



THE SENATE

Senate Economics References Committee

16 August 2024

Mr Nicholas Pullen
Partner
HWL Ebsworth Lawyers

Mr Alex Porz
Associate
HWL Ebsworth Lawyers

By email: [REDACTED]

Dear Mr Pullen and Mr Porz,

Inquiry into Australian Securities and Investments Commission (ASIC) investigation and enforcement

I am writing in response to a letter from Ms Janet Whiting (Partner, Gilbert + Tobin), dated 4 July 2024, where Ms Whiting raised concerns about references to her then client, Ms Karen Chester, in the Senate Economics References Committee's report on ASIC investigation and enforcement, which was tabled on 3 July 2024.

I understand that you now act for Ms Chester, and correspondence on this matter should be directed to HWL Ebsworth Lawyers.

The committee has considered the issues raised in Ms Whiting's letter and stands by the content of its report. The committee carefully assessed all evidence put to it regarding the relevant Treasury investigation, and does not agree that the paragraphs Ms Whiting refers to are inaccurate or misleading.

In the interests of transparency, the committee has nonetheless agreed to publish Ms Whiting's letter on its website, along with this response.

If you have any questions, you can contact the secretariat on economics.sen@aph.gov.au or (02) 6277 3540.

Yours sincerely,

Sean Turner
Committee Secretary

Partner
Contact

Janet Whiting
Paddy O'Sullivan

Our ref



L 25, 101 Collins Street
Melbourne VIC 3000 AUS
GPO Box 90 Melbourne VIC 3001
T +61 3 8656 3300 F +61 3 8656 3400
www.gtlaw.com.au

4 July 2024

By email: economics.sen@aph.gov.au

Dr Sean Turner
Committee Secretary
Economics Legislation and References Committees
Department of the Senate
Parliament House
CANBERRA ACT 2600

Dear Dr Turner

SERC Report into ASIC: Correction of Report dated 3 July 2024 for Ms Karen Chester

We refer to the Senate Economics References Committee's Final Report entitled 'Australian Securities and Investments Commission investigation and enforcement' and dated 3 July 2024 (**Report**).

In our letter to Senator Bragg dated 17 June 2024, we requested an opportunity to review a draft of the Report prior to it being tabled, in order to fact check it and respond to any evidence or commentary that related to our client, Ms Chester. Having regard to the litany of defamatory missives about our client's reputation over an extended period, we considered that procedural fairness required our client be afforded that opportunity.

You responded to our request nearly two weeks later, on 28 June 2024, in which you advised that the Committee had denied our client the opportunity to review those aspects of the Report that referred to our client. You noted that if the Committee had any concerns or queries about the evidence provided to the Committee, it was able to seek a response from our client, however the Committee did not intend to do so at that time. You also noted that the Committee was not aware of any evidence that would require a response from our client, in that such evidence would reflect adversely on her.

Notwithstanding those matters, we have now had an opportunity to review the published Report and are deeply concerned about various factual inaccuracies contained in it, along with the cherry-picking of evidence without its proper context. These matters, as set out below, require immediate correction by the Committee:

- (a) Paragraph 7.56 of the Report states that there was an investigation of Ms Chester "*regarding allegations about her behaviour towards other staff members of ASIC*". However, that statement is misleading in circumstances where, based on our review of the material, the only allegations made to the Treasurer about Ms Chester's conduct were made by Mr Shipton.
- (b) Paragraph 7.59 of the Report is similarly inaccurate when it states, with respect to an investigation into our client, that "*one of the initial complaints had been made by former Chair of ASIC, Mr James Shipton*". However that is misleading, in circumstances where all of the complaints about our client, based on our review of the material, were made only by Mr Shipton.

- (c) Paragraphs 7.59 and 7.62 of the Report state that an investigation into our client found or concluded that “*many of the instances of alleged conduct could be wholly of [sic] partially substantiated*”. That excerpt is cherry-picked from a letter from Mr Kennedy to Mr Longo dated 1 February 2022, without its proper context, in a manner that is highly prejudicial to our client. As you know, the part of that letter read in full stated that: “The investigation found that many 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 significance” (emphasis added). The failure to report on that letter, in its proper context, is inaccurate and misleading.
- (d) Paragraph 7.63 of the Report states that the purported conclusions contained in the Ministerial Submission referred to at paragraphs 7.61 and 7.62 of the Report (and which included the cherry-picked quote referred to in paragraph (c) above), “contrasted” with Ms Chester’s comments during the 2022-23 supplementary budget estimates hearing, that there were no adverse findings against her following a ‘very comprehensive’ Treasury investigation. Paragraph 7.63 casts unfounded doubt, in an unfair and misleading manner, on the truthfulness of Ms Chester’s comments, in circumstances where all of the evidence about the investigation read as a whole, including Ms Chester’s response to question AET 091 and a proper reading of the 1 February 2022 letter, did not make any adverse findings about our client.

In those circumstances, our client requires the above misleading and inaccurate statements to be corrected by the Committee forthwith. In order to do so, we require the Committee to immediately table this letter, as an addendum to the Report, by way of correction. Doing so is critical to affording procedural fairness to our client and to protect her reputation from further defamatory missives.

Yours faithfully
Gilbert + Tobin

Janet Whiting
Partner

