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Question:

Mr GORMAN: I appreciate your assurance and I don't question that. I'd note for all commissioners that the standard that is applied to us as parliamentarians is not to publish the value or the quantity of any interest, just to note that an interest exists. I will put on notice if you can consider—I would like to see, if not the register that you have just referred to, at least a list of the interests of each of the commissioners. I'm not asking for value or quantity when it comes to shareholdings, but it is a requirement that is placed on many company directors to provide that information publicly. It would be very useful for me to feel that I'm fulfilling my role in this committee of oversight of ASIC to have that information.

Answer:

ASIC has in place existing processes and procedures to ensure that Commissioners meet their statutory disclosure of interest obligations.

Section 123 of the *Australian Securities and Investments Commission Act 2001* requires a Commissioner to disclose to the Minister in writing (amongst other things) “*any direct or indirect pecuniary interest in a business in Australia or in a body corporate carrying on a business in Australia*”.

In addition to Section 123 of the ASIC Act, Section 29 of the *Public Governance Performance and Accountability Act 2013* imposes an obligation on Commissioners to disclose *any material interest that relates to the affairs of ASIC* as follows:

- (a) The ASIC Chair is required to make the disclosure in writing to the Minister (rule 13 of the *Public Governance Performance and Accountability Rules 2014 (PGPA Rules)*);
- (b) The Commissioners (other than the Chair) are required to make the disclosure in writing to the Chair, with a copy of that disclosure included in the records maintained by ASIC's Commission Secretary (process established pursuant to rule 16 PGPA Rules); and
- (c) The Commissioners, including the Chair, are required to disclose to each other either orally or in writing any material personal interest that relates to the affairs at ASIC as soon as practical after they become aware of the interest (i.e. at the next Commission meeting) and ensure that that it is recorded in the minutes of the meeting (rule 16A PGPA Rules). This is similar to the obligation imposed on company directors by Section 191 of the Corporations Act.¹

¹ In addition, Section 205G(1)(a) of the Corporations Act requires directors of listed companies to notify the market operator of their interests in the securities of the listed company or a related company but not of their broader interests & holdings. This provision together with prohibitions on insider trading and market manipulation are part of the regulatory regime designed to maintain an informed market and ensure price sensitive information is disclosed to the market rather than a mechanism for managing conflicts of interest.

The information contained in these disclosures is personal information concerning the financial affairs of the Commissioners and in some cases, their family members. The personal information is provided to the Minister and other Commission members by a Commissioner, on the basis that it would not be published or widely disseminated. Neither the ASIC Act nor the PGPA Act make any provision for public disclosure of this disclosure.

ASIC also notes that the Report of the Committee of Inquiry Concerning Public Duty and Private Interests² known as the Bowen Report, that led to the adoption of the House of Representatives Register of Members' Interests, concluded that:

*For elected officeholders, the registers of interests should be publicly accessible; for appointed officeholders, the register should be kept confidential.*³

We understand that the basis of this position is that Members of Parliament are elected to office by the public, who they represent and are accountable to. Statutory office holders such as Commissioners are appointed to Office by the Governor General on the recommendations of the Minister and are accordingly obliged to disclose their interests to the Executive.

² Commonwealth, *Public duty and private interest: Report of the Committee of Inquiry established by the Prime Minister on 15 February 1978* (July 1979).

³ Ibid 222