

TO : The Honourable Chris Bowen, Minister for Human Services
Minister for Financial Services, Superannuation, Corporate Law

CC : The Honourable Bernie Ripoll

CC : Mr. Tony D'Aloisio, ASIC Chairman

CC : Ms Helen McNally, ASIC contact for Westpoint.

CC : TheAustralian Media

CC : Any Australian investor I can reach

FROM : Graham MacAulay, President Westpoint Investors Group.
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DATE : August 31, 2009.

Subject **A call for the open inquiry into ASIC and the Australian Financial Marketplace as promised by Senator Sherry on behalf of the Australian Labor Party**

Dear Sir,

Thank you for your reply 12/08/2009 to an email I sent to Senator Sherry. However, I found it disappointing in that it does no more than list a number of known facts.

Perhaps you are under the misapprehension the open inquiry promised by Senator Sherry on behalf of the Labor party was an inquiry into Westpoint. Perusal of [his letter to me](#) should correct any mistake in that direction.

Consider the following point form verifiable claims.

- * Often called the marketplace “policeman”, ASIC’s failure to monitor the marketplace and take timely effective action at the first sign of trouble is legendary. Should you require proof, I would be most happy to provide it to you with a large number of hard copy instances drawn from the Australian media. Alternatively, you can scan through [Need for RC](#) on the website www.WestpointInvestorsGroup.com. Perusal of [2009 08 03 TheAustralian](#) and [2009 08 25 SMH](#) newspaper clippings will give an indication of the widespread general opinion of ASIC’s unwillingness to carry out its assigned duties. **Rather than an agent of investor protection, ASIC has been a WMID (Weapon of Mass Investor Destruction).**

- * The actions taken by ASIC in the Westpoint matter have not resulted in a single jailing of any planner. ASIC has an inglorious lack of success in prosecutions in its “*rein of error*” (West Australian journalist Neal Prior’s description of ASIC performance since its creation).

Further, [Stephen Mayne’s article in Crikey of 12-05-2008](#) begins with D’ALOISIO TALKS TOUGH WHILE CROOKS STAY OUT OF JAIL, and contains a hyperlink to ASIC’s unimpressive performance in this area over the years. ASIC’s success rate has not improved since that article.

- * ASIC’s failure extends to all aspects of the marketplace. Westpoint, ACR, Fincorp, Bridgecorp, OPES, and Storm are only a few of the company failures in recent years where ASIC knew matters were not correct. In each case ASIC took no pre-emptive action, and did what it does best: nothing.
- * ASIC’s Mark Steward admitted in [Hansard](#) ASIC “cat and moused” with Westpoint lawyers for months is a clear indication ASIC was failing in its appointed duties.
- * A contact who corresponds with me regularly, Peter Neil, seems to have a watertight case involving fraud, but cannot get ASIC, or any Government organisation to investigate the facts - despite his extensive documentation.
- * Better RADAR WOULD SPOT ANOTHER STORM [[2009-08 17 AFR](#)] is a clear indication ASIC’s current radar isn’t working. THE INSIDE STORY [[2009 08 16 AFR](#)] involves an ASIC investigation into an insider trading incident. I can only recall one minor incident in which ASIC brought a charge of insider trading. Funny that, [Alan Kohler took Tony D’Aloisio, the then ASX Chairman, to task in 2005](#) on the ASX’s lack of action on insider trading. He instituted no actions in this area while at the ASX, or when he transferred to ASIC.
- * [Kate Kachor’s article of 14 08 2009 begins with](#) PLANNER QUALIFICATIONS NEED OVERHAUL. These are the same planners former ASIC Chairman, Jeff Lucy, exhorted investors to consult for financial advice.
- * Jeff Lucy in the previous item is the same [Jeff Lucy who perjured himself](#) with claims on the Westpoint model at subsequent Senate Estimate Committees.
- * The number of Australian lives destroyed by ASIC negligence/incompetence involving a very large number of companies defies comprehension. That destruction involves suicides, and ill health brought on by emotional and financial strain. It has cost the Australian Taxpayers dearly in terms of pensions and the associated ancillary health and benefits costs.
- * My call for a Royal Commission extends well beyond the Westpoint matter. Many others have called for a Royal Commission, including well-known advocate [Denise Brailey](#) and, surprisingly even [Norm Carey](#).

