

Subject: Senator Sherry update on Westpoint
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BCC:

Hi

I wish to inform you of what has been happening of late in regards to representation for you as a Westpoint investor.

Two months ago Senator Sherry wrote to FICS asking for answers to why their dispute resolution service appears not to be working, to date he has not received a response but soon after the letter was sent FICS announced they were taking legal action to gain a ruling to support their claim that they do have the authority to adjudicate on managed investment schemes.

Senator Sherry also help arrange the FICS story on the 7:30 report attempting to highlight the problems Westpoint investors who are proceeding through the system are facing.

Last week Senator Sherry took the opportunity of Senate estimates to question ASIC on several Westpoint related matters.

His main aim of questioning was relating to:

- Promissory note loophole, raising the \$50,000 figure to a much higher level and question Mr Lucy on the difference of opinion between him and the government.
- Lifting the FICS monetary cap from \$100,000 to a higher level, especially in light of Mr Lucy saying at a WIG meeting that this will be done soon, FICS new rules have just been released last week and it was not included in this, in fact it stated this has been deferred for further review.
- FICS Court action and why is it needed after ASIC has been down the same path.
- FICS enforcement powers and now that FICS has significant delays due to court action, if ASIC continues with its legal action against the financial planners involved they may deregister them before FICS has a chance to make rulings. If this happens FICS has limited ability to force FP's to pay compensation, their only leverage is the threat to remove license and this would have already been done by ASIC.
- Insurance requirements for Financial Planners has been delayed again, the government recently announced that mandatory PI insurance would again be deferred until 2007, why? The government has had since 2001 to implement the rules for "adequate" PI insurance as sought in the FSR Act 2001, yet they still have not come up with any plan for this. This would have helped the majority of Westpoint investors if it was adopted back in 2001 when it should have been.

I have attached Senator Sherry's media release put out today, 7 November 2006 and I am hoping that hansard of the questions will be available by tomorrow.

When it is available I will distribute this to you as well.

If you have any queries in relation to this or any other matter please do not hesitate to contact me

Cheers

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SENATOR NICK SHERRY

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***** MEDIA RELEASE *****

November 7, 2006

Government inaction on Professional Indemnity Insurance

"Labor welcomes the government's action, albeit very late, on mandating professional indemnity (PI) insurance for financial services professionals", Senator Sherry said today.

The need for an adequate level of insurance was recognised back in March 2001 when the Financial Services Reform (FSR) Act became law, yet here we are over five years later and the government has only managed to release draft regulations, waiting for the consultation stage.

Prior to the FSR Act 2001 the only requirement for a financial services professional was to lodge a maximum \$20,000 bond with ASIC. In a situation like Westpoint, investors were required to invest at minimum \$50,000 in promissory notes. Obviously the \$20,000 bond would not meet compensation payment for one client let alone the hundreds that a financial services professional advise each year.

The *FSR Act 2001* repealed Chapters 6 and 7 of the *Corporations Act 2001* (Corporations Act) and inserted a revised Chapter 7 into the Corporations Act, which included Section 912B

Section 912B of the Corporations Act states that until 30 June 2006, financial advisers are required to meet the same obligations that they were required to meet before FSR became operational.

That is, the government left investors without protection for a further five years as financial services professionals were allowed to continue with a \$20,000 bond until 30 June 2006.

The majority of Westpoint investors invested in Westpoint during this time; if the Government had acted earlier they would have some additional protection now.

If an investor invested more than \$100,000 in Westpoint they cannot claim through the Financial Inquiries Complaints Service, due to their monetary limit, and if their financial services professional did not have adequate insurance then the legal option is not viable. These investors are left high and dry.

Incredibly after five years of waiting for the government to introduce PI insurance requirements for the financial industry the government again deferred any need for this insurance until 2007.

Obviously the Government has not learned any lessons from the pain and hardship endured by the Westpoint victims and is giving the 'green light' for this to happen to other investors.

During last weeks Senate estimates I questioned ASIC as to why PI insurance was still not mandatory, the answer "this is an extremely complex area". I can't understand the complexity for a six year delay implementing Section 912B of the Corporations Act unless the government are weak when it comes to investor protection.

It seems more than coincidental that only two working days after I highlighted at Senate estimates that it is not acceptable for Australian investors to be left without protection the government has announced they will finally act.

I will be looking closely of their definition of 'adequate" insurance, those that have lost everything deserve : 'fair go' from the Government and Labor will ensure they get it.

For more information contact Nick Sherry 0418 482 807

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