

The Parliament of the Commonwealth of Australia

Committee of Members' Interests

House of Representatives
Report on the operations of the Committee for 2006

28 March 2007

© Commonwealth of Australia 2001
ISBN 978-0-642-78918-1



Membership of the committee

41st Parliament

Chair Mr S Ciobo MP

Deputy Chair Mr H Jenkins MP

Members Mr R Baldwin MP (discharged 9/2/06)
 Mr A Byrne MP

 Mr P Neville MP

 Mr H Quick MP

 Mr P Secker MP (appointed 9/2/06)

 Mr C Thompson MP

Committee secretariat

Secretary Mr B Wright

Assistant Mrs L Brennan

House of Representatives
Parliament House
Canberra ACT 2600
Telephone: (02) 6277 4222
Email: Laraine.Brennan.Reps@aph.gov.au

Introduction

1. Under the provisions of standing order 220 by which the Committee is established, the Committee is required, as soon as practicable after each 31 December, to prepare and table in the House a report on its operations during that year.
2. This is the report of the Committee for the calendar year 2006.

Responsibilities of the Committee

3. Standing order 220 sets out the following terms of reference for the committee:
 - (i) to inquire into and report on the arrangements made for the compilation, maintenance and accessibility of a Register of Members' Interests;
 - (ii) to consider proposals made by Members and others on the form and content of the register;
 - (iii) to consider any specific complaints about registering or declaring interests;
 - (iv) to consider possible changes to any code of conduct adopted by the House;
 - (v) to consider whether persons (other than Members) ought to be required to register and declare their interests;

A report in accordance with these terms of reference follows.

Arrangements made for the compilation, maintenance and accessibility of the register

4. No change was made to the arrangements by which the register is maintained. Since 1986 arrangements approved by the Committee provide that the register may be inspected, by appointment, between 10 am and 12 noon and 2 pm and 4 pm on working days in the office of the Registrar. In addition the Registrar may grant permission for the register to be inspected outside of those hours if the Registrar is satisfied that the circumstances surrounding the request warrant the exercise of such a discretion.
5. In total the register was inspected on 56 occasions during the year. These inspections take no account of the use of copies of statements of interests and notifications of alterations of interests tabled by the Chair and made available through the Table Office.

-
6. The Report on operations of the Committee for 2005 was tabled on 16 February 2006. Notifications of alterations of interests received during the period 8 December 2005 to 29 March 2006 were tabled on 30 March 2006, those for 30 March to 21 June 2006 were tabled on 22 June 2006, and those for 23 June to 6 December 2006 were tabled on 7 December 2006.

Proposals made by Members and others as to the form and content of the Register

- 7 The Committee discussed two particular aspects of the present requirements during the year. The first was whether it was appropriate that Members should continue to be required to declare the interests of spouses and dependent children, the second concerned interests held through self-managed superannuation funds. The committee informed all Members of its consideration of these matters and gave them an opportunity to provide and views or comments they wished to. The committee is grateful for the responses received.
- 8 **Requirement to declare spouse interests** This requirement has been part of the rules since the system was introduced in 1984. It was, however, a matter of some dispute at that time - see, for example debates on 5 October 1983 (*Hansard*, p 1383-1406), 8-9 October 1984 (*Hansard* p 1867-1878 and the standing orders committee report, and dissenting report, 7 June 1984.
- 9 Arguments for the declaration of spouse/child interests included the view that this was necessary to ensure that a full disclosure of relevant interests was made and that all potential conflicts were revealed. Arguments against the requirement included concerns about the invasion of the privacy of family members, the status and rights of Members' spouses as persons in their own right and concerns about security.
- 10 The committee acknowledges that the declaration of spouse/child interests is not required in some other Houses for example the UK House of Commons, and New Zealand's House of Representatives.
- 11 The rules for Senators require them to complete two forms - one sets out details of the Senator's own interests, the other contains details of spouse/dependent child interests. This second part is not made public, but if the committee of Senators' Interests considers that a conflict of interest arises it may agree to table relevant spouse/child details.

-
- 12 If, instead of monitoring the operation of a long-established set of requirements, our Committee was now considering the introduction of requirements it is possible that a different conclusion would be reached in respect of spouse/dependent child interests. On one view a reasonable balance would be to require Members to declare spouse/dependent child interests, but to keep that part of the declarations confidential unless the Committee believed, in a particular case, that a conflict arose, in which case it could authorise tabling of the details. This would mirror the position applying in the Senate. In this matter as in all other aspects of the actual requirements any change is a matter for the House. The committee makes no recommendation that the House should amend the requirements at this time.
- 13 **Superannuation interests** The resolution of the House establishing the requirements does not mention superannuation interests. This probably reflects the fact that when it was adopted, in 1984, superannuation, especially private superannuation, was not such a prominent matter.
- 14 Despite the silence of the resolution, Members often declare superannuation (other than parliamentary superannuation) interests under category 9: ‘other assets’ – the Register contains many entries recording interests in publicly available or industry superannuation funds. There has however been some uncertainty in respect of private or self managed superannuation funds (SMSFs).
- 15 As well as the resolution of the House being silent in respect of superannuation interests, the Explanatory Notes authorised by the Committee to assist Members in interpreting the requirements make no mention of superannuation interests. The notes contain no reference to the possession of superannuation interests or to the ownership of shares through SMSFs
- 16 There is an anomaly in respect the silence of the requirements in respect of SMSFs and the statements in the notes about shareholdings: the committee has stated that where shareholdings of a Member/spouse/dependent child amount to a controlling interest in a company it is necessary also to register any shareholdings held by that company. A similar view has been taken in respect of shares held by a trust, a nominee company or a partnership, the test applied is whether the Member/spouse/dependent children are able to exercise control over the right to vote or dispose of shares held by the entity – if the have such control the notes say that the shareholdings of the entity must also be declared.
- 17 It is probable that in practice some Members may already apply the same test to shares held by SMSFs – that is, they may declare shareholdings held through SMSFs without specifying that the share are in fact held through such vehicles. It is of course also possible that because both the resolution of the House and the Committee’s explanatory notes are silent in respect of SMSFs some Members may not declare such interests.
- 18 The committee believes that it would be consistent with the overall purpose of the requirements, and with the detailed position taken in respect of shares held through private companies and family and business trusts, for the Explanatory Notes to state that interests in superannuation funds, including SMSFs, should be declared and that shares held through SMSFs should be declared (subject to the

same conditions as apply to shares held by private companies and family and business trusts). This would also have the advantage of achieving consistency between the Houses.

- 19 The Committee has therefore agreed to amend the Explanatory Notes it authorises to guide and assist Members. The first change is to the note under item 1 (Shareholdings) so that it reads "...This includes shares held by a family or business trust, a nominee company, a partnership or **a self-managed superannuation fund (SMSF)...**". The second change is to the note under item 9 (Other assets) so that it reads "Private life assurance policies **and superannuation interests, including self-managed superannuation funds (SMSFs)** should be included.." (changes shown in bold). This will have the effect that a Member with a SMSF would declare this fact under item 9, and, if the fund held shares, those shares would be declared under item 1.

Specific complaints made in relation to the registering or declaring of interests

20. No specific complaints were raised with the Committee.

Changes to any code of conduct

21. The House has not adopted any code of conduct for Members, although a draft code was tabled by the Speaker, on behalf of a working group, on 21 June 1995. The Committee was, therefore not required to consider this matter.

Registration of interests by other classes of person

No issues were considered in this area during the year.

(STEVEN CIOBO MP)
Chair
28 March 2007