

LOCAL GOVERNMENT

PECUNIARY INTEREST AND DISCIPLINARY TRIBUNAL

ANNUAL REPORT 2005

The Local Government Pecuniary Interest and Disciplinary Tribunal was established by the *Local Government Amendment Act 2005* which commenced on 1 January 2005. Section 440N of Part 1, Division 3 of the *Local Government Amendment Act 2005* permits the referral to the Tribunal by the Director-General of the Department of Local Government of matters alleging misbehaviour by a councillor.

Certain other amendments to the *Local Government Act 1993* include amendments to ss.442, 443, 448, 451 and the insertion of a contempt power in s.486A. This section permits the Pecuniary Interest and Disciplinary Tribunal to report certain matters to the Supreme Court of New South Wales to be dealt with by that Court as if those matters were a contempt of that court.

The Tribunal retains its former function to determine complaints of contraventions 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 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 from civic office and, in the case of council employees, recommend disciplinary action or dismissal.

The Tribunal is constituted by one part-time member appointed by the Governor. On 11 April 2001 I was appointed to hold the office for a period of five years.

The Act obliges the Tribunal to furnish an annual report to the Minister concerning proceedings that have been conducted before it during the year.

This report covers the period from 1 July 2004 to 30 June 2005. 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 steps taken by the Tribunal in respect of those reports during that period.

PROCEEDINGS BEFORE THE TRIBUNAL

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.

NOTICES OF INVESTIGATION

In the period 1 July 2004 to 30 June 2005 the Tribunal received from the Director-General three notices of decision by him to investigate a complaint:

- 1. PIT 1/2005 (Notice received 1/5/2005) - Councillor Ron Fernance, Moree Plains**

Shire Council

Alleged contravention of s.451 of the *Local Government Act 1993* in that he:

"Contrary to Chapter 14, Part 2 of the *Local Government Act 1993* at the Council meeting of 5 October 2004 took part in the consideration of development application DA04-0107, in which he had disclosed a pecuniary interest."

2. PIT 2/2005 (Notice received 7/6/2005) - Councillor Rick D'Amico, Lane Cove Municipal Council

Alleged contravention of s.451 of the *Local Government Act 1993* in that he:

"Failed to declare a pecuniary interest in a matter before council on 21 June 2004 in respect of a proposed joint development between council and Woolworths Limited in accordance with section 451 of the *Local Government Act 1993* and in respect of his failure to absent himself from the said council meeting when such matter was considered and voted upon."

3. PIT 3/2005 (Notice received 7/6/2005) - Councillor Caroline Stott, Ashfield Council

Alleged contravention of s.449 of the *Local Government Act 1993* in that she:

"Failed to lodge her 2002-2003 pecuniary interest return by 30 September 2003 in accordance with section 449 of the *Local Government Act 1993*."

REPORTS OF INVESTIGATIONS - ACTION BY TRIBUNAL

The Tribunal's actions in respect to reports referred to in the Tribunal's 2004 Annual Report are as follows:

1. PIT 3/2001 - Councillor Brian Eichorn, Uralla Shire Council:

As reported in the Tribunal's Annual Report 2004, page 6 the Tribunal had determined that Councillor Brian Eichorn had breached the pecuniary interest provisions of the *Local Government Act 1993* in respect of meetings of the Uralla Shire Council held on 23 February and 28 September 2001.

The Tribunal accepted that Councillor Eichorn did not knowingly intend to breach the provisions of the Act. However, in circumstances where he was clearly aware that he had a pecuniary interest the Tribunal was of the opinion that he ought to have taken greater care in doing what he did at the two meetings. The Tribunal rejected the view that was put forward that what he said was permitted when the standing orders of the meeting were suspended and when there was no formal motion before the council. The Tribunal accepted that what occurred was an honest, albeit mistaken, belief that Councillor Eichorn was entitled to do what he did.

At the time of the Tribunal's decision, Councillor Eichorn was no longer a member of the council. The Tribunal, nevertheless, was of the opinion that he ought to be reprimanded for his breaches of the Act and it so ordered.

2. PIT 4/2001 - Councillor Peter Kemper, Uralla Shire Council:

As reported in the Tribunal's Annual Report 2004, page 8 the Tribunal had determined that at three meetings of the council Councillor Kemper participated in circumstances where he breached s.451 of the Act, because his employer had a pecuniary interest in the matter before the council, and as an employee of that company, Councillor Kemper was taken to have a pecuniary interest by virtue of the provisions of s.443(2) of the Act.

