



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

ECONOMICS LEGISLATION COMMITTEE

Estimates

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ECONOMICS LEGISLATION COMMITTEE

Wednesday, 1 March 2023

Members in attendance: Senators Bragg [by video link], O'Neill, Stewart and Walsh

TREASURY PORTFOLIO

In Attendance

Senator Gallagher, Minister for Finance, Minister for the Public Service, Minister for Women

Australian Securities and Investments Commission

Mr Joe Longo, Chair

Ms Sarah Court, Deputy Chair

Ms Karen Chester, Deputy Chair

Ms Danielle Press, Commissioner

Mr Warren Day, Chief Operating Officer

Mr Chris Savundra, General Counsel

Mr Greg Kirk, Executive Director, Strategy Group

Committee met at 14:02

CHAIR (Senator Walsh): I declare open this hearing of the Senate Economics Legislation Committee into the 2022-23 supplementary budget estimates. I begin by acknowledging the traditional custodians of the land on which we meet today and pay my respects to their elders past and present. I extend that respect to Aboriginal and Torres Strait Islander peoples here today.

The committee has set 3 March 2023 as the date by which senators are to submit written questions on notice and 31 March 2023 as the date for the return of answers to questions taken on notice. The committee will hear from the Australian Securities and Investments Commission.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee. Such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence.

The Senate has endorsed the following test of relevance of questions at estimates hearings: any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purpose of estimates hearings. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise.

The Senate has resolved also that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Witnesses are reminded of the Senate order specifying the process by which a claim of public interest immunity should be raised. I incorporate the public immunity statement into the *Hansard*.

The extract read as follows—

Public interest immunity claims

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which

the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

CHAIR: I remind all senators that, as we continue our work implementing the *Set the standard* report, as chair I will ensure that proceedings are conducted in an orderly, respectful and courteous way. An officer called to answer a question for the first time should state their full name and the capacity in which they appear.

I now welcome Senator the Honourable Katy Gallagher, Minister for Finance; and the committee also welcomes representatives from the Australian Securities and Investment Commission.

Before I invite Mr Longo to give an opening statement, I wanted to make a couple of points about the conduct of today's hearing. The committee views transparency to the parliament and the accuracy of information provided as being of the utmost importance. The committee invited ASIC back to give evidence today because we think that it's critical that senators have the opportunity to ask questions about the supplementary evidence provided last week, in order to ensure that there is transparency about the matters raised in estimates on 16 February and in order to ensure that accurate information is provided to us.

To that end, it's my job as the chair to ensure that the freest possible flow of information from ASIC to the parliament occurs in today's hearing. It's my view that the best way to achieve that flow of information is for us all to have an open and orderly discussion today. In relation to witnesses, as the chair it's my expectation that information that can be provided today will be provided today, given that ASIC has had significant opportunity between their first estimates appearance on 16 February and today to review the matters at hand.

In relation to senators, it's my expectation that senators will seek information in an orderly and respectful fashion and, in particular, that senators will allow time for answers to be completed before they continue with further questions.

With that introduction, Mr Longo, I welcome you to make an opening statement. Before I do that, the minister is seeking the call.

Senator Gallagher: Just briefly, Chair, I want to support your comments around being accountable to the Senate. I think it is important that we are and also that where there is further information that could be provided—whether it's additional information, clarifying information or the provision of accurate information—that that is done at the earliest opportunity.

I'm happy to answer questions about the letter I wrote to the committee because of that responsibility I feel we do have to ensure that in the Senate estimates process, or in appearing before committees, the seriousness with which evidence is provided and the importance of accuracy for that is maintained.

CHAIR: Mr Longo, I understand you've got an opening statement and we appreciate that you've provided it to us as well today.

Mr Longo: We value the opportunity to appear before this committee, indeed, for all the reasons that your opening, Chair, noted.

I understand that you've 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—which were the subject of Senator Bragg's questions—that 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 section 111 of the ASIC Act, the letter included the following statements: '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 letter also said: '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 section 9 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 section 111 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 a code. The only legislative sanction that is available in relation to a commissioner is termination by the Governor-General under section 111 of the ASIC Act. As ASIC's chair, I am 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 viewed the confidential and legally privileged report, neither I nor ASIC have a copy of that 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 seven months since I had become chair, I had not seen any conduct by Deputy Chair Chester that concerned me. And finally, the lack of utility in all of those circumstances 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's *Corporate Plan 2022-26*; *ASIC enforcement and regulatory update October to December 2022*, which provides a summary of enforcement outcomes for the last six months of last year; and the Financial Regulator Assessment Authority's *Effectiveness and capability review of the Australian Securities and Investments Commission*, dated 29 July 2022. There are many other documents I could have tabled this afternoon, but I chose those three. 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.

CHAIR: Thank you very much for that opening statement, Mr Longo, and thank you for agreeing to appear again today and also for providing the supplementary information that you have provided to us to clarify the answers that you gave on 16 February. It is my normal practice to hand the call straight to the deputy chair or an opposition member, but in this case this additional hearing is for broader accountability to the committee as a whole, so, Senator Bragg, I'm going to use the chair's prerogative just to ask a few questions before I come to you, as it certainly was you, Senator Bragg, who raised these questions in estimates. So I will come to you shortly.

Mr Longo, in the hearing on 16 February, when you were asked whether you were aware of any inquiries into any ASIC commissioner in the last two years—there was a reference to the PGPA in the question—you said, 'Not that I'm aware of'. You've clarified your evidence subsequent to that, of course, telling the committee and all of us that there has been an investigation into the conduct of an ASIC commissioner in that time frame. Why was it that you told the Senate that you were not aware of any investigations under the PGPA Act?

Mr Longo: I think at the time I made it clear that we were seeking clarification of that question. There is no mechanism under the PGPA Act, so I was answering the question I was asked.

