

**Subject:** WESTPOINT victims deserve a fair go - Senator Sherry Media release  
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# **SENATOR NICK SHERRY**

**Labor Senator for Tasmania**

**Shadow Minister for Superannuation,**

**Intergenerational Finance: Banking & Financial Services**

## **\*\*\* MEDIA RELEASE \*\*\***

**September 13, 2006**

### **WESTPOINT victims deserve a fair go**

Doubts as to whether the Financial Industry Complaints Service (FICS) has the ability to deal with Westpoint disputes must be cleared up immediately, Shadow Minister for Superannuation, Senator Nick Sherry said today.

“If this is not done Westpoint victims face long delays and greater uncertainty”.

The Howard Government has failed to protect Westpoint consumers and now needs to address the necessity for urgent legislation to fix promissory note loopholes.

Promissory notes greater than \$50,000 are not debentures for the purposes of the Corporations Act. Labor and even the Chairman of ASIC, Mr Jeff Lucy have called for this amount to be increased to close this loophole. Mr L suggested this be increased to \$500,000 or even \$5,000,000.

#### **Now**

the government needs to address another possible loophole with promissory notes and legislate that FICS co resolution service has the power to adjudicate on matters dealing with promissory notes.

ASIC took action in 2004 to clarify their power over the use of promissory notes and the ruling from this was they were considered to be a Managed Investment Scheme.

Furthermore the Western Australian Court of Appeal upheld this ruling in 2006, which should remove doubt promissory notes are Managed Investment schemes

However FICS, which operates a free national complaint resolution service approved by ASIC to deal with complaints about Australian Financial Services Licence Holders has cast doubt over this ruling.

A number of their members, who provide financial advice on many products including Managed Investment Schemes, are arguing that FICS should not deal with the complaints because promissory notes are not ‘financial products’ as defined in the Corporations Act.

We don’t want Westpoint victims going through the same process ASIC went through - eighteen months of court

action to determine promissory notes are a managed Investment Scheme.

FICS needs to restore Westpoint victims' faith that their external dispute resolution service can handle complain against Australian Financial Services Licence Holders. Many victims have been waiting nine months or more for action. Only last week I wrote a letter to FICS seeking answers for apparent excessive delays and now they have started legal action in the Federal Court.

The government needs to act now to shore up Westpoint victims rights and remove any doubt that FICS has the power to help these victims.

**For more information contact Shane May 0438 950 375**

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