

**LOCAL GOVERNMENT  
PECUNIARY INTEREST TRIBUNAL**

**ANNUAL REPORT 1997**

DATED: 26 August, 1997

# **LOCAL GOVERNMENT PECUNIARY INTEREST TRIBUNAL**

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The Local Government Pecuniary Interest Tribunal was established by the Local Government Act 1993.

The Tribunal's principal function is to determine allegations of contraventions of Part 2 of Chapter 14 of the Act.

Part 2 of that Chapter requires that the pecuniary 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, staff and other designated persons are required to make disclosure and refrain from taking part in decisions on Council matters in which they have a pecuniary interest.

If a contravention is proved to the Tribunal, 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 9 February 1994 I was appointed to hold office for three years. On 9 February 1997 I was re-appointed for a further three 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 1996 to 30 June 1997. 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 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 either 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

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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 1996 to 30 June 1997 the Tribunal received from the Director-General seven notices of decisions by him to investigate complaints.

The nature of the alleged contraventions under investigation in these cases was as follows:

1. **PIT3/1996** (Notice received 9 July 1996) - **Councillor Jillianne Patricia Deering - Sutherland Shire Council:** Alleged contravention of section 449(1) of Local Government Act, 1993 by failure to lodge pecuniary interest return within 3 months of election to Council on 13 September 1995.
2. **PIT4/1996** (Notice received 15 July 1996) - **Councillor Raymond Wadsworth - Wentworth Shire Council:** Alleged contravention of section 451 of Local Government Act, 1993 by failure to disclose pecuniary interest and refrain from participating in and voting on a matter of Council's advertising policy at a Council meeting on 17 April 1996.
3. **PIT5/1996** (Notice received 21 November 1996) - **Councillor David Redmond - Sutherland Shire Council:** Alleged contravention of section 451 of Local Government Act, 1993 in relation to matters before the Council concerning public road connection between certain roads in the Shire.
4. **PIT6/1996** (Notice received 21 November 1996) - **Councillor Thomas White - Sutherland Shire Council:** Alleged contravention of section 451 of Local Government Act, 1993 in relation to matters before the

Council concerning public road connection between certain roads in the Shire.

5. **PIT7/1996** (Notice received 11 December 1996) - **Mr Leigh Robins, Director of Technical Services - Oberon Shire Council:** Alleged contravention of section 459 Local Government Act, 1993 by failure to disclose in writing to the Council's General Manager a pecuniary interest in a Council matter relating to sewerage connection to certain properties with which matter Mr Robins was dealing in his capacity as Director of Technical Services.
6. **PIT1/1997** (Notice received 21 January 1997) - **Councillor David York - Barraba Shire Council:** Alleged contraventions of section 451 Local Government Act, 1993 by his participation at Council meetings in January and February 1996 in matters relating to future use of the Barraba Post Office Building in respect of which he had declared a pecuniary interest.
7. **PIT2/1997** (Notice received 1 April 1997) - **Councillor J Miller - Orange City Council:** Alleged possible contraventions of section 451 Local Government Act, 1993 by failure to disclose pecuniary interests in a proposal before Council meetings on 7 and 21 November 1996 for the provision of financial assistance by the Council for a marketing strategy to promote shopping at Orange.

## **REPORTS OF INVESTIGATIONS - ACTION BY THE 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. **PIT1/1996 - Former Councillor John Norman Fisk - Burwood Council** (Report received 28 May 1996)

The Report on this matter was mentioned in the Tribunal's Annual Report 1996 (listed as No.3 under the heading "**Reports of Investigations - Action by the Tribunal**"). As mentioned there, the

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Tribunal decided to conduct a hearing into the complaint and, at the date of that Annual Report, a preliminary hearing had been held and a date for a further hearing appointed.

