

1 **Senator XENOPHON**—Chair, I do have five questions in relation to Westpoint, but I can wait my turn
2 or I can keep going and take five minutes.

3 **CHAIR**—I think Senator Bushby is anxious.

4 **Senator XENOPHON**—I will wait my turn for the Westpoint questions. Mr D’Aloisio, insofar as the
5 answers that you will provide on notice, can you provide any documents or supporting documentation in
6 terms of a paper trail of the enforceable undertakings and dates and times when things were followed up
7 and the like?

8 **Mr D’Aloisio**—Certainly enforceable undertakings are a public record and they are on our website. We
9 can provide them. As to whether I can provide any other papers, I will need to look into that.

10 **Senator XENOPHON**—Insofar as—

11 **Mr D’Aloisio**—Insofar as I can as a matter of law.

12 **Good question and good answer.**

13 **Senator XENOPHON**—Insofar as those documents reflect what level of compliance was there with
14 respect to the enforceable undertaking.

15 **Mr D’Aloisio**—I see what you mean, yes.

16 **Senator XENOPHON**—And what follow-up there was by ASIC to follow up Mr Cornwell and his
17 activities, thank you.

18 **CHAIR**—Senator Xenophon, I understand that you can go ahead, if you prefer.

19 **Senator XENOPHON**—Mr D’Aloisio, I have been asked by Graham MacAulay, who is the president
20 of the Westpoint Investors Group, to put some questions to you.

21 **Mr D’Aloisio**—Yes. I know Mr MacAulay.

22 **He certainly does!**

23 **Senator XENOPHON**—He has contacted my office. Firstly, did ASIC commission a solvency review of the
24 Westpoint group and its entities?

25 **Mr D’Aloisio**—In what year?

26 **Senator XENOPHON**—Prior to action being taken by ASIC?

27 **Mr D’Aloisio**—I am not sure. I think there was. Whether it is a solvency report I am not sure. Again, I
28 think so, but I will take it on notice and answer that specifically.

29 **Daloisio meets with the Westpoint Group on an irregular basis. Currently, ASIC is running a Section**
30 **50 with the aim of recovering money for Westpoint investors/victims. Simultaneously, Carey is suing**
31 **ASIC. No I don’t expect Tony to know every detail of the case. However, it is unthinkable he has not**
32 **been fully briefed on what has happened to-date. If he hasn’t been briefed, then that only adds to a**
33 **Royal Commission that includes ASIC operations. If a solvency review was taken, it would involve**
34 **outside auditors and it would be unthinkable that Tony D’Daloisio did not know of its existence.**

35 **Senator XENOPHON**—Thank you. Following on from that, was there a Deloitte solvency review
36 carried out in relation to Westpoint before action was taken by ASIC? Did that solvency review find that
37 Westpoint was not insolvent?

38 **Mr D’Aloisio**—I cannot answer that either. I will have to take that one on notice. It does not ring a bell
39 with me.

40 **I reiterate my previous point.**

41 **Senator XENOPHON**—Further to that, would that be a public document in relation to any solvency
42 reviews carried out?

43 **Mr D’Aloisio**—I will have a look.

44 I believe the press should try to force him to make a public statement. It has obvious implications on
45 the Carey suit, and more importantly, if there was a solvency report it will show ASIC treated
46 Westpoint investors.

47 **Senator XENOPHON**—The question that Mr MacAulay has raised with me is: why did ASIC make
48 the winding up application against ASIC's own expert opinion, given his understanding that Deloitte's
49 solvency review found that Westpoint was not in fact insolvent?

50 **Mr D'Aloisio**—Again, I will look more carefully at that, because this now goes back to about 2004-05.
51 ASIC was quite clear at the time that it needed to take action to put the companies into liquidation in order
52 to protect investors. That then led to a series of actions that ASIC took. So ASIC made a judgment that it
53 was in the best interests to put those companies into liquidation. I think as history has proven, that was
54 correct. As to what the basis of it was and the nature of the reports ASIC received, I will have a look at that
55 and answer the question.

56 **D'Aloisio did not answer Xenophon's question, nor did he request the extraneous waffle.**

57 **Senator XENOPHON**—I have a couple more questions. If that is the case, did not ASIC suppress the
58 Deloitte's solvency report when making an application to the Federal Court? In other words, that solvency
59 report was not provided to the Federal Court when the application was made.

60 **Mr D'Aloisio**—I will take that on notice. That is not ASIC—we would not—

61 **Not an answer to the question!**

62 **Senator XENOPHON**—Again—

63 **Xenophon pushes D'Aloisio.**

64 **Mr D'Aloisio**—I will take it on notice.

65 **Again D'Aloisio sidesteps the question.**

66 **Senator XENOPHON**—I want to make it clear that these are concerns—

67 **Mr D'Aloisio**—These are questions—

68 **That D'Aloisio is not answering.**

69 **Senator XENOPHON**—These are questions that have been expressed to me. If that is not the case, it
70 will be terrific if you could clarify that. The other matter that has been put to me is that there is a
71 perception amongst investors who have lost their money that ASIC timed their action to prevent the
72 rollovers and repayments proceeding and that led to a chain of events that led to the collapse of this group
73 when a solvency review found that the group was still solvent at that time.

