

Dear Sir,

Congratulations for bringing a long overdue matter into the public arena.

One can harbour no doubts planners have behaved abominably, often aided and abetted by equally crooked lawyers. The inquiry provides an opportunity for the identification and prosecution of many of them.

Although not in the terms of reference of the inquiry, no one should forget much of the tragedy that has occurred in the financial investment industry would not have taken place if the financial regulator had carried out its duties diligently. ASIC has a responsibility to control the behaviour of the planners. Despite that, overwhelming evidence exists ASIC consistently failed to take action when problems first surfaced. In many cases they never took action. ASIC has often uttered the cry they could not take action because of the current laws. The lack of appeal to Parliament for the necessary laws negates this argument. ASIC's defence is indefensible.

Hopefully the inquiry will bring to light how ASIC, through its negligence, aided and abetted the destruction of the well being of tens of thousands of Australian lives in terms of monetary loss, emotional and physical trauma, and in some cases the loss of life by suicide.

The direct result of ASIC's horrendous regulatory failure is the saddling of the Australian public with massive costs in terms of the payment of needless pensions and their associated welfare costs.

The previous Coalition Government created ASIC with the stated intention of not only carrying out normal regulatory duties as directed by the parliament, but also charged it with protecting investors. Often cited as a company in which ASIC failed to take appropriate action, Westpoint is but one of a myriad of such companies littering the Australian financial landscape. There will be more. However, to the best of my knowledge, Westpoint is unique among those companies to date.

The following explains not only why I hold this view, but also demonstrates the cynical manner in which ASIC has tried to hide its mistakes and how it deals with questions that might cause it embarrassment.

In an attempt to force KPMG and planners to repay Westpoint investors for their losses, ASIC has convened a mediation meeting. It is ASIC which should be compensating Westpoint investors both for the loss of their capital, and the damage ASIC inflicted upon them. As the attachment 2009_02_17_MacAulay_McNally demonstrates, every Westpoint Mezzanine investor put his or her money into an illegal Managed Investment Scheme under the close gaze of the regulator. ASIC ignores any suggestion of its responsibility in this matter. As might be expected, at the time of writing, Helen McNally has not replied to my last email.

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