

Hi Everyone,

A famous article of yesteryear in support of a myth stated, "Yes Veronica, there is a Santa Clause". A more modern myth is that the Australian Securities Investment Commission is a regulator protecting Australian investors.

As I understand, the Howard led Government replaced the old SEC with ASIC because of the rorts and public rape of investors in the 1980's and the early nineteen nineties. Part of the Howard Government's solution, having read George Orwell's *1984*, set up a law that one could not sue the newly created ASIC for any reason other than malfeasance. That law provides ASIC with an undemocratic defence not available to any participant in the marketplace it oversees. This protection has proved to be a very effective piece of legislation – I can recall only one successful prosecution against ASIC.

However, that same law, coupled with the misuse of the necessary secrecy of ASIC's internal research into whether an entity is breaking the law, is at the heart of why ASIC has been so spectacularly inefficient. Without any compunction to obey the same rules as those it oversees, ASIC is unaccountable.

When it created ASIC, the Howard Government knew the dangers in making it almost impossible to sue the regulator. The current Labor Government has had more than ample proof of ASIC's abject failure. Despite needless investor destruction over the past decade, neither political party has attempted to bring ASIC to account. Nor has ASIC, which should set the standards for the financial industry, ever raised the matter. One can only presume its continuing inefficiency without fear of accountability, suited it.

Australia calls itself a democracy. In my book, all entities are equal in a democracy. As with the pigs in Orwell's *1984*, ASIC is "more equal" than other market entities. Where were/are the honest politicians that allowed this situation to arise/continue?

The Westpoint story begins with Denise Brailey. On the advice of West Australian lawyer Doug Solomon, she informed ASIC of what might happen. The regulator ignored the warning, and issued Westpoint with a "no action letter", which they never rescinded. Hansard records the many warnings and complaints ASIC received about Westpoint from 2001 onwards. Documentary evidence exists the WA Government on at least five occasions wrote to Treasury with its concerns about WestPoint. Both ASIC and the Government kept investors in the dark during the financial rape of the investors, mainly drawn from the older generation. ASIC withheld knowledge of a secret Deloitte's Westpoint audit it commissioned - and its result - from the market. When ASIC took Westpoint to court in 2004, none of its charges related to the fact Westpoint was a Managed Investment Scheme. Even when the judge in the case informed them of that fact, ASIC failed to prosecute Westpoint for running an illegal MIS. In addition, we have ASIC's Jeremy Cooper ringing the head of KPMG and telling him to "give Westpoint a thorough going over". What does that say about ASIC's view of those it controls in reference to audits?

Despite the contents of the last paragraph (all on the Website [www.westpointinvestorsgroup.com](http://www.westpointinvestorsgroup.com)), ASIC took no action in relation to Westpoint for the best part of three years after its collapse. It did so, not by pursuing the guilty parties in open court, but by a commercial Mediation action held in

camera. None of the participants in that action have been prosecuted, and even KPMG's rollover to the tune of \$67 million was achieved without fault on KPMG's part. Given its past record of not divulging the truth, it is difficult for a Westpoint investor not to believe ASIC chose its course of action to protect its past inglorious record.

ASIC originally set the recovery target at \$539 M. No one expected them to recover that amount, but did expect a far better return than the \$170m it now hopes to recover. ASIC pushes its own bandwagon by inferring it is responsible for the money retrieved in normal liquidation actions, and by private prosecution. It is a pity ASIC is not as proficient at regulation as it is at self-promotion.

ASIC may have acted in accord with the law. However, it leaves a nasty taste in the mouth. Investors, some of them suicidal, contacted me because they got no sense when they contacted ASIC. With my background and nature, I am ill equipped for social work. The stories I have heard, and the damage to the people involved in terms of emotion and health, affect me greatly.

Despite the above, Westpoint investors should not believe they have been singled out. Many investors have suffered a similar state. The main difference between Westpoint investors and the myriad of other investors is that in the case of Westpoint the documentation of events was better. The Storm debacle is an indication of how far ASIC and successive Governments have gone to suppress the truth.

Given the size of the slaughter of hapless investors, ASIC's failure to implement punitive action is monumental. The percentage of those prosecuted for criminal acts is abysmal, and the number of successful prosecutions launched to date is even worse. The vast majority of wrongdoers who wreaked havoc in the marketplace go unpunished. We still await Senator Sherry's promise of an open inquiry into the marketplace.

It is certainly true ASIC has privileges and rights in law bestowed upon them by the Australian Parliament that no other Australian entity enjoys. How ASIC, or the Parliament might defend them in terms of democracy is more than difficult to explain. The record shows that ASIC has on past occasions used these rights and privileges to subdue the truth for whatever reason. Can anyone please explain to me the difference between a criminal who bends the law to enrich himself, and ASIC's misuse of its powers to protect its own image? In recognizing the law and ethics are entirely two different entities, I believe the regulator in a democracy should operate in strict accordance with the spirit of the law, and display to the market place the legal and ethical standards it expects of those it regulates.

Having seen so many lives destroyed by an incompetent and uncaring financial regulator, I fear for the financial future of my children and grandchildren. I dream the impossible dream of a set of politicians who care about the investors in this country, and of a regulator pursuing a "broken window" policy and prosecuting financial wrong doers. I am very aware it will not happen in my lifetime.

One last point, on the day of the KPMG announcement, ASIC rang me. In that communication, they promised a communication relating to the settlement that I could broadcast to members. Does it surprise me that I am still waiting for its arrival?

Graham