

SENATE ECONOMICS LEGISLATION COMMITTEE

SENATE ESTIMATES

ASIC CHAIR JOE LONGO

OPENING STATEMENT

1 MARCH 2023

I am pleased to appear before the committee today. I am joined today by Deputy Chairs Sarah Court and Karen Chester, Commissioner Danielle Press, Chief Operating Officer Warren Day, and our General Counsel, Chris Savundra.

We value the opportunity to appear before this Committee.

I understand that you have convened this extra hearing following the hearing on 16 February 2023 to better understand the letter I sent to the Committee Secretary on 22 February 2023.

I acknowledge that there were questions following my evidence on 16 February 2023.

After that hearing I went back to the letter dated 1 February 2022 from the Secretary of the Treasury that was the subject of Senator Bragg's questions, which was sent to me over a year ago.

I realised that my recollection given in evidence required clarification.

That is why I wrote to the Committee Secretary on 22 February 2023 and tabled the relevant correspondence to the Committee.

In my evidence on 16 February 2023, I made it clear that I did not have the letter in front of me and that I would need to go back to it.

While the letter from the Secretary of the Treasury made it clear that there was an insufficient basis for Treasury to advise the Treasurer to take any further formal steps in the matter, relating to potential actions that may be taken under s 111 of the ASIC Act, the letter included the following statements (and I quote):

- *“The investigation found that many of the instances of alleged conduct could be wholly or partially substantiated as to the fact that specific things occurred, although in many cases recollections differed about the specific conduct and its substance and significance.”*
- *“...the investigation has revealed instances of conduct regarding the standards set out in the ASIC Code of Conduct.”*

The letter from the Secretary of the Treasury referred the matter to me for further consideration.

In light of the contents of the letter I felt the need to clarify the evidence I gave at the hearing on 16 February 2023 (which was based on my recollection at the time).

I reject any suggestion that the evidence I gave at the 16 February hearing was other than in good faith.

Some of you will also no doubt be aware of the further questioning and evidence about these events that took place at the Parliamentary Joint Committee on Corporations and Financial Services hearing on 23 February 2023.

Before we continue, I think it would be useful to provide some background to this matter.

As you will be aware, ASIC Commissioners are independent statutory appointees, appointed by the Governor-General on the nomination of the Minister, under s9 of the ASIC Act.

The ASIC Chair is appointed in the same way, and in addition has the role of being the Accountable Authority under the PGPA act.

As such, the Chair has ultimate responsibility for the governance and management of ASIC.

Commissioners do not report to the Chair, and their appointment may only be terminated under s111 of the ASIC Act by the Governor-General.

The Minister oversees Commissioners' statutory office arrangements including, for example, approvals to take leave.

All Commissioners are subject to the ASIC Code of Conduct.

There are, however, no formal sanctions that can be imposed on a Commissioner who breaches the Code. The only legislative sanction that is available in relation to a Commissioner is termination by the Governor-General under s111 of the ASIC Act.

As ASIC's Chair, I'm not empowered to formally sanction or discipline Commission members.

That was the background in which on 1 February 2022 I received the letter from the Secretary of the Treasury which the Committee has before it.

Although I have viewed the confidential and legally privileged report, neither I, nor ASIC, have a copy of the report.

It was apparent to me that the confidential investigation concerned a historical point in time, that occurred before my time at ASIC, and during a period of upheaval at the most senior level of the organisation.

What I read in the confidential and legally privileged report did not reflect what I had seen in the organisation in the seven months since my appointment.

Now to come to my response to the Secretary's letter.

I gave careful consideration to the following:

- To the extent that any conduct was substantiated, it occurred at a certain historical point in time before my term as Chair commenced.
- Given the change in circumstances since my appointment, in my view, the likelihood of the conduct that was the subject of the report recurring, was very low.
- In the 7 months since I had become Chair, I had not seen any conduct by Deputy Chair Chester that concerned me.
- The lack of utility in re-investigating the matter.

Based on those factors, I decided that I would not proceed with a formal investigation under the ASIC Code of Conduct at that time.

I wrote to Deputy Chair Chester and the Secretary of the Treasury to inform them that I considered the matter closed.

I spoke to Deputy Chair Chester and reinforced my expectations around Commissioner behaviours. I also asked her to reflect constructively on the issues and conduct which led to the process being initiated. I advised Ms Chester that the matter was at an end and my focus would continue to be on taking ASIC in a positive direction.

The confidence and ambition of ASIC had been impacted by a range of events and a fresh start was needed.

Revisiting historical events would not achieve this. Instead, ASIC's focus and energy was on supporting and leading the organisation.

This was what was needed.

ASIC has a strong culture of serving the public interest.

Our work impacts the financial wellbeing of all Australians.

This historical matter does not, in my view, reflect a broader cultural problem within ASIC.

ASIC staff continue, day in day out, to work hard and do an excellent job.

They are focused on protecting Australian consumers and fulfilling our vision for a fair, strong and efficient financial system for all Australians.

ASIC's outcomes speak for themselves.

In this regard I'd like to table with the committee the following documents:

- ASIC Corporate Plan 2022-26
- ASIC Enforcement and Regulatory update for October to December 2022 that provides a summary of enforcement outcomes between July – December 2022 (23-026MR)
- Financial Regulator Assessment Authority Effectiveness and Capability Review of the Australian Securities and Investments Commission – 29 July 2022

These documents comprehensively report on the important work that ASIC is doing and our achievements. I note that just this week, ASIC commenced three significant civil penalty actions, relating to the former Freedom Foods group, RACQ, and Mercer Superannuation.

These results are consistent with an organisation that is overall performing well. We continue to focus on ensuring we are an ambitious and confident regulator, trusted by the community and always looking ahead.

We look forward to answering the Committee's questions.