



SENATOR NICK SHERRY

Labor Senator for Tasmania

Shadow Minister for Finance and Superannuation

30 July 2007

Graham MacAulay

Email; gmacaulay@inet.net.au

Dear Mr MacAulay

Thank you for your correspondence outlining the anguish you are experiencing as a result of investing in one of many failed property investment schemes.

I apologise for any delay in responding to your email but as a result of the continuing number of collapses I have been inundated with many hundreds of requests for help.

In the last eighteen months there has been several collapses, the failings of Westpoint, Fincorp, Australian Capital Reserve (ACR) and Bridgecorp alone have affected 20,000 investors who have lost savings of up to \$1 billion.

Since the collapse of Westpoint I have been championing the rights of investors in Parliament, Senate Estimates and every other opportunity I can.

At Senate Estimates in February and May I was hoping to gain specific answers on how ASIC has presided over such collapses and has failed to halt or minimise the string of collapses.

During the February Senate Estimates the chairman Jeff Lucy was unable to attend and as such I was unable to gain any meaningful answers to questioning, then during the May Senate Estimates, Mr Tony D'Aloisio had been newly appointed as the chairman of ASIC and was unable to adequately address historical events leading to collapses, he focused on plans to address future collapses.

Unfortunately we have had a further two collapses since the May Senate Estimates and alarm bells are ringing for more in the future.

During the May Senate Estimates I was able to gain information that revealed that there is another \$8 billion invested in similar schemes (unlisted-unrated debentures) such as Westpoint, Fincorp, ACR.

So it was with some urgency that I, on behalf of the Australian Labor Party, called for an

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Unfortunately since requesting the Joint Parliamentary Committee on Corporations and Financial Services and the Government to hold an inquiry into these corporate failures a further two collapses involving Bridgecorp and Mega-Money have occurred.

Labor's many attempts to gain answers from the Government, the Australian Securities and Investments Commission (ASIC) and the Australian Tax Office (ATO) on how disasters like Westpoint, Fincorp, ACR and Bridgecorp could occur have failed.

It is vital that we gain a full understanding of how this has happened, firstly, to improve the regulation regime to minimise the likelihood of these events occurring again and second to keep pressure on all parties to maximise the recovery of monies for victims.

Since the collapse of Westpoint twenty months ago not one legislative change has been made by Government and neither the Government nor ASIC have admitted to having made a single error in judgement.

After reviewing the collapses of Westpoint, Fincorp, ACR and Bridgecorp it was revealed the regulator ASIC had been aware of underlying problems with these types of investment schemes as early as 2001. In the case of Westpoint the Howard Government and ASIC were informed, in writing, in August 2002, January 2003, May 2003, June 2003 and March 2004 by the Western Australian Minister for Consumer and Employment Protection, Mr John Kobelke that he held grave concerns for those investing in Westpoint style investments.

In a written response from the Howard Government, a year after Mr Kobelke wrote to them, the Howard Government, in February 2003, stated, ***"If required the Government will consider any recommendations ASIC makes to improve consumer protection in this area"*** and ***"the Government will consider legislative change should ASIC identify any regulatory gap"***.

Unfortunately for Westpoint investors, neither ASIC nor the Howard Government were able to identify any regulatory gap that required legislative change. This inaction in turn failed to protect investors.

Similar events were played out with Fincorp, ACR and Bridgecorp. The Howard Government and ASIC were informed by State Governments that they had concerns with these investments, still both failed to act to protect investors.

In 2006 ASIC has admitted they would be powerless to shut down another Westpoint-style investment scheme because of a loophole whereby promissory notes of \$50,000.

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ASIC's Chairman Mr Jeff Lucy announced legislative change would be necessary to fix this loophole. Some four years after ASIC was first asked to identify any regulatory gap.

When I questioned ASIC officials at the May 2006 Senate Estimates about the reason they did not recommend any legislative changes to the Government, they indicated that their policy was to determine through the court process whether current laws needed amendment.

