

LOCAL GOVERNMENT
PECUNIARY INTEREST AND DISCIPLINARY TRIBUNAL
ANNUAL REPORT 2011

GENERAL

The Local Government Pecuniary Interest and Disciplinary Tribunal is established pursuant to s.487 of the *Local Government Act, 1993* and was established in that form by the *Local Government Amendment (Discipline) Act, 2004*

The Tribunal replaced the former Local Government Pecuniary Interest Tribunal and retains its former function to determine complaints of contravention of Part 2 of Chapter 14 of the *Local Government Act 1993*.

Part 2 of that Chapter requires that the financial interests of councillors, council delegates, senior staff and certain other persons involved in making decisions or giving advice on council matters be placed on public record. Councillors and designated persons are required to submit written returns for that purpose.

Councillors, senior staff and other designated persons are also required to disclose their pecuniary interests and refrain from taking part in decisions on council matters in which they have a pecuniary interest.

If a complaint of a contravention is proved, the Tribunal may, in the case of councillors, council committee members and council advisers, counsel, reprimand, suspend or disqualify them from civic office and, in the case of council employees, recommend disciplinary action or dismissal.

Division 3 of Part 1 of Chapter 14 of the *Local Government Act*, inserted by the 2004 Amendment Act, deals with misbehaviour of a Councillor and permits an appeal to the Tribunal by a councillor against whom an order of suspension is made by the Director General. The Division also provides for the referral to the Tribunal by the Director General of a matter being considered under that Division instead of suspending the Councillor.

The legislation requires complaints of contraventions to be dealt with in the first instance by the Director-General of the Department. There is a procedure laid down by the Act.

The Director-General has powers to investigate a complaint or refer it to another authority for investigation. The Act requires that when the Director-General decides to investigate or refer the complaint for investigation to another authority the Tribunal must be notified.

The Tribunal's functions are initiated by a report presented to the Tribunal by the Director-General or a report received by the Director-General from another authority and presented by the Director-General to the Tribunal. In either case, the Tribunal, after considering the report, may decide to conduct proceedings into the complaint, or it may decide, for reasons to be stated in writing, not to conduct proceedings. It may decide to refer the matter to another authority to be dealt with if it considers that is more appropriate than the authority deal with the matter and the authority agrees to the referral.

The Tribunal's functions under Division 3 of Part 1 Chapter 14 are initiated by the making of an appeal to the Tribunal by a Councillor, or by the making of a referral to the Tribunal by the Director General.

The Tribunal is constituted by one part-time member appointed by the Governor. On 30 May 2007, I was appointed to hold the office for a period of five (5) years to 29 May, 2012.

Section 490 of the *Local Government Act* obliges the Tribunal to furnish an annual report to the Minister concerning proceedings that have been conducted before it during the year within two (2) months after the end of each year.

This report covers the period from 1 July 2010 to 30 June 2011. It includes reference to complaints of which notice of a decision by the Director-General to investigate has been given to the Tribunal under s.465 of the Act, reports of completed investigations presented to the Tribunal under s.468 of the Act, and proceedings conducted before the Tribunal in respect of those reports during that period.

NOTICES OF INVESTIGATION

In the period 1 July 2010 to 30 June 2011 the Tribunal received from the Director-General three (3) Notices of Decision to investigate a complaint under s.465 of the *Local Government Act*.

1. LGPIDT 09/2010 – (Notice received 21 July 2010) – Councillor Maxwell Walker, Mid-Western Regional Council

It is alleged that Councillor Maxwell Walker was in breach of s.451 of the *Local Government Act, 1993* in failing to declare a pecuniary interest in matters coming before Council's meeting of 18 November 2009 pursuant to s.451(1) and failing to take the steps required by s.451(2) of the Act.

The terms of reference for the investigation were to investigate the conduct of Councillor Maxwell Walker in respect of his participation in the consideration and discussion of a Mayoral Minute in relation to the water usage fees applied to the Mudgee Country Race Club Inc, of which he is the Chairman, at the Mid-Western Regional Council meeting of 18 November 2009, and failing to disclose his pecuniary interest at the Mid-Western Regional Council meeting on 18 November 2009 as required by section 451 of the Act.

2. LGPIDT 01/2011 – (Notice received 31 January 2011) – Councillor Glenys Francis, Port Stephens Council

It is alleged that Councillor Glenys Francis breached the provisions of s.451 of the Act by failing to declare a pecuniary interest in matters coming before Council's meetings on 25 May 2010 pursuant to s.451(1) and failing to take the steps required by s.451(2) of the Act.

The terms for reference for the investigation were to investigate the conduct of Councillor Glenys Francis in respect of her participation in the consideration and discussion of an amended 'Aircraft Noise' policy and related Development Control Plan at the Council Committee meeting of 25 May 2010 and Council's Ordinary meeting of 25 May 2010, which had a negative impact on the value of Councillor Francis' property, and failing to disclose a pecuniary interest at the

Council Committee and Ordinary meetings of 25 May 2010, in accordance with s.451 of the Act.

3. LGPIDT 02/2011 – (Notice received 31 January 2011 and amended 9 February 2011) – Councillor Tina Reynolds, Dubbo City Council

It is alleged that Councillor Reynolds has breached the provisions of s.451 of the Act by failing to declare a pecuniary interest in matters coming before Council's Works and Committee meeting held on 15 March 2010 and the Ordinary Meeting on 22 March 2010.

The terms of reference for the investigation were to investigate the conduct of Councillor Tina Reynolds in respect of her failure to disclose a pecuniary interest, her participation in the consideration, discussion and decisions of matter before Dubbo City Council in contravention of s451(1) and (2) of the Act relating to the budget allocations for horticultural activities in Council's functional plans from which her company, A1 Tree Services, receives an income at the meetings.

REPORTS OF INVESTIGATIONS

On 15 December 2010 pursuant to s.468 of the *Local Government Act* the Tribunal received from the Director General a Report of Investigation into **Councillor Maxwell Walker of Mid-Western Regional Council: Notice of Investigation No 1 above (LGPIDT 09/32010)**.

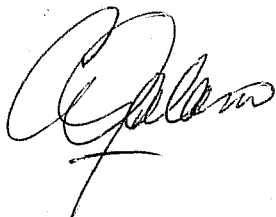
On 17 June 2011 pursuant to s.468 of the *Local Government Act* the Tribunal received from the Director General a Report of Investigation into **Councillor Glenys Francis of Port Stephens Council: Notice of Investigation No 2 above (LGPIDT 01/2011)**.

PROCEEDINGS BEFORE THE TRIBUNAL

In the period 1 July 2010 to 30 June 2011 the Tribunal took the following action in relation to the Conduct of proceedings.

On 14 February 2011 the Tribunal issued a Notice of Decision to Conduct Proceedings, and Notice of Preliminary Conference pursuant s.469(1) of the Act to **Councillor Maxwell Walker of Mid-Western Regional Council**. Following a Preliminary Conference held on 11 March 2011, the hearing of the proceedings was conducted on 14 July 2011. The Tribunal's Determination is reserved.

Dated: 24 August 2011



Adrian Galasso SC

Local Government Pecuniary Interest and Disciplinary Tribunal

