

LOCAL GOVERNMENT

PECUNIARY INTEREST TRIBUNAL

ANNUAL REPORT 2001

The Local Government Pecuniary Interest Tribunal was established by the Local Government Act 1993 which commenced on 1 July 1993. The Tribunal's principal function is to determine complaints of contraventions of Part 2 of Chapter 14 of the Act.

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 office for a period of five years. The previous member, P D McClellan, QC, resigned on 25 January 2001 on being appointed as a Judge of the Supreme Court of New South Wales.

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 2000 to 30 June 2001. It includes reference to complaints of which notice of a decision by the Director-General to investigate has been given to the Tribunal under s465 of the Act, reports of completed investigations presented to the Tribunal under s468 of the Act and action 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. The Tribunal may determine the proceedings with or in some circumstances without a hearing. It may decide to refer the matter to another authority to be dealt with if it considers that it is more appropriate that the authority deal with the matter and the authority agrees to the referral.

NOTICES OF INVESTIGATION

In the period 1 July 2000 to 30 June 2001 the Tribunal received from the Director-General, three notices of decisions by him to investigate a complaint.

1. **PIT2/2000** (Notice received 29 January 2001) – **Councillor Dominic WY Kanak – Waverley Council**: Alleged contravention of s451 of the Local Government Act, 1993 by failing to disclose his pecuniary interests and by participating in a debate and voting on matters before Waverley Council on 28 September 1999 concerning a Motion that was before the Council regarding the proposed Olympic Volleyball Stadium on Bondi Beach.
2. **PIT3/2000** (Notice received 29 January 2001) – **Councillor Bala Balendra – Auburn Council**: Alleged contraventions of s451 of the Local Government Act, 1993, by failing to disclose his pecuniary interests and participating in debates before Auburn Council on 1 March 2000, 5 July 2000 and 16 August 2000 concerning the Auburn Development Control Plan 2000.
3. **PIT4/2000** (Notice received 29 January 2001) – **Councillor Alan Friend, Walgett Council**: Alleged contraventions of s451 of the Local Government Act, 1993, by failing to disclose his pecuniary interests and participating in debates before Walgett Council on 31 July 2000 and 25 September 2000 concerning the proposal by Walgett Game Meats Processing Works for the construction of an all weather access road and financial assistance.

REPORTS OF INVESTIGATIONS – ACTION BY TRIBUNAL

The Reports of the Director-General's investigations received by the Tribunal during the period under review, and the Tribunal's actions in respect thereof were as follows:

1. **PIT1/2000** (Notice received October 1999) – **Councillor Christopher Ringstad – North Sydney Council**: This matter was referred to in the Tribunal's Annual Report 2000 at page 4 and incorrectly identified as **PIT1/1998**. The alleged contraventions related to contravention of s451 of the Local Government Act 1993 by failing to fully

disclose his pecuniary interests and by participating in a debate and voting on matters before the North Sydney Council on 14 April 1998 concerning the draft North Sydney Local Environmental Plan 1998, and further that he contravened section 449 of the Local Government Act, 1993 by not fully and correctly disclosing his interests for the year ended 30 June 1998. These matters did not proceed to hearing and were dealt with by the previous Tribunal member, P D McClellan, QC in the following manner:

Section 451. The Tribunal found that there was no likelihood that Councillor Ringstad would financially gain or lose if the draft plan were adopted and was therefore satisfied he did not have a pecuniary interest in the matter and had not breached Section 451. The Tribunal noted that this was likely to be an exceptional case where a change in zoning did not affect the property's value. The Tribunal noted its previous decisions in Roberts and Treloar and that councillors may breach the Act even if he or she honestly believes the matter does not raise a relevant financial interest. Rather than rely on their own judgment prudent councilors should obtain relevant advice before deciding to participate and vote.

Section 449. Councillor Ringstad admitted he had failed to include certain real property details in his returns for the year ended 30 June 1998. The Tribunal accepted evidence that the omission was inadvertent and due to a lack of care. The Tribunal counselled Councillor Ringstad for his breach of Section 449.

OUTSTANDING COMPLAINTS

The Investigations and Review Branch of the Department has reported to the Tribunal that nine (9) complaints under section 460 of the Act were received in the twelve months to 30 June 2001 of which only six (6) met the criteria of a formal pecuniary interest complaint. Of these four (4) have resulted in pecuniary interest complaints being made by the Director-General pursuant to s.460.

ACKNOWLEDGEMENT

The Director-General, the Officers of your Department and the Tribunal's own staff have fully supported and assisted the Tribunal in the performance of its functions. The Tribunal expresses its appreciation.

DATED: 19 March 2002

D.P.F. OFFICER QC
Pecuniary Interest Tribunal