The Tribunal was of the opinion that what was involved were clear and serious breaches of the provisions of the Act spread over a period from February to September 2001. At all times Councillor Kemper was aware of all relevant factual matters and had ample opportunity to properly acquaint himself with the provisions of the Act and the relevant decisions of the Tribunal. Councillor Kemper's attention had been expressly drawn to a relevant decision of this Tribunal. Councillor Kemper did not understand the material which was being proffered by the Director-General and did not understand the relevant

decision of this Tribunal and did not understand how the pecuniary interest provisions of the Act applied to a person in his position. Notwithstanding these matters, Councillor Kemper took no adequate or further steps to properly acquaint himself with the provisions of the Act so far as they related to him. The Tribunal was of the opinion that the breaches of the Act committed by Councillor Kemper were committed with reckless disregard of his responsibilities. Councillor Kemper had demonstrated no real remorse at any stage of the proceedings for the breaches which he had committed and no real appreciation of how the breaches arose or that he had taken any steps to properly understand his obligations under the Act.

In the circumstances, the Tribunal was of the opinion that Councillor Kemper's breaches of the Act warrant him being disqualified from holding civic office for a period of 12 months and the Tribunal so ordered.

There have been three reports of the Director-General's investigations received by the Tribunal during the period under review:

1. PIT 1/2004 (Report received 14/10/2004) - Councillor Ian Longbottom, Lane Cove Council

Alleged contravention of s.449 of the *Local Government Act 1993* and involved an allegation that he failed to lodge his 2001-2002 pecuniary interest return by 30 September 2002.

The undisputed fact was that Councillor Longbottom ought to have completed and lodged with the general manager within three months after 30 June 2002 a pecuniary interest return in the form prescribed by the Regulations. He did not do so until 30 April 2003. The return that was so lodged was not in the form prescribed because it was undated, it did not disclose the nature of Councillor Longbottom's interests in parcels of real estate set out in the return. The return did not disclose, as required by the Regulations, the address or a description of the principal object of the corporations in which Councillor Longbottom held an interest or position which corporations were listed on the return. Further contrary to the Regulations, in relation to sources of income

disclosed, there was not a description sufficient to identify the person from whom or the circumstances in which the income was or was reasonably expected to be received.

Councillor Longbottom's explanations amounted to an assertion of it being a matter of oversight or slackness or undue haste. The Tribunal was of the opinion that the breaches by Councillor Longbottom of his obligations to lodge the return at all for a period of seven months and when lodged for it to be incomplete and lacking the details required by the Regulations were breaches of a serious kind. The Tribunal viewed his explanations as totally unsatisfactory and emphasised that both the Department and the Tribunal had given more than ample warnings of the importance of timely and careful and complete returns being lodged.

In the particular circumstances of the case and taking into account Councillor Longbottom's fine character and reputation, the Tribunal determined that he ought to be reprimanded for his breaches of the Act and Regulations and it so ordered.

2. PIT 1/2003 (Report received February 2005) - Councillor David Taylor, Weddin Shire Council

This matter was referred to in the Tribunal's Annual Report 2004 at page 3 and involved allegations of alleged contraventions of s.451 of the *Local Government Act 1993*.

During the period covered by this report, the Tribunal instituted the gathering of further evidence and, in particular, valuation evidence relating to the property in which it was alleged Councillor Taylor had a pecuniary interest. The outcome of the Tribunal's deliberations in relation to this matter will be referred to in the Tribunal's Annual Report for 2006.

3. PIT 2/2003 (Report received February 2005) - Councillor Barry Hinde, Weddin Shire Council

The matter was referred to in the Tribunal's Annual Report 2003 at page 3 and involved allegation of alleged contraventions of s.451 of the *Local Government Act 1993*.

In the period covered by this report, the Tribunal instituted the gathering of further evidence relating to the employment of Councillor Barry Hinde's wife so as to clarify whether or not there was any relevant pecuniary interest involved. The outcome of the Tribunal's deliberations in relation to this matter will be contained in the Annual Report 2006.

7 September 2005

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D.P.F. Officer QC
Pecuniary Interest and Disciplinary Tribunal