CHAIR: My recollection is that there were some follow-up questions, broadening the question out to a question about whether there has been some form of investigation, whether it involves PGPA or not. Why didn't you inform the Senate of an investigation that it seems plausible that you would have had a recollection of?

Mr Longo: I think at that point I said I would take the matter on notice: 'This is a matter I'd like to take on notice.' This was, again, after Senator Bragg was pressing me. Then Deputy Chair Chester made the statement she made. I'm trying to be open with the committee. At that point, Deputy Chair Chester decided to say what she did. Prior to that point, I thought the sensible thing to do was to take the matter on notice. It potentially involved a whole range of confidential processes and aspects, and, frankly, I wasn't expecting to have to deal with that issue at that point in time. Events moved on that afternoon, and Deputy Chair Chester gave the evidence she gave, and then I gave the evidence I gave.

CHAIR: So your answer there is that you sought to take the question on notice to go back and look at what information it would be appropriate to provide the committee? Is that broadly correct?

Mr Longo: Well, yes. These events occurred a while ago, they're obviously confidential and involve confidential processes, and at that point in my evidence I thought I would take those issues on notice. But then, as I've said, the evidence that afternoon took a different turn.

CHAIR: Okay. I think that people in the broader community would expect that the corporate regulator has the highest standards of transparency, accountability and accuracy. Do you believe that accurate information to Senate committees is important, and is that why you sought to clarify your evidence?

Mr Longo: I clarified my evidence because I thought that was what was needed after I refreshed my recollection by reading the letter that the Treasury secretary sent me. I made it quite clear on the last occasion that I would need to do that. I did that, and that led to the letter that went to the secretariat and the attached letters.

CHAIR: Do you believe that accurate information should be provided to the Senate?

Mr Longo: Yes, indeed. I have always tried to give accurate information at all the hearings of Senate committees and all the other committees of parliament that I appear before.

CHAIR: Okay. You've provided us with additional information. Just before I go to Senator Bragg, could you detail for us the time line of events that are captured in the letters that you've provided to us? I understand that the allegations that were subject to investigation occurred in 2021, and letters advising of the outcome of the review were sent in early February 2022. Is that correct? Can you just take us through the time line of the information you've provided to us?

Mr Longo: Yes. My understanding is that the events that were the subject of the investigations occurred prior to my appointment and that the Treasury secretary commissioned an investigation into those matters. The next point in the chronology, from my perspective, is the letter from Mr Kennedy, the Treasury secretary, on 1 February 2022, which I opened with. I was quoting from that letter. Then the next letter is the letter that I wrote to the Treasury secretary and to Deputy Chair Chester on 28 February, formally informing Deputy Chair Chester and the Treasury secretary that I would not be taking that matter any further. So, they're the key dates, from my perspective. Clearly there were other things going on. But from my perspective they're the key dates.

CHAIR: Okay. In the letter from Dr Kennedy to you on 1 February 2022 he notes that he considers that the investigation has revealed instances of conduct regarding the standards set out in the ASIC code of conduct. Your opening statements made some remarks about how you handled that information from the secretary. Who did you consult with in determining that you would take no further action? I think essentially you said in your opening statement that you gave careful consideration to various factors. Did you consult with anyone in determining that you wouldn't take any further action?

Mr Longo: I considered the report. I looked at the extent to which the conduct was substantiated. I looked at what had happened since I was appointed and, in the seven months since I became chair, the lack of utility in reinvestigating the matter. I embarked on a range of considerations in doing that, but I have to say that that was a confidential process that I embarked upon. But the reasons for me as the accountable authority not taking the matter any further are as I've set out.

CHAIR: Okay. Thank you. I do have more questions, but in the interest of the proceedings I'll go to Senator Bragg.

Senator BRAGG: I first want to thank ASIC for being here today and also to offer my thanks to the government senators for convening, with the committee's consent, this special hearing today. I have some questions for Chair Longo as well as for Deputy Chair Chester. Mr Longo, referring to your evidence today, how did you view the report?

Mr Longo: How did I view the report?

Senator BRAGG: You said you don't have the report, so how did you view it?

Mr Longo: Well, I viewed it, but I don't have the report.

Senator BRAGG: How did you read a report that you no longer have? Was it provided to you on a disappearing messaging app, or was it given to you as a paper copy that you had to hand back to someone?

Mr Longo: I was given access to the report on a confidential basis and in confidential circumstances. Those circumstances did not include me being given a copy of the report or retaining a copy of it.

Senator BRAGG: So you read the report and you handed it back to a Treasury official.

Mr Longo: I was given access to the report in confidential circumstances, but I did not retain a copy of the report, nor do I have one in my possession or ASIC's possession at the moment.

Senator BRAGG: Who else was given access to the report when you were given access to the report?

Mr Longo: The report is a confidential document, I was given access to it, and that's all I'm prepared to say about it at the moment. It's a confidential, legally privileged report commissioned by Treasury. It's their report. I'm not able to comment any further on who had access to it.

Senator BRAGG: Did you meet with lawyers from Gilbert + Tobin in relation to this matter?

Mr Longo: When you say 'Louise from Gilbert + Tobin'—

Senator BRAGG: No, I said 'lawyers'. Did you meet with lawyers from Gilbert + Tobin?

Mr Longo: I beg your pardon. I certainly know Gilbert + Tobin, but I don't think—sorry, Senator. Are you referring to the firm that was given the task of conducting the investigation?

Senator BRAGG: No, I am just wondering whether you met with any lawyers—legal staff—from Gilbert + Tobin in relation to this report.

Mr Longo: No, I did not.

Senator BRAGG: Did you inform Deputy Chair Chester of the 'no adverse findings' comment that was used on 16 February?