74 **Xenophon knows he has D'Aloisio in a corner. If ASIC did so time their action that led to the collapse
75 of the Westpoint group, and the Deloitte report showed Westpoint was solvent immediately before
76 that action, then surely the investors has a case against ASIC based on malfeasance.**

77 **Mr D'Aloisio**—ASIC has worked hard to recover money. We are now in the process where, I think of
78 the \$370 million or \$380 million lost through liquidations and ASIC actions, investors have now received
79 somewhere in the order of \$100 million. There is a major litigation matter outstanding with the auditors.
80 There is litigation outstanding with the directors. The directors have cross-claimed. Indeed, one of the
81 cross-claims that the directors have made is that the company should never have been put into liquidation
82 and that if ASIC had not done that, the company would be solvent today. I am paraphrasing.

83 **So D'Aloisio does know what is going on! But I can't believe the claim D'Aloisio makes about ASIC
84 recovering \$100 million for investors. ASIC has recovered a little over \$40 million through its
85 mediation efforts. The rest of the stated amount has come from direct litigation cases paid for by the
86 relevant investors. I am certain D'Aloisio knows the exact figure that has been recovered through
87 ASIC.**

88 **Senator XENOPHON**—Sure.

89 **Mr D’Aloisio**—Our view is that there is just no substance to that defence. But these are before a court
90 of law. In due course, the court will rule on those issues as well. We commenced some 17 actions, of
91 which a significant number were against financial advisers. Pretty much all of those have now been settled
92 and moneys have been recovered for the investors. So we are working very hard to protect the interests of
93 people like Mr MacAulay.

94 The court will decide if Carey’s case has substance. I am unaware of many investors being happy
95 with ASIC’s efforts to date. There are a many investors, who will under the current scheme, never be
96 eligible for the recovery of any of their money. Further, ASIC has requested a figure of \$200 million
97 in the mediation process from KPMG. The [SMH of 09/06/2010](#) states KPMG claim it is not
98 responsible for the losses, and sheets the blame home to the Westpoint directors and ASIC. The
99 KPMG defence runs into hundreds of pages.

100 **Senator XENOPHON**—But if there were any expert reports, including a Deloitte’s solvency review,
101 into Westpoint, ASIC would not have difficulty in releasing that document?

102 That seems a reasonable enough observation.

103 **Mr D’Aloisio**—I have to look at the nature of the document and how it was obtained and what its
104 relevance is in the current court proceedings. In principle, one would look at it. If it is a document that can
105 be made available, of course it would. But I do have to weigh up the nature of the litigation that is going on
106 in this. These are not resolved matters at the moment.

107 I read D’Aloisio’s statement as , “Never mind what the truth, if it helps our case, then we don’t want
108 to release it”. If that s too harsh a judgement, would someone please explain what is the legal
109 benefit to the public in suppressing the truth?”

110 **Senator XENOPHON**—Sure, but go back a step. Before any litigation, there was not a document—
111 Xenophon is interrupted by D’Aloisio.

112 **Mr D’Aloisio**—No. But all this will be relevant to litigation that is going on today.

113 His statement is further proof that if the solvency review exists, then whether it should be made
114 public or not is a matter of what is occurring in the current litigation. Again I ask the question, what
115 is more important, the truth of how lawyers from either side can use the document?

116 **Senator XENOPHON**—Sure. But insofar as a document was not prepared for the purpose of litigation,
117 it is not in the nature of an expert report for the purposes of litigation. It was a preparatory report as to the
118 solvency of the Westpoint group. As a general principle, if a document is prepared prior to any litigation,
119 not in anticipation of litigation, would not that document be in the public interest to be released for those
120 concerned about this matter?

121 Xenophon has the bone between his teeth, and he is not letting go. I might ask, if Deloitte’s did an
122 audit, then why was the result of this audit not presented to the Court when ASIC sought to have
123 Westpoint liquidated?

124 **Mr D’Aloisio**—There are very strict rules under the ASIC Act as to what we can and cannot make
125 available. Under section 127, for example, there are things that have to be maintained, such as
126 confidentiality, and what we can and cannot release. I am not disagreeing with you, Senator, and I am not
127 suggesting that I will not make a document available if we can. What I would like to do is to take it on
128 notice and have a look at it. If we can make it available, we will.

129 A strange form of openness in a democracy: under ASIC Act we might not be able to release the
130 truth.

131 **Senator XENOPHON**—And you can let the committee know—

132 **Mr D'Aloisio**—Absolutely.

133 **Senator XENOPHON**—if you do not wish to make it available, as to what basis?

134 **Mr D'Aloisio**—Absolutely.

135 **Senator XENOPHON**—And any other expert reports in relation to the solvency of this group before
136 action was taken.

137 **Mr D'Aloisio**—Okay, I will have a look at that as well.

138 **Senator XENOPHON**—Insofar as there was any opinion or advice given prior to the action taken by
139 ASIC. Thank you very much.

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141 **Although Senator Xenophon did not ask of all of my questions (probably because of a lack of**
142 **available time), I don't think D'Aloisio came out of the exchange very well.**