Finally in May 2007 ASIC wrote to the Government requesting the promissory note loophole be addressed and advised the government that a review of the threshold (upwards) is appropriate.

Unfortunately Senator Coonan in response to questioning from the Labor Party showed that the government is either at best confused or at worst deliberately misleading investors on this issue.

Senator Coonan was asked *"Wasn't the Westpoint collapse in part due to a loophole exempting promissory notes greater than \$50,000 under the Corporations Act?"*, *"Why did the minister, in her answer of 22 June last year, deny time and again that any loophole existed?"* and *"Can the minister now indicate, almost a year after being questioned on the matter, what action has been taken to close the loophole?"*.

Senator Coonan's response, *"I am representing the Assistant Treasurer, and I am advised that there is no gap in the law"*.

She later contradicted herself when she stated *"It appears that those running Westpoint chose to structure their fundraising activities so as to avoid the disclosure requirements of the Corporations Act"*.

Senator Coonan claimed there is no gap in the law but then went on to say those running Westpoint chose to structure their fundraising activities so as to avoid the disclosure requirements of the Corporations Act. If this is possible under the current laws then there is a loophole that needs addressing and the government needs to admit this.

There is no doubt that the exclusion of promissory notes greater than \$50,000 being classified as debentures had created a loophole that the Westpoint group cruelly manipulated.

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Furthermore areas such as countering expensive advertising campaigns by these types of investments which deliberately target the elderly or unsophisticated investors need to be fully investigated.

Since the Westpoint collapse Labor has called for an increase in the monetary cap placed on investors who wish to utilise the Financial Industry Complaints Service (FICS). This is currently set at \$100,000 and needs to be increased to at least \$250,000.

Since Labor has called for this to be increased there has been a further four collapses and a further 20,000 investors affected by significant losses, yet due to the government's inaction many of these investors are unable to utilise the free FICS process and cannot afford expensive legal action.

Furthermore when the government introduced the Financial Services Reform Act in 2001 this Act was supposed to include a chapter on Personal Indemnity (PI) insurance. This was to ensure financial planners had sufficient PI insurance in the event they provided unsound advice to their clients, some six years later the government had still not finalised this requirement and as such many victims will find compensation difficult as those financial planners who gave misleading advice may have been underinsured.

It is obvious to Labor that a "perfect storm" of failure has occurred across the financial services sector and that this requires a substantial upgrade of regulation. It is time for the Howard Government to stop sticking its head in the sand and begin to help those investors who have fallen victim to their inaction and to protect future investors.

If successful at the next election a Rudd Labor government would hold an enquiry into the financial services industry, with particular focus on collapses such as Westpoint, Fincorp, ACR and Bridgecorp to determine what mistakes were made and effect change to legislation to minimise them happening again.

Also a Rudd Labor Government would ensure ASIC adopts a more pro-active approach to its procedures. Providing better investor education and warnings and ensuring tighter compliance by financial services license holders.

If more effort is placed at the front-end (public education and awareness and company monitoring) ASIC would need fewer resources and in turn funding at the back-end (litigation) because less, costly and lengthy, legal actions would be required.

Another area that would be investigated by a Rudd Labor government is the merger of ASIC and APRA like many other countries in the world to provide a more effective and streamlined investor watchdog. This would also be decided upon as part of the enquiry

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I will continue to draw attention to all these issues and fight for answers to establish how these collapses continue to happen and how Governments can protect investors in the future.

It has now been over four weeks since I have called for an inquiry and still the government remains silent, at this stage not agreeing with my request.

I will continue to call for this inquiry and continue to place pressure on the Government to allow this to proceed as a matter of urgency, before another collapse occurs.

I have included a selection of media releases that I have released on this issue.

In the meantime, please do not hesitate to contact my advisor Shane May if you feel we can be of any further assistance to you in this matter.

Yours sincerely

Senator Nick Sherry

Australian Senate



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