

TO : All members of Parliament.

CC : The Australian Media

CC : The Overseas Media

DATE : 2 May 2007

SUBJECT **The continuing disastrous reign of ASIC.**

Dear MHR,

Daily, in the press, one reads criticism after criticism of ASIC's performance across many fronts. It is justified criticism. As I am most familiar with the Westpoint tragedy, my opening remarks begin with events concerning that company. The treatment Westpoint investors continue to receive from ASIC and both major political parties incense me.

In common with all Westpoint investors, I was foolish enough to believe ASIC had sufficient competence to carry out the simplest of tasks. It has been a very bitter lesson to learn they were not.

In common with many Sydney listeners to radio 2GB, I heard Online Super advertised by leading broadcaster, Alan Jones, for many months. Little did we know Online Super did not possess an AFSL for all of 2003, personal indemnity insurance, or the qualifications to advise on SMSF's. As with all Westpoint investors, we knew nothing of Denise Brailey's meetings with ASIC Commissioners, or the Western Australian Government's written concerns to ASIC and Treasury about Westpoint. Like all investors in regulated products we did not know ASIC does not check prospectuses or Information Memoranda. ASIC demands disclosure of those it regulates, but not of itself.

Then there was the matter of Kebbel Bank. It operated under the noses of the regulators, ASIC and APRA for many years and was a major promoter of Westpoint. Using the facade of an Investment Bank, with a full range of stationery, they promoted themselves on the Internet and at seminars. Neil Burnard issued business cards like confetti claiming he was a director of the bank. When someone finally complained to ASIC, they passed the matter over to APRA, which told them "not to do it again" without taking any other action.

There are other matters, such as ASIC admitting in parliament they played "cat and mouse" with Westpoint lawyer for months. I wonder what sub-section of the Corporations act I can find "cat and mouse"?

In 2006 the West Australian High Court found Westpoint Mezzanine Schemes had always been unregistered (illegal) Managed Investment Schemes. As ASIC gave Westpoint lawyers, Freehills, a letter stating they could find no legal problems with the Westpoint Mezzanine Schemes in 2000, gives rise to the question of the legal competency of ASIC. How many investors would knowingly invest in an illegal MIS? Of course, ASIC and the Government refuse to discuss this (and many other matters in relation to Westpoint). It leaves a very sour taste about

the integrity of the Australian parliament.

None of the foregoing would have occurred had ASIC been vigilant and carried out its duty to protect financial consumers.

So far the ASIC Chairman has tried to lay the blame for the Westpoint tragedy in turn at the feet of greedy investors, greedy planners, the auditors, and back to the planners. In short, Jeffrey Lucy has blamed everyone except the original cause of the problem - an incompetent ASIC. How many people would choose to invest in an illegal MIS?

I might also draw your attention to the Auditor General's comments of January 2006 that the frustration with ASIC's failure to implement a system involving the issue of new AFSL's drove many to become unlicensed financial planners. His report of January 2007 was highly critical of ASIC's successful prosecution rate per investor complaint.

ASIC may be a statutory body, but it is a business returning a profit of \$300 million pa to Treasury. It sells information from a database suffering a lack of relevant data.

As further proof of ASIC's non-caring attitude towards the financial protection of investors is, despite all of the warnings and their own concerns in 2003, ASIC issued Westpoint with an AFSL. The case of Fincorp, a recent company collapse, which like Westpoint, had a clean audit only a few months before catastrophic failure is even worse. ASIC had cause to take action on Fincorp on no less than six occasions, including a false and misleading prospectus, but they retained their AFSL until the collapse.

It is difficult to understand in a so called "well-regulated" system how a company showing no sign of problems at a yearly audit can fail spectacularly only a few months later, as was the case with both Westpoint and Fincorp. The Australian Financial Review of 28/04/2007 reports HIH was probably insolvent as far back as 1998. The failure of audits has been a long-standing one with no action taken to rectify the situation.

I have heard several variations on the likely total losses of investors over the next two years resulting from ASIC's failure to take commonsense early action. These figures run between \$5-10 billion (in keeping with Lucy's 2005 statement). The longer the delay in taking the appropriate action, the larger the figure will be. If I know this, then so do the central core of both major parties, and the possible damage bill frightens them. I believe that is the major reason for non-action by both parties. Neither of them wants to admit the failure of ASIC, and the probable repayment of investor monies.

In addition, they do not want the general public to know the number of exclusions in AFSL holder's personal indemnity policies that ensure it is almost impossible to make claims on them. Parliament had a clear duty to ensure they prescribed the content of the policies, but failed to do so.

If ASIC does not bother to check prospectuses before their issue, and does not know what is occurring in the marketplace unless someone comes in and tells them, as was the case with Keibel "Bank", how can ASIC possibly protect investors? The prosecution of a few wrongdoers, years after the event, does not protect those who have lost their money.

Investors, in desperation for justice, have in recent times resorted to vigilante tactics to have fugitives from financial justice brought back to Australia, because ASIC is either too lazy, or too incompetent, to find them.

So far, many tens (perhaps hundreds) of thousands of Australians have lost their hard earned savings because of ASIC's failure to carry out its intended purpose.

Daily, one reads of the failure and the arrogance of ASIC in the press. ASIC is responsible to parliament and as such, it is you, the politicians who are responsible for the continuing desolation of lives resulting from the continuing failure of ASIC.

The appointment of Mr. Lucy, the man who has overseen so much of the current disaster and halved the abysmal record of successful prosecutions, as ASIC Commissioner is scandalous.

In this, an election year, it is not only your seat at risk. What makes any of you believe your invested money is safe while those in charge of the current regulatory system remain in power?

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