



**Joint Parliamentary Committee Corporations and Financial Services
Report on Aspects of Agribusiness Managed Investment Schemes
House of Representatives**

17 August 2009

Sharon Grierson MP

Ms Grierson: (Newcastle) (10:50 AM) — It is pleasing to see people stand in this chamber and address the report of the Joint Parliamentary Committee on Corporations and Financial Services because this was an important report - the inquiry into aspects of agribusiness managed investment schemes related to the recent collapse of Timbercorp and Great Southern. The inquiry kicked off in a very rapid response to a very real situation, a situation of great loss. It was interesting for me to listen to the three previous speakers, who come from regional areas and who understand that these sorts of schemes had particular appeal to people living on the land. There is a characteristic of Australians to back themselves, and in a way many of these investors were backing what they do in their lives and the communities they live in, so it is very regrettable when they suffer great loss. I congratulate the three preceding speakers for their concern for their constituents.

It is estimated that Great Southern and Timbercorp had 43 per cent of all managed investment scheme business in Australia and MIS accounted for 100 per cent of their business - so we are talking about two schemes that were absolutely specialised. The schemes collapsed in April and May of this year, taking with them over \$3 billion from 60,000-plus investors. Of course, the investors were attracted by the offer of an immediate tax deduction on their investment combined with the possibility of a long-term return. Intervening factors—drought, changes to the economic environment and the natural environment together with the global financial crisis—meant that there were factors of high risk that many people had not considered, and when they came together it was quite devastating.

The parliamentary inquiry was held to determine why the collapse happened and how it could be prevented from happening again. Naturally, in that inquiry we looked at the sorts of factors that influence people to invest in any product, so this is a story that relates to all investments. We looked at business models and scheme structures, taxation treatments, the conflicts of interest for board members and other directors, commissions, fees, other remuneration paid to marketers, distributors, related entities and sellers and who they were, including accountants

and financial advisors and their roles. We looked at the accuracy of promotional and advertising material for MISs, particularly information relating to claim benefits and returns, including carbon offsets, the range of individuals and organisations who were involved with these schemes, including the holders of relevant Australian financial services licences and the level of consumer education and understanding of these schemes. We looked at the performance of the schemes, the factors underlying the recent scheme collapses, rejected returns and supporting information, including the assumptions that they were based on, product price and demand, the impact of MISs on other related markets and the need for any legislative or regulatory change.

I note the previous speaker's concern that the Committee perhaps did not go as far as he would have liked. I have to praise the chair, the member for Oxley, for his role in the Committee and I have to praise the Committee members. This was a rapid response which got off the ground very quickly and it allowed the people who were involved and who had suffered loss to have their voices heard. That is terribly important at a time when the asset values of most people in this country—whether a home, a superannuation fund or a particular investment portfolio—have all been drastically reduced, and for many people, particularly people on the land, that was their superannuation, their retirement income or their hope.

I praise the chair, Mr Bernie Ripoll, the member for Oxley, and I particularly praise the secretariat. We have worked them very hard and they have been incredibly supportive of the work of the committee. We thank Dr Shona Batge, the secretary; Mr Andrew Bomm, the principal research officer; Ms Esma Poskovic, the executive assistant; and also Toni Matulick and Clare Guest.

In this report it was revealed that the managed investment schemes encompass a variety of structures for the creation and operation of collecting investment schemes or projects. This can include anything that involves an investor acquiring something other than a security: a share, a debenture, an interest in a prudentially regulated entity such as a bank deposit et cetera. The sector includes managed funds, public unit trusts, property syndicates, service strata schemes and, in the example of Great Southern and Timbercorp, agricultural schemes. To quote from the report:

As with other MIS, investors (or growers) in an agribusiness MIS pool their funds for a common purpose, in this case to finance large scale agricultural operations. Rather than investing in the unit trust structure outlined above, though, investors gain an interest in an agricultural project on an allocated parcel of land. Fees paid by investors secure the right to have their 'allotment' used for a particular agricultural purpose, and a limited right to what is grown on that land by the scheme's manager, operating under a management agreement.

Investors do not purchase a physical asset, including the land the projects occur on. In forestry MIS, the growers usually own the trees on the land, while growers in non-forestry MIS are entitled to the crop but not the trees that produces it. Investors receive a share of harvest proceeds after the scheme's manager has been paid for plantation/crop maintenance, harvesting, land costs and selling the crop.

The main thrust of the recommendations arising from this inquiry—and I have heard some debate on the issue here in this chamber—was to curtail up-front tax breaks on agribusiness projects so that Ponzi-esque sales models are not allowed to develop. I will come back to that, but I think it is important to say that we are legislators—we are the people who make the legislation here—and we have to really be aware that a policy setting can absolutely shape behaviour. We know that but sometimes we do not think of the negative consequences that can arise from that. So a policy setting that gave tax concessions made something extremely attractive for people, just as a policy setting that encouraged people to salary sacrifice to superannuation made something extremely attractive to people, without some responsibility being taken for the nondisclosure of the possible risks. I know we cannot always foresee global financial crises, but it is a very real issue for people. They have confidence and trust in governments of this country, so when there is a policy setting that is very attractive we have to really take an extra level of responsibility. Unfortunately for the investors in MISs, I think we have let them down.

At its most basic, the Ponzi model pays returns to separate investors from their own money or money paid by subsequent investors rather than from any actual profit earned. While it would not be accurate to generalise across the entire agribusiness MIS sector, the MIS model can, to quote from the report:

... encourage Responsible Entities to develop business models with a ponzi-like character if external factors such as access to credit and drought intervene, necessitating extra MIS sales to inject working capital into existing schemes— as was the case with Timbercorp and Great Southern. As the submission by ASIC to the inquiry stated, while there were not literal interpretations of a Ponzi model:

Agribusiness MIS operators have been criticised for adopting business models which rely on receipts from application fees for revenue.

ASIC indicated:

... this business model may be unstable if the flow of new MIS sales is interrupted.

Another recommendation of the report was for an amendment to be made to the Corporations Act, arising from concerns about how liquidators have managed their conflicting obligations to creditors and to investors. The committee found that ASIC should appoint a responsible entity to manage any registered MIS when it collapses. Injecting an independent person into that process, I think, would be something all of us support. We can see that when it gets to a liquidation process there seem to be a lot of fees to go to everybody else but the creditors and investors tend to lose out quite a lot.

Finally, the committee recommended that ASIC disclose the qualifications and accreditation of third parties advising on the schemes. General concerns about advisers' remuneration and the standard of financial advice provided were also mentioned in the report, though of course these issues are still to be addressed

more comprehensively in the committee's concurrent inquiry into financial products and services.

I recommend this report to the House. The inquiry was completed over a very short period of time. It certainly did not go into the depth that some members would have liked but, because the committee is also involved in the Storm and Opes Prime inquiry. I hope many of these matters are going to end up in a regulatory framework, a regulatory regime, that puts more emphasis on the consumer protection that I think many people thought was there. The consumer protection aspects of investment schemes have not really been at the forefront of anyone's mind. ASIC will be the first to admit that their powers did not give them the support for that weighting. Their weighting was more on the market. Now that we have seen so much tragic loss, we know there is a need for a balance that was missing.