

I have noted you signed a petition calling on the government to act to assist investors in Westpoint mezzanine finance schemes who are facing loss as a result of the Westpoint failure.

I can assure you that the Australian Government is committed to ensuring that those investors who were deliberately misled or deceived by Westpoint, or their financial advisers, receive the full protection of the law..

Those individuals who acted dishonestly to wilfully exploit and misuse the funds provided by investors are being vigorously prosecuted and their assets frozen. The Government expects the full force of die law to be applied these individuals who have acted illegally and their assets to be seized and used for the benefit of creditors.

I would first like to make some general remarks regarding ASIC's powers to act against companies such as Wcstpoint. ASIC cannot intervene in the operation of a company solely because the projects the company proposes contain a certain level of risk. The assessment of risk relative to the proposed rate of return is a decision for individual businesses and investors.

The statement about risk is valid. However, ASIC received a number of warnings about Westpoint from reputable sources, including Denise Brailey and the West Australian Department of Consumer and Employment Protection, and failed to take any investigative action. One of the key factors in the setting up of ASIC was the protection of financial consumers. At no stage in the Westpoint tragedy has ASIC moved to protect the investors.

Mr Hockey also fails to mention the role of Kebbel Investment Bank (KIB), operated for almost five years under the noses of ASIC and APRA without detection, inducing the public to invest. Where were ASIC and APRA during those times?

The presence of ex Victorian Judge Lynette Schifftan with the express duty to ensure the protection of investor monies as an independent director on the Board of the Westpoint Mezzanine companies gave investors confidence. At least one newspaper stated she did not go ASIC on becoming concerned because they “leaked like a sieve”. Nor did she make her unease known to any other authority at the time. If that is the case, then why have ASIC not brought charges against her?

The statement ASIC could not intervene conflicts with other legal opinion. Hugh McLernon of IMF has stated ASIC could have stepped in and closed Westpoint down at any stage.

By way of background, ASIC has been making public statements about the risks to investors of high-yield debt instruments such as those offered by Westpoint, since early 2003. The campaign warned investors that higher yields were inevitably accompanied by higher risks. A media release containing a warning of this kind is issued by ASIC and placed on its website in May 2003, and similar warnings were repeated in subsequent years.

The claim of ASIC issuing warnings is an oft-repeated bleat, by Jeffrey Lucy, Senator Coonan, and Peter Dutton's office. I wrote to the Assistant Treasurer on 23-06-2006 demanding a copy of the warnings, when and where they appeared, and how the average investor would relate them to Westpoint Mezzanine companies. I am yet to receive a reply. There is the further question that if ASIC felt strongly about Westpoint, why did they not

come out and name the company? Isn't it ASIC's duty to protect financial consumers?

Why would anyone have gone to the ASIC when so many of the AFSL holders, which ASIC controls, were actively promoting Westpoint products? Why did ASIC not give clear directions to these AFSL holders to issue warnings to investors before they purchased Westpoint products?

ASIC has advised the Government that it became concerned about Westpoint's fundraising activities after it became clear that Westpoint was deliberately setting out to avoid the disclosure requirements of the law. ASIC took action in this respect in 2003, first through discussions with the company, and then through formal proceedings in court in May 2004 when Westpoint refused to change its behavior.

If ASIC believed something was wrong with Westpoint's activities why did they not demand immediate answers to specific questions, and then prosecute them if they were not answered? In collecting money, ASIC do not give the world one day's grace. Instead, as ASIC's Mr. Steward has claimed ASIC played "cat and mouse" with Westpoint. This was at a time of peak money flow into Westpoint. Why did they not request of the parliament immediate legislation to allow them to investigate, or demand a temporary injunction on Westpoint investment products until that company co-operate fully? Where was the consumer protection?

ASIC has further advised that it kept investors informed about its proceedings against Westpoint throughout this time. An announcement concerning ASIC's action against Westpoint in the Supreme Court of Western Australia was issued as a media release and placed on its website in May 2004. In addition, ASIC wrote to all of the investors in the two mezzanine financing schemes which formed the substance of the court proceedings telling about ASIC's concerns, and inviting them to join its action against Westpoint. None of the investors responded to this invitation.

The Hon J. Hockey fails to mention ASIC took Westpoint to court for technical decisions on points of law. ASIC did not attempt at any time to prosecute Westpoint.

ASIC, after investigation, gave Westpoint permission to implement the model with the issuing of the "2000 Freehills letter", ignored repeated warnings, took Westpoint to court without ever going to the minister to ask for the necessary powers. All very strange!

Why did ASIC not produce the "2000 Freehills letter as part of the court evidence. Surely it had direct relevance to the points of law in questions?

No investor has the desire to peruse the very user-unfriendly ASIC database unless it is absolutely necessary. Where does any authority, including ASIC, state that every investor in Australia should peruse the database on a daily basis to ensure the products in which they have invested are not under ASIC scrutiny?

ASIC chose Bayshore Mezzanine and Emu Brewery as test cases for ALL the mezzanine companies. ASIC wrote to a total of 256 investors - only because the court demanded they do so. The letter they sent was unintelligible to anyone except a corporate lawyer, and the investors took it as some form of correction of minor procedure. As the Court's decision

would affect all Westpoint Mezzanine investors, why did ASIC not write to all investors in simple English explaining the consequences of the court action?

Why did ASIC take Westpoint to court when they had given the all clear to Westpoint in 2000? Why did ASIC not tender the "2000 Freehills letter" as part of the evidence. Taking context into account, did its contents have any bearing on the points raised?

I have consistently asked if ASIC had the power to demand the cessation of Westpoint issuing promissory notes, as stated in Media Release 04-157, when they had allowed them from the time of the initial Westpoint offerings, an there had been no changes in the law. I am yet to receive an answer.

