



16 JUL 2007

BY:.....

OFFICE OF THE HON PETER DUTTON MP
THE MINISTER FOR REVENUE AND ASSISTANT TREASURER

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Dear Mr

Thank you for your email of 5 June 2007 to the Parliamentary Secretary to the Treasurer concerning the Australian Securities and Investments Commission's (ASIC) vetting of prospectuses in the context of the Westpoint collapse. Your email has been referred to the Minister for Revenue and Assistant Treasurer as he has portfolio responsibility for this matter. The Minister has asked me to respond to you.

As a general statement the Australian Government does not accept your contention that ASIC failed to protect the investors in Westpoint and in particular failed to properly regulate the Westpoint prospectuses as required under the law.

Westpoint in fact did its best to circumvent the prospectus requirements in the law by structuring some of its fundraisings as promissory notes, arguing that these instruments did not fall within the scope of the relevant parts of the law. None of the Information Memorandums issued by Westpoint for its mezzanine financings were in fact lodged with ASIC.

ASIC took action in the Western Australian Supreme Court to clarify that the promissory note issues should be accompanied by regulated disclosure documents that would have to be lodged with ASIC. This would have allowed ASIC to review these documents and take action to protect investors in case of deficiencies in their contents.

The judgment of the court, including the judgment on appeal, confirmed the main point that the Westpoint mezzanine finance companies were subject to the disclosure requirements in the law and general regulatory oversight by ASIC.

However, it is important to note that this clarification was not provided by the court until late in 2004, and that Westpoint appealed against the judgment handed down at that time, with a final judgment not becoming available until 2006.

ASIC can only act within the boundaries set by the law, and this fact was exploited by Westpoint and its advisers to prevent, or at least significantly delay, ASIC intervention in its affairs.

The Australian Government therefore is not able to accept your claim for compensation based on an alleged failure by ASIC to regulate Westpoint properly.

Yours sincerely



Joanne Hutchinson
Adviser