

Dear .....

Thank you for your email of 8 December 2006 to the Parliamentary Secretary to the Treasurer concerning Westpoint. Your letter has been referred to the Minister for Revenue and Assistant Treasurer as he has portfolio responsibility for this matter. The Minister has asked me to respond to you.

I appreciate your concerns about the losses you and others may suffer on your investment in the Westpoint group. I can assure you that the Australian Government is committed to taking action in relation to those investors who were deliberately misled or deceived by Westpoint or their financial adviser. The Government expects the full force of the law to be applied to those individuals who have acted illegally.

For Westpoint investors, ASIC is providing support in recovering the funds they placed in Westpoint schemes. It is, for example, helping investors who are claiming 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.

For Westpoint investors who are unsuccessful in recovering funds and face severe financial hardship, the Government has granted an exemption to the investments in the Westpoint group of companies from the social security income test deeming rules. This means that any investment an income support recipient makes in these companies is exempt from the deeming provisions, but any income earned by the investment would still be counted. This will assist people who need to seek an income support payment, such as the age pension.

Additionally, you may not know that there are special hardship provisions that allow investors in severe financial hardship and whose payment is affected by the assets test to have outstanding loans disregarded. If investors in the Westpoint group of companies would like more information about the special hardship provisions or about the operation of the social security means test I would recommend that they arrange an interview at Centrelink with a Financial Information Service (FIS) officer. FIS officers are specially trained to provide information about the assessment of income and assets. FIS is a free service. Investors can contact their local FIS officer by ringing Centrelink on 13 2300 for the cost of a local call.

PO Box 6022 Telephone: 026277 7360 Facsimile: 0262734125  
Parliament House Canberra ACT 2600 Web: [www.peterdutton.com.au](http://www.peterdutton.com.au)  
Email: [Peter.Dutton.MP@aph.gov.au](mailto:Peter.Dutton.MP@aph.gov.au) [assistant.treasurer.gov.au](mailto:assistant.treasurer.gov.au)

In terms of ASIC's actions on the Westpoint issue, it may help if I outline ASIC's actions to date and the next steps in the process.

ASIC's actions to date

ASIC advises that it became concerned about Westpoint's fundraising activities after it became clear that Westpoint was deliberately setting out to avoid the disclosure requirements in 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.

Initial actions taken by ASIC against Westpoint and its fundraisings were part of a wider campaign to ensure that people investing in interest-bearing instruments promising a higher than usual yield were made aware of the heightened risks typically associated with such investments. A public warning about the risks associated with high-yield debentures and similar investments was, for example, placed on ASIC's website in May 2003 as part of the campaign. This was one of a number of warnings issued by ASIC with the consistent message that higher yields are inevitably "linked to higher risks, and that investors need to be especially careful before placing their money into such investments. ASIC 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. ASIC wrote to investors in the two mezzanine financing schemes which formed the substance of the court proceedings informing them of 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. ASIC cannot intervene in the operation of a company solely because the projects they propose have a high level of risk. The assessment of risk relative to the proposed rate of return is a decision for individual businesses and investors. However, when ASIC obtained evidence confirming Westpoint's distressed financial state in late 2005, it successfully took action to stop Westpoint from operating further.

A liquidator has been appointed by ASIC to some of the Westpoint companies. Following an application by ASIC, the Federal Court has also appointed a liquidator to the parent company, Westpoint Pty Ltd. This will assist in securing investor assets and make sure that they are devoted to the repayment of moneys due to creditors.

The Government's view is that it is highly likely that significant breaches of the law have been committed by some of the individuals responsible for operating and promoting the Westpoint schemes, and that all efforts will be made to bring these people to justice.

ASIC's latest action

Charges Laid Against Neal Austin Burnard

During the course of ASIC's investigations in the collapse of the Westpoint group, ASIC examined the affairs of Palentia Pty Limited, formerly known as Kebbel (NSW) Pty Ltd, in relation to fundraising for the Westpoint 'mezzanine' companies. Mr Burnard was a director of Palentia.

Charges were laid on 4 December 2006 against Mr Burnard. Mr Burnard has been charged with four counts of engaging in dishonest conduct in relation to a financial product in the course of carrying on a financial services business under the Corporations Act 2001 (the Corporations Act); and 14 counts of obtaining money by false or misleading statements under the Crimes Act 1900 (the Crimes Act) of NSW. His first court appearance was 19 December 2006, at the Local Court of NSW in Sydney. Mr Burnard has been granted bail, and the matter will return to court on 20 February 2007.

ASIC alleges that Mr Burnard engaged in dishonest conduct in the course of carrying on a financial services business, namely providing financial product advice, by representing to investors that 'Kebbel Investment Bank' existed when, in fact, no such entity existed. These charges were brought under the Corporations Act.

ASIC also alleges that Mr Burnard, with intent to obtain a financial advantage for various Westpoint 'mezzanine' companies, made or published a statement which he knew to be false or misleading in a material particular, in that it purported that an entity 'Kebbel Investment Bank' existed when in fact no such entity existed.

In addition, ASIC alleges Mr Burnard described himself as a director of 'Kebbel Investment Bank' and made or published statements referring to 'Kebbel Investment Bank', which he knew to be false or misleading. These charges were brought under the Crimes Act.

The Commonwealth Director of Public Prosecutions (DPP) is prosecuting this matter on ASIC's behalf.

#### Westpoint Directors

ASIC is also currently investigating whether directors of companies in the Westpoint group have breached any laws.

These investigations are wide-ranging and involve consideration of a range of possible misconduct by directors and a variety of civil, criminal and administrative remedies, including civil penalty proceedings. In civil penalty proceedings, orders may be sought for pecuniary penalties, compensation and/or banning from managing a corporation.

#### Looking ahead

A considerable amount of work has already been done in order to uncover what occurred during the life of the Westpoint companies. ASIC expects that the investigations will continue for many months. Parts of the investigations will be completed at different stages, depending on their complexity and scope. Once ASIC completes an investigation or part of an investigation, it may refer criminal misconduct to the DPP to decide whether to commence a prosecution, commence civil action itself, or refer an administrative brief to an ASIC officer for a licensing decision.

ASIC is asking the Court to continue orders that freeze the assets of the Westpoint directors and companies associated with them for a further six months, until its investigations are further advanced. The application before the Federal Court in Western Australia on 18 December 2006 was for this purpose. The judge has indicated that he will hand down his decision in January 2007, and that the orders are to continue until that time.

ASIC has also commenced a large number of related proceedings to wind up various Westpoint companies that were insolvent. ASIC has successfully wound up 18 companies in these actions.

ASIC will continue to investigate all aspects of the collapse of the Westpoint group of companies but because of the complexity of the issues and the substantial information

which needs to be gathered, it is expected to take some time. Heavy penalties, both civil and criminal, apply to persons who may be in breach of their obligations under the Corporations Act.

The Government is closely monitoring legal developments in the Westpoint case. ASIC will continue to provide updates, as appropriate, through media and information releases. Its primary communication to affected investors is via its website at [www.asic.gov.au](http://www.asic.gov.au).

Thank you for bringing this matter to the Government's attention. I trust this information will be of assistance to you.