Mr Longo: That expression was one used by Deputy Chair Chester. It's not my characterisation of the findings in the letter. To be frank, it's one of the reasons why I read into the record the relevant paragraphs from Dr Kennedy's letter. What I was trying to clarify is that that's what's in the letter. You can see it for yourself. Deputy Chair Chester formed the view that, based on her view of the matter, there were no adverse findings, but I've never expressed a view about whether there were or there weren't.

Senator BRAGG: So you did not inform Deputy Chair Chester that there were no adverse findings? You didn't do that?

Mr Longo: No, I didn't use that expression. I said that, as my opening statement said, clearly the outcome of the investigation—and I've been trying to think of a way of talking about this without repeating the two paragraphs from the letter—was mixed. So, on that basis, the way I thought best to handle it was to ask her to reflect on the issues and matters that actually led to the process being initiated in the first place—remembering that I wasn't around for any of that. Secondly, I thought it was appropriate—and I might add that, when I talk about reinforcing my expectations around commissioner behaviours, it was something I talked about from the first day of my appointment anyway. When I first started the job, we sat down as a commission and talked about how we would work together. So I thought it was appropriate to reinforce that. But otherwise I told Ms Chester that I wouldn't be taking the matter any further.

Senator BRAGG: Just before I leave this matter: on the report itself, you viewed it, it's not retained by ASIC in any way, and the only copies that exist to your knowledge exist in the Treasury department. Is that right?

Mr Longo: Yes, that's correct.

Senator BRAGG: Thank you. My last question to you, Mr Longo, is: what sort of preparation do you do with your team before Senate estimates? Do you consider the standing orders? Do you consider the guidelines that are issued to witnesses? What sort of work goes on behind the scenes?

Mr Longo: 'A lot of work' is the short answer to that. I've appeared now, in the short time I've been chair, a number of times, not only before the Senate estimates committee but before other committees. We take extremely seriously preparation for those hearings and we do our best, across the commissioners and others appearing, to be well briefed about matters that, within reason, can be anticipated to arise at those hearings. This particular matter was just entirely unexpected on the day. I'm not going to repeat what I said earlier, but the short answer to your question is we take preparation very seriously and we do our best to be well prepared so we can be cooperative and assist the various committees.

The other thing we try to do is be very open with all the committees, and FRAR as well, that if there's anything in particular that you would like one of us to talk about at a hearing or an appearance, if you can give us a heads up that helps because we're able then to prepare in particular for a particular issue that a member of parliament is interested in. But we do our best to anticipate those things.

Senator BRAGG: I certainly appreciate the steps that you've taken to correct the record and to clear up what was initially said on 16 February. I might just ask some questions to the deputy chair now.

Can I ask you whether you've been provided with all the information about the standing orders in relation to parliamentary privilege and also in relation to information given to witnesses who are appearing at parliamentary hearings, which are known as the 'government guidelines'?

Ms Chester: In answer to your question, we have a very capable staff member who makes sure that before every appearance we have those documents made available to us. I've been appearing before parliamentary committees and Senate committees across many years. I'm very familiar with those obligations, which are very important to us. Indeed, it was because of those obligations that I sought to provide additional information to this committee following your questions back on, I think it was 16 February.

Senator BRAGG: My main question to you regards your evidence on 16 February that there were 'no adverse findings'. What is your position for the record now?

Ms Chester: I stand by my earlier evidence to this committee. After a comprehensive investigation and a related process, no adverse findings have been provided to me.

Senator BRAGG: Your evidence, though, on 16 February was that there was effectively a letter that had been provided which stated no adverse findings. But the letter from Secretary Kennedy says that the allegations 'could be wholly or partially substantiated'. That doesn't appear to be the same as 'no adverse findings', does it?

Ms Chester: There are two letters that provided me with an understanding of the outcome of the processes. The first one was from the Treasury secretary, Dr Kennedy, on 1 February 2022. The second one was from Chair Longo on 28 February 2022. I think the letter that you're now referring to is the letter that Chair Longo received from Dr Kennedy.

Senator BRAGG: Yes.

Ms Chester: Which is a paragraph that takes several readings, but I am struggling to find a clear adverse finding in that reading. It read to me to be a little inconclusive. It's on that basis that I still feel that I can stand by my earlier evidence. But it's also sort of taken in the context of I'm reading it across the bookends of the letters from Dr Kennedy and then the outcome of the process that Chair Longo went through in considering whether or not to initiate a code of conduct inquiry.

Senator BRAGG: You said on 16 February:

Those allegations were referred to the Treasury. Treasury undertook and oversaw a very comprehensive investigation. There were no adverse findings.

That is still your position, is it?

Ms Chester: Yes.

Senator BRAGG: Do you think that can sit alongside the statement in the letter from Kennedy which says that 'allegations could be wholly or partially substantiated'? Do you think that's consistent?

Ms Chester: I think you have to read the entire paragraph. The matter was then referred to Chair Longo to take it further, and it was not taken further.

Senator BRAGG: But these are serious matters. I have just asked the chair if he said to you that there were no adverse findings, and he said that he did not give you that advice. I can't see it in any of the correspondence that has been supplied by ASIC. There is a 'no adverse findings statement' that you have made to the parliament. Is that your own reading, or has that been supplied by someone else?

Ms Chester: The two letters that I received back in February 2022 were the only communications I had from anybody on the outcome of the two processes. I did have legal counsel at the time, and the legal counsel at that time did say to me that this represented no adverse findings. The other letter that you are referring to is one that I only became aware of at the time that this committee became aware of it, so I think it's fair to say that that's my reading of that letter and that's why I stand by my earlier evidence to this committee.