During this time, and up to late 2005, Westpoint confirmed that the company was solvent and audited financial statements did not indicate any information to the contrary. When ASIC obtained evidence confirming Westpoint's distressed financial state in late 2005, it successfully took action to stop Westpoint from operating further.

The Hon. J. Hockey has failed to mention ASIC only stepped in after Westpoint ceased paying interest. I formally request the physical dates on which KPMG signed off Westpoint Corporation, and the Westpoint Mezzanine Companies from 2001. I also request publication of any notes during that period.

ASIC is now taking appropriate action against Westpoint and in support of investors. ASIC is turning its attention to the conduct of a number of parties involved in operating and promoting Westpoint Mezzanine finance schemes. Action has already started against a number of the main Westpoint directors, including group founder Mr. Norm Carey. ASIC has obtained a court order freezing the personal assets of these individuals and barring them from leaving the country while its investigation continues.

Had ASIC been more proactive at all stages of the Westpoint tragedy and carried out their role of protecting financial consumers many Australian citizens would have not taken their own life; lost their homes; had their lifestyles destroyed; suffered stress related problems.

THE WORD *PROTECTION* CARRIES WITH IT A SENSE OF REAL-TIME MONITORING AND ACTION.

Except in exceptional circumstances, a policeman who arrests a murderer cannot claim protection of the victim.

Not once in the catastrophic Westpoint saga can ASIC claim it was protecting the public.

In addition to the loss by thousands of Australian investors, how much has the inaction of ASIC to put simple monitoring in place cost the Australian taxpayer?

ASIC has also announced that it is investigating the conduct of financial advisers involved in promoting the Westpoint schemes and that appropriate action will be taken if breaches of the law are found to have occurred. ASIC was recently able to stop one of the main promoters of the Westpoint schemes, Neil Bumard, from leaving the country. Mr Burnard's assets have now been

frozen pending further investigations by ASIC.

ASIC were so ill prepared at the time of Mr. Burnard's forced return to Australia they had to call in Joe Felice and myself, both members of the Westpoint Investment Group, to provide the evidence to obtain the affidavit to initially freeze his assets.

Furthermore. ASIC is supporting investors in recovering the funds they placed in Westpoint schemes. It is, for example, helping investors claim compensation from financial advisers due to defective advice by closely monitoring the response of these advisers that claims are dealt with quickly and fairly.

ASIC's preparation is such that on Friday, 11-08-2006, Three members of the Westpoint Investors Group attended a meeting held by two ASIC personnel who were attempting to produce a general document to explain to investors what they should do. Both officers were pleasant, and easy to work with. However, they knew nothing of the investors' confusion because of legal technicalities. In no way do I blame them. I put it down to the inability of management to plan ahead, and provide staff with the necessary information to do their job.

Legal action in relation to Westpoint schemes has been assisted by the recent decision of the Supreme Court of Western Australia which has confirmed that the fund-raising by Westpoint for the Emu Brewery project was an offering of an interest in a managed investment scheme. Managed investment schemes are fully regulated with the Corporations Act both in regard to disclosure and financial advice.

Yes, Managed Investment Schemes can be regulate products, However, if they are not issued with a prospectus, and never subjected to stringent ASIC testing, then they are illegal product. The WA court decision was that Westpoint Mezzanine Schemes were MIS's. The fact they were never registered make them illegal MIS's. Every Westpoint Mezzanine investor put their money in an illegal MIS. ASIC failed Westpoint investors. As ASIC 's first, and only Minister, Joe Hockey could hardly not know the full implication of the court decision.

This means that such schemes are subject to licensing, disclosures disclosure and conduct requirements contained in the Corporations Act. Failure to register a managed investment scheme that requires registration under the Corporations Act exposes a person to fines of up to \$22,000 and/or imprisonment for 5 years. The court can also order the schemes be wound up. Failure to provide appropriate disclosure documentation when required by law can also result in criminal penalties and civil liability , depending upon the precise circumstances.

I really don't believe the Hon. J. Hockey has signed his name to this document!

Yes, Management Investment Schemes (MIS's) do come under the Corporations ACT. However, in the process of becoming a legal MIS, it must pass a number of stringent tests, and at issue it requires a full prospectus.

Westpoint never made an application to become a MIS, and the issue vehicle was an Information Memorandum.

The fact is ASIC thought it was NOT an MIS, and this was one of the points of law they lost in the appeal.

WESTPOINT INVESTORS WERE FROM DAY ONE IN AN ILLEGAL INVESTMENT SCHEME.

The Government is supporting ASIC by making the appropriate provisions in its recent Budget to ensure that it has the necessary funding to pursue cases such as Westpoint. ASIC has received additional funding of \$30 million per annum for the investigation and litigation of matters of significant public interest. In total, additional funding of \$234.6 million over the next four years has been made available to ASIC through the Budget over the next four years.

The Government is committed to ensuring that those investors misled by Westpoint, its directors, or their financial advisors, receive the full protection of the law.

I trust this information is of assistance.

This protection even extends to ASIC charging them money if they have to find out information about their adviser.

I am sure those whose partners have died of “stress”, the many who have lost their homes, and those leading suffering depression in smashed lifestyles will be greatly comforted in the knowledge the Government has an interest in prosecuting the offenders. Particularly when they know the Government receives in excess of \$350 million each year from the profit of ASIC. Investor interest is deepened by the knowledge this money could have been used to protect them. I am also sure when they write to their “caring government”, which all end up in the office of the Assistant Treasurer, they really do appreciate the rubbish reply, months later, informing them of how much ASIC is doing. Of course, no question is ever answered with honesty.

Yours sincerely,

the letter is signed Joe Hockey.