

LOCAL GOVERNMENT

PECUNIARY INTEREST TRIBUNAL

ANNUAL REPORT 2002

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 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 2001 to 30 June 2002. 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 a hearing into the complaint, or it may decide, for reasons to be stated in writing, not to conduct 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 2001 to 30 June 2002 the Tribunal received from the Director-General, four notices of decisions by him to investigate a complaint.

1. **PIT1/2001** (Notice received 17 September 2001) – **Councillor Carmel Del Duca** – **Canada Bay Council**: Alleged contravention of s449(1) of the Local Government Act, 1993 by failing to disclose her pecuniary interests in respect of the requirements of Chapter 14 of the Local Government Act 1993, Part 2, **Duties of Disclosure**, Division 2, **Completion and lodgment of a written return within the prescribed time**.
2. **PIT2/2001** (Notice received 18 December 2001) – **Councillor Christopher Gulaptis** – **Maclean Shire Council**: Alleged contraventions of s451 of the Local Government Act, 1993 in that he:
 - (i) Failed to disclose his pecuniary interests and participated in debates before Maclean Shire Council on 12 April 2000, concerning a decision that a Gulmarrad Section 94 Road Contribution Plan be prepared; and any matter relating thereto;
 - (ii) Participated in debates before Maclean Shire Council on 17 January 2001 concerning the Council's decision to acquire from Dovoni Pty Ltd that part of its Lot 2 DP 606754 as is affected by the proposed Yamba Bypass and any matter relating thereto; and
 - (iii) Participated in debates before Maclean Shire Council on 11 April 2001 concerning the application lodged by Australian Indigenous Christian Ministries Ltd proposing the establishment of a Recreation Establishment (Religious Retreat) at Lot 50 DP 1012341, Murrayville Road, Ashby, and any matter relating thereto.
3. **PIT3/2001** (Notice received 10 December 2001) – **Councillor Brian Eichorn**, **Uralla Shire Council**: Alleged contraventions of s451 of the Local Government Act, 1993 in that he:
 - (i) Failed to disclose his pecuniary interests and participated in debates before Uralla Shire Council on 23 February 2001 concerning a proposal to purchase Lakeview during that part of the Council Meeting when the Council suspended standing orders;
 - (ii) Participated in debates before Uralla Shire Council on 24 September 2001 in the discussion of the sale of Lakeview, prior to declaring a pecuniary interest

and leaving the Council Meeting during that part of the Meeting when the Council suspended standing orders;

- (iii) Participated in debates before Uralla Shire Council held on 28 September 2001 after declaring a pecuniary interest in the Council's consideration of a Report dealing with "Expressions of Interest for the Provision of Marketing Advice for "Lakeview"; and
- (iv) Any other matter that may come to attention.

4. **PIT4/2001** (Notice received 10 December 2001) – **Councillor Peter Kemper, Uralla Shire Council**: Alleged contraventions of s451 of the Local Government Act, 1993 in that he:

- (i) Failed to disclose his pecuniary interest in debates before a Council Meeting of Uralla Shire Council on 23 February 2001 in the debate, consideration and voting on a matter before the Council concerning a proposal to purchase Lakeview;
- (ii) Participated in a Council Meeting of Uralla Shire Council on 23 April 2001 in the Council's consideration of a proposal to purchase three properties at Uralla, prior to leaving the Council Meeting without giving a reason;
- (iii) Participated in a Council Meeting of Uralla Shire Council held on 30 April 2001 prior to declaring a conflict of loyalties and leaving the Council Meeting.
- (iv) Participated in a Council Meeting held on 24 September 2001 in the discussion of the sale of Lakeview, prior to declaring a conflict of interest and leaving the Council Meeting; and
- (v) Any other matter that may come to attention.

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. **PIT2/2000** (Notice received 22 May 2001) – **Councillor Dominic Wy Kanak – Waverley Council**:

This matter was referred to in the Tribunal's Annual Report, page 3. The alleged contraventions related to section 451 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 Volley Ball Stadium on Bondi Beach. In particular the Motion related to proceedings which had been commenced by Councillor Kanak in the Supreme Court and a proposal that the Council join, fund and assist those proceedings and that the Council provide suitable and adequate funding for those who were then campaigning to oppose the Volley Ball Stadium.

The proceedings were complicated by the fact that Councillor Kanak made a number of admissions of liability and after the Tribunal had received submissions as to what consequences ought to flow he sought to withdraw those admissions, to review the Tribunal's decision made in the first instance to conduct a hearing and to re-open the hearing of the matter. These applications were each refused by the Tribunal.

The Tribunal found that Councillor Kanak had breached the provisions of section 451 in the manner alleged. The Tribunal also found that Councillor Kanak sought at the meeting to excise from the Motion the relevant offending paragraphs but that his attempts to do so, in a formal manner, were unsuccessful. Councillor Kanak's breaches were transparent. On the other hand the Tribunal noted with some concern that Councillor Kanak was reluctant to acknowledge his wrongdoing even though he had sought to excise the offending paragraphs from the Notice of Motion at the Council hearing. The Tribunal found the manner in which he had conducted the proceedings carried a clear implication that while appreciated the nature and extent of his duties under the Act he was prepared to seek to take any procedural advantage which may be available to him to seek to avoid the admissions which he had made.

In all the circumstances the Tribunal reprimanded Councillor Kanak for his breaches of section 451 of the Act.

2. **PIT4/2000** (Notice received June 2001) – **Councillor Alan Friend – Walgett Council:**

This matter was referred to in the Tribunal's Annual Report for the year 2001 at page 3. The matter involved alleged contraventions of section 451 of the Local Government Act, 1993 by failing to disclose his pecuniary interests and participating in debates before Walgett Council concerning a proposal by Walgett Game Meats Processing Works for the construction of an all-weather access road and financial assistance.

In the period under review a preliminary hearing was held at which time it was indicated that Councillor Friend intended to make certain concessions relating to the allegations. The formulation of those concessions involved matters of some complexity.

The final outcome in relation to this matter will be reported in the next Annual Report of the Tribunal.

3. **PIT3/2000** (Notice received August 2001) - **Councillor Bala Balendra – Auburn Council:**

This matter was also referred to in the Tribunal's Annual Report for the year 2001. It alleged contraventions of section 451 of the Local Government Act, 1993 by failing to disclose alleged pecuniary interests and participating in debates before Auburn Council concerning the Auburn Development Control Plan.

The Tribunal decided in November 2001 to conduct proceedings into the complaint. Since reaching that decision further matters have arisen which have required further investigations to be made. The Tribunal anticipates being in a position in the not too distant future to make a further decision as to the course to be adopted in relation to this matter.

4. **PIT 1/2001** (Notice received 11 June 2001) – **Councillor C Del Duca – Canada Bay Council:**

This complaint alleges that Councillor Carmel Del Duca failed to complete and lodge a written return within the prescribed period of time under section 449(1) of the Local Government Act, 1993. The Tribunal received from the Director-General a Report dated May 2002. During the period under review the Report was considered and on 30 July 2002 the Tribunal decided to conduct proceedings into the said complaint.

OUTSTANDING COMPLAINTS

The Investigations and Review Branch of the Department has reported to the Tribunal that 168 complaints under s460 of the Act were received in the twelve months to 30 June 2001 of which only eight met the criteria of a formal pecuniary interest complaint. Of these three have result in pecuniary interest complaints being made by the Director-General pursuant to s460.