Senator BRAGG: Okay. Well, I will give you what I think is a reasonable person's view on this, which is that those two statements do not appear to be consistent and that the letter from the secretary does not in any way indicate no adverse findings. In fact, it indicates that there were allegations that could be, as he says in his own words, 'wholly or partially substantiated'. So I don't understand the basis for the evidence that you have given to the Senate.

CHAIR: Senator Bragg, I note that in your questioning you are conducting yourself in the way that I indicated I would like to see—in a respectful and orderly way. I couldn't, though, in your last contribution there, identify a question, and I was wondering if you would rephrase that as a question for Ms Chester.

Senator BRAGG: I will, thank you, Chair. The privilege resolutions which were agreed to by the Senate on 25 February 1988 set out the offences by witnesses appearing before the Senate. They set out that a witness before the Senate or a committee shall not:

... give any evidence which the witness knows to be false or misleading in a material particular, or which the witness does not believe on reasonable grounds to be true or substantially true in every material particular.

So I guess my question is: are you satisfied that the evidence you have given—that there are no adverse findings against you, which you have apparently drawn from these letters—satisfies that section of the privilege resolutions of 1988, which, of course, form part of the standing orders?

Ms Chester: Yes, I do.

Senator BRAGG: Okay. I'll hand back to you, Chair.

CHAIR: Thank you, Senator Bragg. I'll go now to Senator O'Neill.

Senator O'NEILL: I just want to understand and clarify the sequence for myself. There are a number of letters before us that we have received as a job lot, but the sequence of the receipt of letters—if I understood your

evidence, Ms Chester—was that you received the letter directed to you from Dr Kennedy, and you read that as an indication of 'no adverse findings'. Is that how you received the communication from Dr Kennedy?

Ms Chester: The letter that I received?

Senator O'NEILL: Yes.

Ms Chester: Yes, it was. I think it might be helpful to also make the point that I have not been informed of any adverse findings, and clearly, if there had been adverse findings, I would have been told of them. I've not seen the report. I've relied upon two short letters that I received at the outcome and then having seen the letter to Chair Longo.

Senator O'NEILL: We might just go through that step by step.

Ms Chester: Okay.

Senator O'NEILL: Firstly, this is the letter you received dated 1 February 2022, and you have read 'there is an insufficient basis' as 'no adverse findings'. You amplified your evidence today by saying that you had legal counsel at the time and the language that was used in that consideration of this matter was that there were no adverse findings. Is that the sort of common parlance for 'there is an insufficient basis on which to advise the Treasurer to take any formal steps'?

Ms Chester: It really was a collective reading of the two letters. They're important bookends. The letter from Dr Kennedy to me left open a process to be followed through.

Senator O'NEILL: We'll come to that next.

Ms Chester: So really the view on 'no adverse findings' was based on a collective reading of the two letters.

Senator O'NEILL: Okay. We've got your response to the first letter. The second letter that you're referring to is one amongst the pack of letters that we have received, and I'm assuming that you're referring to the letter addressed to you, Ms Chester, on 28 February from Mr Longo.

Ms Chester: That's correct.

Senator O'NEILL: Right. Is that the sum total of the correspondence that you had to interact with prior to appearing at the hearing and indicating that you believed there were no adverse findings?

Ms Chester: That's correct.

Senator O'NEILL: So it's only subsequent to that, with the provision of letters to this committee, that you had sight of the letter to which Senator Bragg has been referring, which is the letter to Mr Longo?

Ms Chester: That's correct.

Senator O'NEILL: So the letter from Dr Kennedy to Mr Longo was unseen by you until it became a public document in the course of the inquiry of this committee?

Ms Chester: That's correct.

Senator O'NEILL: Okay. I think that's probably an important sequence to get on the record. Following that, if I can go just back to Mr Longo, I'm seeking confirmation of evidence that I believe you gave to the chair, my colleague Senator Walsh, that you received the letter from Dr Kennedy, the Treasury secretary, and you also observed the report and made personal observations. When you were asked, 'Who did you consult with in determining that you would take no further action?' I wasn't 100 per cent clear. Did you consult with anyone, or did you only seek your own counsel in referring to the documents and the observations you had at the time?

Mr Longo: I understand. Treasury had its job done, and I had my job to do. I had some interactions with Treasury to inform them of the approach I was taking, but it was my decision. I was given access, in the way I've described already, to the report. But, as the Treasury secretary's letter said, he summarised where the investigation landed and then he asked me to further consider it. He referred it to me for further consideration, which is what I did. So I did some internal work on that, but it, if I may say so, was a confidential process. I had access to the report and I looked at it, but, for the reasons I've given, I decided not to take the matter any further.

Senator O'NEILL: When you say you did internal work, are you saying inside yourself or inside ASIC? I want to restate the question that the chair put to you and get a clear answer: was there any consultation with any other person or was the consultation that determined your action solely undertaken by you?

Mr Longo: As accountable authority, I undertook the bulk of that consideration. I had some assistance from my immediate staff. The issues in connection with the inquiry or the investigation made it important that I maintained a high level of confidentiality around who I could speak with about my consideration of the matter. I

got appropriate support from Treasury, who of course have been working on the matter for a while. I had the benefit of the Treasury Secretary's letter, and I formed a view, for the reasons I have given.

Senator O'NEILL: I think I'm clearer now about the steps that you undertook after you received the letter from the Treasury Secretary. You've added a little more information in that you received support from your personal staff. Is that correct, your personal staff or staff around you?

Mr Longo: The staff within my office, yes, working for ASIC.

Senator O'NEILL: Staff within your office working for ASIC.

Mr Longo: Yes. I know there's been concern about cooperation and being fully transparent and accountable. I am trying to be accountable. It was my decision to make, and I did my best at the time to make what I thought was a wise decision. I did get some help in making it, but I really—out of a sense of respect for the confidentiality of the one or two people who helped me—think or hope that the Senate is sufficiently informed by my informing you in that way.

