
The Parliament of the Commonwealth of Australia

Committee of Members' Interests

House of Representatives
Report on the operations of the Committee for 2007

February 2008

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Membership of the committee

42nd Parliament

Chair

Deputy Chair

Members

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

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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 2007.

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. The committee considered the arrangements for the compilation and maintenance of the register during the year. One complaint was received in respect to the conditions of access. The committee was briefed on the arrangements applying in other jurisdictions and on considerations and options for the compilation of and access to the register. Following consideration at two meetings no change was determined in respect to the arrangements, so that the key conditions remains as follows: inspections between 10am and 12noon and 2pm and 4pm on working days, but with appointments able to be made outside these hours, and with persons inspecting the register being allowed to make

notes but not make photocopies of the declarations. (Copies of returns and alterations are available, after tabling, through the Table Office – see below).

6. In total the register was inspected on ninety-one 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.
7. The report on operations of the Committee for 2006 was tabled on 29 March 2007. Copies of notifications of alterations of interests received during the period 8 December 2006 to 28 March 2007 were tabled on 29 March 2007, and those for 29 March to 20 June 2007 were tabled on 21 June 2007.

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

8. The Committee's report for 2006 dealt with the issue of superannuation interests, and, in particular, with self-managed superannuation funds (SMSFs). It noted that the resolution of the House establishing the requirements did not mention superannuation interests, and said that this probably reflected the fact that when it was adopted, in 1984, superannuation, especially private superannuation, was not a prominent matter.
9. The committee recognised that, 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. The committee acknowledged that there had however been some uncertainty in respect of private or self managed superannuation funds (SMSFs).
10. Not only was the resolution of the House silent in respect of superannuation interests, the committee noted that the authorised Explanatory Notes issued to assist Members in interpreting the requirements made no relevant mention of superannuation interests or to the ownership of shares through SMSFs
11. The committee recognised the anomaly in respect the silence of the requirements in respect of SMSFs and the statements in the notes about shareholdings: the committee had 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 had been taken in respect of shares held by a trust, a nominee company or a partnership, the test applied being 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 such control were held, the notes stated that the shareholdings of the entity must also be declared.
12. The committee noted that in practice some Members would already have been applying the same test to shares held by SMSFs – that is, they would have declared shareholdings held through SMSFs without specifying that the shares were in fact held through such vehicles. It was of course also possible, the committee reported, that because both the resolution of the House and the

Committee's explanatory notes were silent in respect of SMSFs other Members would not have declared such interests.

13. Members were consulted about these matters and given the opportunity to put views to the committee. It concluded 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).
14. The Committee therefore amended the Explanatory Notes it authorises to guide and assist Members and notified members accordingly. The first change was to the note under item 1 (Shareholdings) so that it read "...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 was to the note under item 9 (Other assets) so that it read "Private life assurance policies **and superannuation interests, including self-managed superannuation funds (SMSFs)** should be included." (changes shown in bold). This had 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.
15. During 2007 the committee considered the matter of financial instruments such as convertible notes and options. It recognised that neither the resolution of the House establishing the requirements nor the explanatory notes mentioned such instruments. Again this could be explained in part by the fact that the resolution was adopted in 1984. The committee advised the Members of its consideration of this matter and gave them the opportunity to put their views to it.
16. The committee concluded that the ownership of convertible notes and options gave the holders of the options or convertible notes a financial interest in the future performance of a company's shares. It was recognised that some Members would already consider that, having regard to the purpose of the requirements, they should declare the ownership of such assets. The committee concluded however that it would be consistent with the overall purpose of the registration requirements for the ownership of convertible notes and options to be specified as requiring registration.
17. The committee therefore agreed that the explanatory notes issued under its authority to guide Members be amended by the addition of the following words at the end of the notes under item 1 (shareholdings):
"The ownership of convertible notes issued by a company and options or similar instruments in respect of a company's shares should also be registered."

The committee decided that this change should come into effect at the commencement of the 42nd Parliament.

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

18. No specific complaints were raised with the Committee.

Changes to any code of conduct

19. 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.

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Chair
28 March 2007