



The Hon.
Joe Hockey MP

Member for North Sydney. Minister for Human Services



25 JUL 2006

I have noted you signed a petition calling on the government to act to assist investors in Westpoint mezzanine finance schemes who are facing losses 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 adviser, 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 the law to be applied to those 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 Westpoint. 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.

ASIC, however, can act and is fully expected to act when companies are in breach of the law and when there are specific grounds for suspecting that a company may be about to fail. In such cases the priority is always to safeguard the remaining assets for the benefit of creditors and investors.

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 was issued by ASIC and placed on its website in May 2003, and similar warnings were repeated in subsequent years.

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 behaviour.

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 them about ASIC's concerns and inviting them to join its action against Westpoint. None of the investors responded to this invitation.

During this time, and up until late 2005, Westpoint directors 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.

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 the Westpoint mezzanine finance schemes. Action has already started against a number of the main Westpoint directors, including group founder Mr Norman Carey. ASIC has obtained a court order freezing the personal assets of these individuals and barring them from leaving the country while its investigations continue.

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 Burnard, from leaving the country. Mr Burnard's assets have now been frozen pending further investigations by ASIC.

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 to ensure that claims are dealt with quickly and fairly.

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 fundraising by Westpoint for the Emu Brewery project was an offering of an interest in a managed investment scheme. Managed investment schemes are fully regulated under the Corporations Act both in regard to disclosure and financial advice.

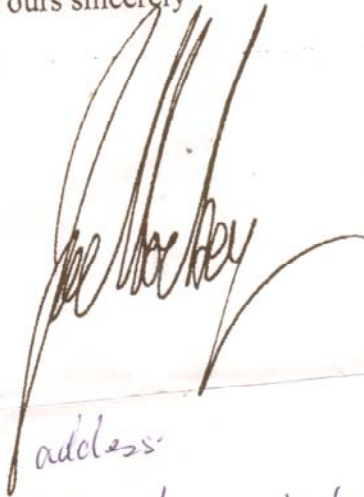
This means that such schemes are subject to the licensing, disclosure and conduct requirements contained in the Corporations Act. Failure to register a managed investment scheme that requires registration under the Corporations Act exposes a person to fines of up to \$22,000 and/or imprisonment for 5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

The Government is supporting ASIC by making 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.

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

I trust this information is of assistance.

Yours sincerely



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