Senator O'NEILL: Mr Longo, given that we're here because this is a concern about clarification, I want to repeat the question and seek your response: who did you consult in determining that you would take no further action?

Mr Longo: I spoke with some individuals at Treasury. I informed them of my decision, and I had access to the report, so I took whatever support I needed to make that decision.

Senator O'NEILL: So your conversations in determining this were with people at Treasury, not with people at ASIC?

Mr Longo: There were some conversations within ASIC and there were some conversations with Treasury. But the matter was referred to me by Treasury for my consideration, so it was a matter for me to deal with.

Senator O'NEILL: You're not responsible for Treasury, so I won't ask you to reveal that; that's another entity. But you are responsible for ASIC, and the question is being asked in Senate estimates. We're trying to get great clarity about what happened, so, Mr Longo, I ask you again: who did you consult with in determining that you would take no further action?

Mr Longo: I had my immediate staff that I consulted with.

Senator O'NEILL: You might need to provide that information, Mr Longo.

Mr Longo: I'm wondering whether I could take that on notice. This whole matter has put a lot of pressure on the organisation. I spoke to a couple of people within ASIC who I thought I could speak with. I'm happy to let you know the name of one person in particular, but I wonder whether I could do that on a confidential basis—let the committee know, and I'll take some advice. I think that the nub of it is that it was my call to make. I got some support, as you would expect, from Treasury. They sent me their letter, I got access to the report, there were some interactions, but it was my decision to make.

Senator O'NEILL: I think we've clarified things to a fair degree, and I understand that you want to take that on notice. It is within your rights to do so, and the committee will await your response. I guess it does point to the sensitivity of many matters that happen in workplaces and the tension between confidentiality and transparency—

Mr Longo: That's right.

Senator O'NEILL: and there is discernment that's required there, so I acknowledge all of those things. We'll leave that there for the moment.

Mr Longo: I'm trying to be as open as I can with the committee.

Senator O'NEILL: Without compromising anybody.

Mr Longo: That's right—

Senator O'NEILL: I hear that, Mr Longo.

Mr Longo: to be frank. But I will take your question very seriously. My present feeling for it is to obviously answer the question on notice but probably confidentially. If I could be given some time on that aspect I would appreciate that.

Senator O'NEILL: The committee does receive information confidentially, Chair, sorry.

CHAIR: This is estimates and so, as I advised in my opening preamble, answers to questions on notice are public. But I understand that what you're undertaking to do, Mr Longo, is go back and consider what information you believe you can provide to us on Senator O'Neill's question and that's appropriate. In terms of time management—

Senator Gallagher: Chair, sorry, just on that, because I'm sure the Mr Longo will want to consult on the names of people that might be provided, there is a mechanism—maybe outside the questions on notice arrangement—to provide information to the committee on a confidential basis which could be explored.

CHAIR: I'm advised that that's correct, Minister, of course. It would require, perhaps, a different process to be initiated.

Senator Gallagher: Yes.

CHAIR: Senator O'Neill, just in terms of time, Senator Bragg does have some questions as well.

Senator O'NEILL: I'm in your hands, Chair.

CHAIR: I'll go to you, Senator Bragg.

Senator BRAGG: Thanks a lot, Chair. I might come back to you, Mr Longo, just based on my last line of questioning to Ms Chester. Do you agree with this characterisation of no adverse findings?

Mr Longo: I think two things. One is that I think we can all take our own view of what the Treasury secretary wrote to me about. Adverse findings can be a bit of a term of art in administrative law and law generally. I'm not going to put any particular gloss on this. The letter says what it says. The word I would use is 'mixed'. I think if I was trying to find a neutral sort of word for where the investigator landed I would go for 'mixed'. But it's not really a matter for me to characterise what sort of findings they are. The letter speaks for itself. I think the report had a mixed conclusion. I think that's the way I would put it. But it's a confidential, legally privileged report. I was given the letter that the committee now has that summarises its effect. It's a matter for judgement as to different people's views as to where they want to go from there.

Senator BRAGG: Thank you very much. I might ask the minister a question about this. Minister, we have one witness saying that there are no adverse findings. We have another witness saying it has mixed findings. Where does that leave the regulator and its public credibility?

Senator Gallagher: Thank you, Senator Bragg, for the question and the opportunity to come back on this subject. I think the government expects all regulators to uphold governance standards and operations. I think governments of all persuasions have expected that of ASIC. There is no doubt, I think, that when issues arise like this and are ventilated in the way they are that that comes at some reputational cost to an organisation. I don't think that's peculiar to ASIC. I think that happens from time to time across entities and organisations in both the public and private sectors.

Senator BRAGG: We're talking about the corporate regulator, which is required to enforce the corporate law. We've got two witnesses before the committee today, giving different answers on the outcome of a report into the conduct of a commissioner. In the government's view, where does that leave the reputation of ASIC?

Senator Gallagher: I think I've said that I think this comes at some reputational cost. You've got all the letters that were written. It's a matter of interpretation, I would say, between a person who is subject to an investigation and the information they have and the chair of the organisation. I don't think these sorts of matters, where they arise, are peculiar to one organisation. I think you see code of conduct investigations and concerns raised about employees and leaders across the board. I think it comes at a reputational cost. The government expects that these matters be dealt with appropriately. That is why, under your government, when this matter arose, it was dealt with by the Treasury secretary, and then, through the established processes set out in both the act and the organisation, it was dealt with in the way it was dealt with.

Senator BRAGG: I might just ask a couple more questions of Ms Chester and then I think I'll be done. Ms Chester, you heard the evidence from Chair Longo that, in his view, the report had mixed findings. How do you respond to that, and do you stick with your position of there being no adverse findings?