Now please consider the following three points.

- a). Tony is sounding rather hairy-chested about his new responsibilities. Asked why it had taken three collapses for the commission to get serious about Westpoint-style schemes, he responded: “The simple answer is that I wasn’t there.” [\[2008 05 12 Crikey\]](#).
One cannot take Tony D’Aloisio’s statement in any other way than that much of a negative nature happened at ASIC before his appointment as ASIC Chairman. What has he achieved to date in averting further negative events?
- b). Better radar would prevent another Storm [\[2009 08 17 AFR\]](#).
Clearly, ASIC’s radar is not repaired.
- c). ASIC calls for a debate on its role [\[2009 08 08 TheAge\]](#).
ASIC has a clearly defined role as defined in the legislature. Surely ASIC is in the best position to tell Parliament in very specific terms what it needs to carry out its job effectively. In an open, accountable, democracy the fourth estate would have reported these specific needs had ASIC publicised them. I do not know anyone who can recall ASIC asking Parliament for a range of specific powers.

Getting straight answers from ASIC is not easy - despite having been a signatory to a document on answering questions. I am still awaiting answers for [a set of questions I sent Tony D’Aloisio on 12-12 2008](#). The [MacAulay McNally exchanges](#) contain the vague general claim ASIC has previously answered my questions. The reason why her document contains no reference to those answers is simple: ASIC did not answer the questions on any previous occurrence. [My latest missive to her of 23 07 2009 still awaits a reply](#). My emails to her do show a measure of emotion, but how does one deal with a Government entity that signs an agreement on answering queries, and then won’t answer reasonable questions?

The above is proof of a floundering ASIC, which has not realised the implementation of any system in the absence of effective monitoring processes invariably leads to disaster. Without early warning of a problem, the easiest of repairable problems can quickly become a nightmare. Further, with an effective monitoring system, the lack of early corrective action invites mammoth disaster.

Given the damage our inept regulatory system has inflicted on a horde of hapless investors, the very least an incumbent Government can do is admit the truth. Not to do so makes a mockery of an accountable open democracy. Spin and half-truths are not the answer. Both the past and present Governments have taken that approach and we now all suffer the inevitable result of that mistake.

In addition to investor losses, I am particularly concerned about the needless loss of life and emotional damage to so many. ASIC’s disastrous reign of sitting on its haunches continues inflicting indescribable pain and sorrow for investors in many companies. The number of Westpoint investors I advised to seek counselling as a result of their telling me they intended to commit suicide has affected me greatly. I have no reason to believe many investors from other companies felt the same way. I have no way of knowing how many pursued that course of escape. The callous indifference to those of senior years appalls me. Perhaps you might like to ask Senator Sherry what it is like to contemplate suicide.

I am equally concerned about the lack of integrity of those we elect to Parliament. It is not a legacy I wish to leave my children. Recently, in relation to the “Ruddgate” affair, I heard one radio announcer state that it is ok for politicians to lie to the public, but it is criminal for them to lie to Parliament. If that is offensive to politicians, so be it. They have brought it upon themselves. Surely identifiable people and events exist for the creation of the current chaos. It is unthinkable in a fair and just society that the guilty are not brought to account.

As I write, information has just come to hand [[see 2009 08 26 SMH](#) and [2009 08 26 AFR 3](#)] concerning the Commonwealth Bank which only adds to that open inquiry promised by Senator Sherry on behalf of the Labor Party. Surely it should be a Royal Commission.

Perhaps I am just a dreamer who cannot accept the Rudd Government is intent on proving itself to be another collection of politicians without integrity. The Rudd Government’s promised action to the promised open inquiry will answer that question.