all-encompassing change to how the financial services industry is operating. In fairness to the industry, many parts of it are already operating along those lines, with a sense of good faith behind them. For many firms, recommendation 1, no matter how sweeping, will be somewhat passe because that is the way they already operate their businesses. For others, it may well be a requirement to look very closely into the mirror and determine exactly how they provide their advice.

The industry has stated through the FPA, IFSA and AFA that they are looking at the issue of commissions. They are looking at how financial advisers are remunerated. Recommendation 4 is that the government consult with and support industry in those sorts of moves. The committee believes it would be inappropriate to regulate and say that commissions are banned. People need to have choice. Advisers need to have choice. We need to ensure that financial advice is readily available for all people, not just for those on high incomes. Recommendation 4 allows the industry time to work with its members, with its clients and, if need be, with legislative support work through how they look at commissions.

The committee has done an excellent job and I thank the members of the committee from both sides of the House who produced a truly bipartisan report and who worked through the dreadful issues of the financial losses of so many families and their wrecked and shattered lives, many of whom will never recover. The committee looked at how we can improve the system. Noting that the financial services regime is already robust, how do we improve it to ensure that it is better placed for the storms that will come again?

Do the recommendations mean that no financial services firm will collapse in the future? No, they do not. Storm Financial did not have any commissions back to product providers. Many of its advisers had masters degrees; however, what Storm Financial, and perhaps others, did not do was to ensure that their fiducial duty of care was enacted when dealing with their clients. What Storm and others did was to leverage upon leverage their clients' interests into the market. They treated all clients in the same way through super leveraging themselves into a bull and growing market and then leveraging unrealised gains back into that market. When the market eventually fell, as all markets do, Storm was unable to recover the assets of their clients.

I certainly commend the report to the government. It makes a range of very solid and very sound recommendations. I look forward to working with the industry going forward as it seeks to continue to enhance its professionalism and provide services to the Australian community.