Ms Chester: In response to an earlier question from Senator O'Neill, it was established that I have not seen the report. This all relates to an exceptional point in time for ASIC in early 2021 which I say will never be repeated. To this date I have not been informed of any adverse findings, and, if there had been adverse findings, I would have thought that I would have been informed of them.

Senator BRAGG: I understand that. The purpose of me asking you the questions that I asked you before was to determine whether you would retain the position you had on 16 February or whether you would, in light of the disclosures made last week to the PJC, take an opportunity to revise your evidence.

Ms Chester: I think you've already asked that question and I think I've already answered it.

Senator BRAGG: I haven't finished my question.

Ms Chester: Apologies.

Senator BRAGG: It's okay, no problem. My understanding is that you are sticking with the position of 16 February of no adverse findings and my question is: what do you then make of the chair's view of there being mixed findings?

Ms Chester: I think, Senator Bragg, that that is a repeat of a question that you did just ask, but it's—

Senator Gallagher: It's also asking for an opinion about someone else's evidence.

CHAIR: I think Ms Chester was getting ready to answer the question again.

Ms Chester: I think it's fair to say that Chair Longo has answered your questions based on the information that he's had access to and I'm answering your questions and the questions of this committee based on the information that I have access to.

Senator BRAGG: Have you read the report?

Ms Chester: I think I've asked and answered that question a couple of times. No.

Senator BRAGG: So your understanding of no adverse findings comes from the letters or from the verbal briefings you've been given?

Ms Chester: I've had no verbal briefings. I'm only relying on the letters. That's the only way that the outcomes of these processes have been communicated to me.

Senator BRAGG: So your position is that you will retain the 16 February position and you will not be seeking to make any further comments or revision of your evidence to the Senate?

Ms Chester: Not until I have new information. I don't feel I'm in a position to change my position. Sorry, that was rather inelegantly worded.

Senator BRAGG: My last question is: do you think, when you look at those two phrases—'no adverse findings' versus 'could be wholly or partially substantiated'—that the typical person would accept that those are consistent? Do you think that that is a credible position for you to take as the Deputy Chair of ASIC, given the critical role you play in the organisation and how important it is that the reputation of the organisation be upheld so that the organisation can enforce the laws set by the parliament?

Ms Chester: If read fully, the paragraph that you refer to in a partial way doesn't lend itself, in my thinking, to the findings. As I said, my position is informed by the reading of the bookends of the letters from Dr Kennedy and then the letter following the outcome of Chair Longo's consideration on whether or not to initiate a code of conduct investigation.

Senator BRAGG: I understand that, but none of those letters say 'no adverse findings'.

CHAIR: Senator Bragg, I might move on. There's beginning to be some repetition in the questions, and we do have more time, so I might just ask a few questions. I think Senator O'Neill has got a couple of questions as well. There will be time to come back to you. In relation to the letter that's being referred to, from Dr Kennedy to Mr Longo, I'm going to quote a statement, and then I have a different question. In the letter that's being referred to, I think it's important to put into the *Hansard* again that the statement is:

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.

It goes on to identify an 'insufficient basis' on which to advise the Treasurer to take any further steps under section 111 of the ASIC Act. So I just wanted to clarify again the full context of what's being quoted there for the record.

I do have a couple of questions for you, Mr Longo, on your handling of the part of this that really does sit with you. The ASIC Act has a special intent in relation to the potential to remove people from their positions on certain types of conduct, and it seems clear that Dr Kennedy has found there's insufficient basis to proceed in that regard. The letters do point to your own code of conduct that you administer, and it does seem unequivocal to me that the investigation 'has revealed instances of conduct regarding the standards set out in the ASIC Code of Conduct'. That's information that you received. The code of conduct outlines a range of standards. It allows for investigations, dispute resolution or another process. It appears that you used another process, which you've described, particularly in answers to questions from Senator O'Neill. I'm wondering why you didn't take one of the other courses available to you under the code which could have provided a lot greater clarity around the issues that we're dealing with today, and how you reflect on that decision.

Mr Longo: It's very hard for me to add to what I've already said. By the time the process came to me, it had been the subject of an investigation that had been going on for over six months and related to historical conduct. I think the paragraph that you read from the letter is curiously drafted, which is why I used the word 'mixed'. For

me to have undertaken an additional process and to have reinvestigated in some way or other the historical conduct in those circumstances, I think, would have served no good purpose—and, as I've said in my evidence, that sort of lacked utility. The code of conduct, as I've said in my evidence, does not empower me to take any formal sanctions against a commissioner.

Now, in the particular circumstances of this matter involving historical conduct, where I had worked with this commissioner very closely for some seven months or so by the time I had to make this decision, I took into account all of those considerations in reaching the view that there was no utility in taking the matter further. In my evidence, I did sit down with Deputy Chair Chester, and I did speak to her about my expectations of commissioners, which would not have been the first time, which is why I used the word 'reinforced' in my opening.

Secondly, the word I've used to try to summarise the effect of that paragraph, which I think does bear very careful reading as a whole, is 'mixed'. It said:

in many cases recollections differed—

in many cases!

about the specific conduct and its substance and significance.

Those words follow:

the instances of alleged conduct could be wholly or partially substantiated as to the fact that specific things occurred.

I had to think through what the utility was of going over all of those circumstances again, when, clearly, the person who did the investigation and the Treasury secretary summarised it in the way he did. To my mind, given everything else that was going on at ASIC, the right thing to do was not to take the matter any further. I spoke with Deputy Chair Chester, took into account all of the circumstances and considerations and decided not to take the matter further.

CHAIR: Okay. There are about 15 minutes or so left. I think I indicated that I was about to go to you, Senator O'Neill, didn't I? And I do need to go back to Senator Bragg as well. But I'll go to you, Senator O'Neill.

