



GRAHAM EDWARDS MP  
FEDERAL MEMBER FOR COWAN

10 October 2006

Thank you for your recent letter outlining the financial hardship you have suffered as a result of the Westpoint collapse.

Labor has made repeated attempts to get adequate answers from the Government, the Australian Securities and Investments Commission (ASIC) and the Australian Tax Office (ATO) about how a disaster like the Westpoint collapse was allowed to occur. It is vital that we gain an understanding of why this happened, firstly, to keep pressure on the various parties to maximise recovery of monies for victims and, secondly and equally importantly, to make any changes to our regulatory system to ensure these events do not occur again.

Both the Howard Government and ASIC were informed, in writing, about concerns relating to investors in mezzanine schemes like Westpoint by the Western Australian Minister for Consumer and Employment Protection, Mr John Kobelke on five occasions - in August 2002, January 2003, May 2003, June 2003 and March 2004. A written response to Mr Kobelke from the Howard Government, in February 2003, made the commitment:

***“If required the Government will consider any recommendations ASIC makes to improve consumer protection in this area” and “the Government will consider legislative change should ASIC identify any regulatory gap”.***

Unfortunately for Westpoint investors, neither the Howard Government nor ASIC were able to identify any regulatory gap that required legislative change. This failure in turn meant that consumers were not adequately protected.

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Some three years after ASIC was first asked to identify any regulatory gap, ASIC has now identified an important problem that needs to be addressed. ASIC states that they are powerless to shut down another Westpoint-style investment scheme because of a loophole whereby promissory notes of \$50,000, or greater, are not classified as debentures. ASIC's chairman, Mr Jeff Lucy, has indicated that legislative change would be necessary to fix this loophole.

When my colleague Senator Nick Sherry, Labor's Shadow Minister for Financial Services, questioned ASIC officials at the recent Senate Estimates about the reason they did not recommend any legislative changes to the Government, they indicated that their policy was to determine through the court process whether current laws needed amendment. This response appears inadequate since the Western Australian Supreme Court ruled in December 2004 that promissory notes were not debentures but they were a Managed Investment Scheme (MIS), therefore giving ASIC authority to act.

Furthermore, ASIC still felt it was powerless to act and it appealed the Court's decision. The WA Court of Appeals recently upheld the original Supreme Court ruling of December 2004. ASIC felt it did not have sufficient powers to move against the Westpoint Scheme, but both the courts and now the Howard Government are saying they did. There is obviously a difference in opinion between the Howard Government and ASIC and this needs to be quickly resolved to protect future investors.

It appears to be clear that the Westpoint group was able to manipulate the exclusion of promissory notes greater than \$50,000 being classified as debentures.

Labor has continued to pursue this matter on behalf of the many investors who have lost out from Westpoint's collapse. During Senate Question Time on June 22, 2006 Senator Coonan, the Minister representing the Assistant Treasurer was asked whether she was aware that ASIC had indicated in an article in the *Australian Financial Review* (June 16, 2006) that it would be powerless to shut down another Westpoint style scheme because of the regulatory loopholes which still remain under this Government's laws. Senator Coonan's responded: "... ***I have said that there is no current loophole***".

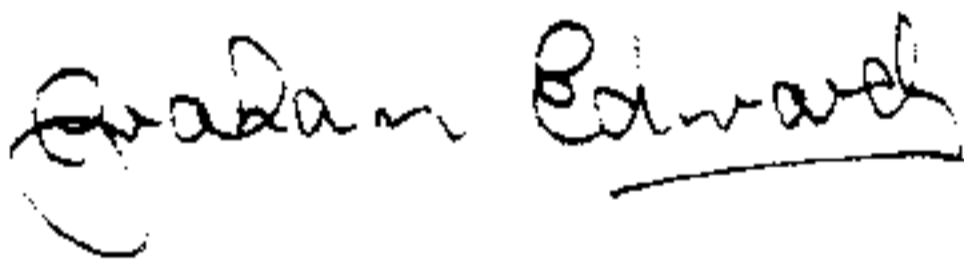
The Howard Government's denial that there is a loophole that needs to be addressed shows that they continue refusing to listen to the advice of the chairman of ASIC, Mr Jeff Lucy, who just six days later was quoted in the *Australian Financial Review*, saying: "**One way of addressing it (the promissory note loophole) would be to go from \$50,000 to \$500,000 or, if you really wanted to get enthusiastic, add two noughts.**"

Labor is also concerned about other issues surrounding the Westpoint collapse:

- the way in which Westpoint investors were required to pay excessive commissions to financial advisors;
- a Research House report which gave Westpoint a three star investment rating;
- the swapping of investors money between mezzanine schemes without the consent of investors;
- the use of a company claiming to be a bank selling Westpoint products, and
- the targeting of investors to establish Self Managed Super Funds (an issue which Labor has continued to pursue with the Australian Taxation Office, due to our concerns about the adequacy of the ATO's oversight of those Funds)
- the inability of the Financial Industry Complaints Service (FICS) to help investors who have lost over \$100,000
- the inadequate levels of insurance of licensed Financial Planners

The Westpoint collapse highlights several serious problems in the regulation of financial services, and the need for the Government to do more to protect investors. . I can assure you that Labor will continue to fight for answers on your behalf, and for changes to protect investors in the future. In the meantime, please do not hesitate to contact my colleague Senator Nick Sherry, if he can be of any further assistance to you in this matter.

Yours sincerely



**Graham Edwards MP**  
**Member for Cowan**