

[Home](#) » [Business](#) » [Breaking News](#) » Article

ASIC playing cat & mouse with Westpoint

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The corporate regulator failed to approach the federal government to change laws so it could target failed Westpoint company because it had to act quickly.

Australian Securities and Investments Commission (ASIC) deputy executive director Mark Steward said the regulator had been playing a game of cat and mouse with Westpoint lawyers that were all aimed at stalling possible legal action.

The Perth-based property company collapsed late last year owing about 4,000 investors more than \$300 million.

The investors, mostly retirees, have been told they are unlikely to recover any of their money.

Concerns about Westpoint had been raised as early as 2001.

But Mr Steward said there had been an ongoing issue surrounding whether ASIC had the legislative power to act on Westpoint, particularly in relation to the value of promissory notes at the centre of the company's operation.

He said during 2003, ASIC and Westpoint lawyers spent several months arguing over whether the regulator had jurisdiction.

"We eventually realised by the end of 2003 that we were being stalled, we were being given the runaround," he said.

"And we delivered an ultimatum to Westpoint to either comply the argument that we put forward about the Corporations Act, or we take action. We ended up taking court action."

Under questioning from John Watson (Lib, Tas), Mr Steward said ASIC decided it would be quicker to convince Westpoint the regulator could act, rather than change the law.

"I think that the issue we were facing was a practical, pragmatic matter, we were dealing with the here and now, we had to do something," he said.

"It wasn't a matter of waiting for law reform through the normal processes, I'm not sure how long that would have taken."

ASIC chairman Jeff Lucy admitted there was a chance there would be similar collapses to Westpoint.

"There is a potential for further Westpoints," he said.

"It is true that people are continuing to invest in types of investment that we would still regard as high risk."

Mr Lucy said it was unlikely the government would act immediately in regards to Westpoint-style investments, largely because the issue was still sub judice.

"The government traditionally and reasonably don't undertake law reform where there's a matter before the court," he said.

Mr Lucy said any possible legal action against Westpoint's auditors on negligence would be up to the liquidators of the company.


But Mr Lucy said that if no action was taken then ASIC might be prepared to look at the issue.

"In the event that there was no one willing to take it, and it passed the public interest test, then yes we would take it," he said.

Mr Lucy said it was too early to consider the issue, but it was something to consider.

"It is too early. It is something that we are very much alive to," he said.

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