Senator O'NEILL: Just following the chair's line of questioning, and reflecting on the process that was undertaken in this particular instance and the further enlightenment that hopefully is coming from this investigation, can I go to cultural issues at ASIC. No organisation is perfect at all times, and that's why we have things like codes of conduct, but the gap between what's written in a code of conduct and how it's enlivened in the workplace can be very significant. My question, really, is seeking your view, initially, Chair Longo, with regard to cultural issues that have been raised at ASIC. Are cultural issues being properly considered, particularly with regard to the stated cultural practices that I think are revealed by your code of conduct?

Mr Longo: I don't believe there is a cultural problem at ASIC. I think the code of conduct is a code that talks about the expectations we have of everyone at ASIC as to how they work with other people. It's a code of conduct—it sets out the standards we expect of people's behaviour. I will hand over to Mr Day in a moment, who I think gave a response to this question on the last occasion, but you've asked for my view.

I think ASIC has a strong culture. From the day I started, all the people I've worked with at ASIC are highly motivated and hardworking. We have a very diverse group. I think people feel good about working at ASIC; there's a good culture. I personally don't think ASIC has a cultural problem, and we can point to some data that can confirm that. I'll ask Mr Day to talk about the data in a moment. So it's not just me thinking that; I think the data absolutely confirms it.

That shouldn't be confused with a desire—not only by me but by everyone working at ASIC—to always do better. We're about to go through an organisational design review which reflects a lot of work that's been done in the last six or seven months. We're right in the midst of an intensive consultation with senior leadership within ASIC and at the team level. We hope to land that in the next couple of months. That's all about getting us to work more effectively together, more efficiently—

Senator O'NEILL: Can I go to that?

Mr Longo: These are the themes I spoke to the last time. So, to my mind, that's good culture. I mean, we wouldn't be doing that if I didn't think and if the commission didn't think that the staff were not ready for some change. It's been over 15 years since ASIC had any review of its structure and organisation, and I've been really pleased with the level of interest and engagement by staff at all levels with this reorganisation. Everyone is not going to agree with it, but, to me, that's a strong culture. It's a good culture.

Senator O'NEILL: I've got a couple more questions that I think are important, arising out of this moment.

Mr Longo: Yes.

Senator O'NEILL: Under 'Our people' in the code of conduct at item 11, there's a statement about treating people with care:

- a. Team members must invite and accept feedback from others and provide feedback constructively.
- b. Team members must always treat others with courtesy, respect, and dignity.
- c. Team members must never bully, harass or unlawfully discriminate against others.

Mr Longo: Yes.

Senator O'NEILL: And on the final page, it directs a team member, should they see a breach of the code of conduct, to undertake a number of actions: the first item is to engage with ASIC's SpeakUp program, the second is their People and Development people partner, the third is a senior executive leader, the fourth is an executive director and the fifth is the chief operating officer. I can only assume this process that we're interrogating today came about because one of those actions was taken, and there was a report, which led to a follow-up and, ultimately, the inquiry by the Treasury secretary and the process that we're following today.

Mr Longo: Yes. Was that a question?

Senator O'NEILL: Is that how this matter would have been activated?

Mr Longo: I might ask Mr Savundra to confirm what I'm about to say, but the investigation that the Treasury secretary commissioned was not an investigation under the ASIC code of conduct. It was an investigation that Treasury initiated, so that's a matter for Treasury. That investigation is something that they commissioned, and it's a matter for Treasury to explain—well, I'll withdraw that. I can't really speak to the origins of the inquiry, how it was put together and all of that. That's really a matter for Treasury. It came to me after Treasury had completed its process, and the Treasury secretary—and we've been looking at this letter this afternoon—referred the matter to me following that process. I hope that clarifies—

Senator O'NEILL: It makes me want to ask more questions, frankly. If the matter didn't come up through the ASIC Code of Conduct, then it has got to Treasury via another means, and that means that the individual who made the complaint has gone outside of ASIC to have their complaint heard. I could be wrong. I'm happy to be corrected if that's not the case. Can you help me clarify that?

Mr Longo: I really can't take it any further—

Senator O'NEILL: Is there anybody here who can? Mr Day, you've been with the organisation for a long time.

Mr Day: All of these events occurred before 1 June 2021. So the origins of that process are something I can't really inform the committee much about at all.

Senator O'NEILL: Mr Savundra, can you assist me?

Mr Savundra: Senator, I can't. I'm not aware of the origins of any report to Treasury and/or the Treasurer. I think—

Senator O'NEILL: But can you clarify for me that this matter did not come up through the ASIC Code of Conduct process, which is clearly outlined?

Mr Savundra: I don't believe so. I'm not aware of what led to Treasury initiating this process, but, to my knowledge, it wasn't through an ASIC Code of Conduct, from the list that you've referred to. Unfortunately, I don't think ASIC can assist with the answer to that question. We would just note that it's important that those that wish to disclose behaviour—

Senator O'NEILL: Can do so by whatever means they feel necessary.

Mr Savundra: And that their identity is protected.

Senator O'NEILL: I'm not casting aspersions on anyone for following a different pattern, but it may say something about the culture if somebody has to go outside the organisation that they're working in to get support. I'm just unclear on the appointment times.

CHAIR: I think it might be useful if you took on notice the origin of the complaint that was lodged. Was it lodged internally with ASIC or was it lodged directly somewhere else? That would be helpful for us to understand.

Mr Savundra: Certainly. I will take that on notice.

Senator O'NEILL: Thank you. Can I just confirm, because I'm not quite sure of the sequence of who was appointed at what time—Ms Court, were you there before Mr Longo?

Ms Court: Mr Longo and I started on the same day.

Senator O'NEILL: I thought it was around the same time, but that clarifies that. Ms Press, you have been there longer.

Ms Press: Yes.

Senator O'NEILL: Do you have any insight into the way in which this matter was referred and ended up with the Treasury secretary?

Ms Press: I'm not aware of how the matter was referred to the Treasury, no.

Senator O'NEILL: Ms Press, and then Ms Court—because of the differing times that you've been in ASIC—how long have you been there?

Ms Press: I've been there 4½ years.

Senator O'NEILL: Given that we have the letter from Mr Kennedy that indicates, and I want to read it correctly, 'There were instances of alleged conduct wholly or partially substantiated, that related to instances of conduct regarding the standards set out in the ASIC Code of Conduct'—which could be anything in this multi-page document—I want to ask you this, and I ask you to be mindful of the directions that the chair gave at the commencement of the hearing: are there any cultural problems at ASIC that the committee here should be aware of, that may have changed over time and that may have informed the action and the consequences that we're considering here today? I want to know if people feel comfortable about advancing concerns around the code of conduct within ASIC. I'm particularly interested in women being able to do that and I'm particularly interested in how that process informs current and projected behaviours. I want to start with you, Ms Press.

Ms Press: If I'm hearing your question correctly, we're talking about today. I think that the culture is that people feel quite empowered to speak up. The SpeakUp Program is used quite substantially. Sometimes they are anonymous, sometimes they are not. So I do think that there are processes by which people can speak up. I don't think there is a gender difference in our organisation with respect to people filing complaints. There's no gender bias in there around whether or not female colleagues can speak up. I think that, ongoing, all organisations have hiccups, but I think generally we treat our people well, and people feel quite empowered to tell us what they think; to tell us that we are incorrect, which is also very good; and to ensure that their voices are, in fact, heard.

Senator O'NEILL: Ms Court?

Ms Court: I've been at ASIC for about 18 months, and my observation of the culture is that it is professional and hardworking and that our staff are committed to working in the public interest. The SpeakUp program that's been referred to is publicised significantly within the organisation, and my observation is of a supportive and respectful environment in which our team members are empowered to bring matters to the attention of commissioners and senior executives. Should they wish, they can do so anonymously through the SpeakUp program. So, from my personal observation in that time, I do not have concerns about the culture within ASIC.

Senator O'NEILL: Could you provide on notice an indication of any claims of discomfort at ASIC that would indicate breaches of the code or cultural practice that might have come to the attention of Comcare in the last five years?

Mr Day: I can give you details right now about claims to Comcare if you like.

CHAIR: I think I'll go against my original statement about answering questions in the room, just because I need to go back to Senator Bragg. So if you're okay, Senator O'Neill—

Senator O'NEILL: I'm happy to receive that on notice, thank you.

CHAIR: Mr Day, we'd appreciate that on notice. Senator Bragg.

Senator BRAGG: Thanks, Chair. I just have a couple more quick questions. The first one is to the minister. As you heard from the evidence today, the deputy chair has maintained the 'no adverse findings' position. You echoed that statement to the committee at the last hearing we had, and you subsequently wrote to the committee, which we appreciated, and clarified that that statement you made was on the basis of the evidence given at the time. Given your view of the correspondence that's now been revealed last week, do you think the position of 'no adverse findings' is an accurate position?

Senator Gallagher: I can only answer from my point of view. I don't have access, and haven't had access, to the reports, and I did not have access to the letters until the letters were provided to me on the day they were provided to the committee. The reason I wrote to the committee was that, when I saw that there was going to be additional information provided to the committee and read the content of those letters, I went back to check the *Hansard* for whether I'd provided evidence that would need clarifying. The point I tried to make in the letter was—I didn't have anything to correct the record on, but I just wanted to be clear—that, when I'd made that statement, it was based on evidence that Ms Chester had provided at that hearing. I wanted to be clear that I had

not got any knowledge of the reports or any of the allegations or any of that. That was trying to be helpful to the committee, because I take my job seriously. In terms of your question, I accept that the evidence that Ms Chester is giving is her understanding of the information that she has. That is what Ms Chester's evidence to the committee has been today, and I have no reason to believe that that is not her understanding.

Senator BRAGG: Thanks, Minister. Just quickly, I just have two brief follow-up questions for Ms Chester. Could you please take on notice how your evidence today satisfies the privilege resolutions in relation to evidence given to Senate committees? I'd like to see how exactly—given the information you now know, including the letters and what they say—your evidence, which you've given today again, satisfies those resolutions. Secondly, I just wonder whether you've given any thought as to whether any of this evidence that has come to light has impacted your ability to function in your role as deputy chair.

Ms Chester: I am happy to take the first question on notice, but I'm not sure what I can add beyond the questions that you've put to me in that regard today. But I'll take it on notice and see if there is anything further that I can add for the benefit of the committee. Sorry, can you just repeat the second question?

Senator BRAGG: The second question is a simple question. I'm wondering whether you believe that the information that has now been presented and the way that it has been presented, which you'd have to say is an unorthodox way, has impaired in any way your capacity to operate as the deputy chair at ASIC.

Ms Chester: No, not at all. It is busy business as usual.

Senator BRAGG: Thank you very much.

CHAIR: Thank you, Ms Chester. Thank you, Senator Bragg. Thank you, Mr Longo, for coming with your team today to answer our questions. That concludes the questions that the committee has for you. Again, on behalf of the committee, we do appreciate you providing additional information to us that clarified your evidence, and we do appreciate you attending today to answer questions on that evidence. We appreciate the commitment that's shown to transparency and accuracy through those actions, so thank you.

There being no further questions at this time, the committee's consideration of the 2022-23 supplementary budget estimates will conclude. I thank the minister and the officers of ASIC who've given evidence today. Thank you also to Hansard, Broadcasting and the secretariat.

Committee adjourned at 15:32