The complaint against former Councillor Fisk was that during his term of office as a Councillor of Burwood Council he had contravened section 46C of the Local Government Act, 1919 by failing to disclose a pecuniary interest in matters before the Council on 10 and 24 November 1992 relating to Chama Motors Pty Limited and Mr Michael Chama who operated a used car yard and car sales business under the name Chama Motors at 422-424 Parramatta Road, Burwood.

The Director-General made the complaint pursuant to Regulation 29 of the Local Government Act (Savings and Transitional) regulation, 1993 which provides for a complaint of a contravention of the old Act to be dealt with in the same way as a complaint made under the new Act.

The Director-General himself raised the question whether the Tribunal had jurisdiction under the new Act to conduct hearings and determine complaints where the person against whom the complaint had been made had ceased to be a Councillor when the complaint was made and when a hearing by the Tribunal into the complaint would be conducted.

This question was heard and determined by the Tribunal at its preliminary hearing which was held on 15 August 1996. The Tribunal decided that under the legislation it had jurisdiction to hear and determine the complaint. A written statement of that decision dated 22 August 1996 was furnished to the parties.

The hearing of the complaint was conducted on 30 September and 14 October 1996. The Tribunal found that, by reason of an arrangement made between Councillor Fisk and Mr Michael Chama relating to the purchase of a motor vehicle for Councillor Fisk and services to be

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provided by Mr Chama with respect thereto, Councillor Fisk had a pecuniary interest in the outcome of the matters concerning Chama Motors that were before the Council, they being matters involving the commercial interests of Chama Motors in respect of which an adverse vote by Councillor Fisk might have jeopardised the arrangement Councillor Fisk then had with Mr Chama for the purchase of the vehicle. The Tribunal found that the complaint had been proved. A written statement of the Tribunal's decision dated 12 November 1996 was furnished to the parties.

When the person concerned is no longer a Councillor the action which the Tribunal may take when a contravention of the Act has been proved is limited. In the present case, after inviting submissions from the parties on the question, the Tribunal ordered that Mr Fisk be severely reprimanded for his failure to comply with sect 46C of the old Act. The Tribunal's written decision and order dated 3 December 1996 was delivered to the parties in accordance with the Act.

2. **PIT2/1996 - Councillor Bruce MacKenzie - Port Stephens Council**  
(Report received 15 July 1996)

The notice of investigation of this matter was mentioned in the Tribunal's Annual Report 1996 (listed 3 under the heading “**Notices of Investigation**”).

The investigation by the Director-General followed a reference from the Independent Commission Against Corruption under sections 13(1)(c) and 16(3) of the Independent Commission Against Corruption Act, 1988. The complaint was made by the Director-General.

The complaint against Councillor MacKenzie was that, by reason of his ownership and proposals to develop land in the Heatherbrae Industrial area, he had a pecuniary interest in proposals before the Council at a number of meetings between September 1993 and October 1994 relating to a Development Control Plan and Section 94 Contributions Plan which applied to land in that area and were liable to affect a

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developer's costs of development of such land. It was alleged that Councillor MacKenzie had participated in those meetings contrary to section 451 of the Local Government Act, 1993.

The Director-General reported the results of his investigation to the Tribunal on 15 July 1996.

The Tribunal decided to conduct a hearing into the complaint. The hearing was appointed for 26 November 1996.

Prior to the hearing Councillor MacKenzie, by his solicitor, notified the Tribunal that he would not be contesting the allegations of fact on which the complaint was based.

Councillor MacKenzie attended the hearing with his solicitor, admitted all of the facts set forth in particulars of his alleged breaches which had been given to him by the Tribunal, acknowledged that his conduct had constituted contraventions of section 451, and admitted that a record of interview by Investigations Officers of the Department, which was in the Director-General's Report was a true and accurate account of the interview.

On the basis of Councillor MacKenzie's admissions the Tribunal, without further hearing, formally found that the complaint was proved. After receiving evidence and submissions on the question of what action the Tribunal should take the Tribunal decided for reasons then given that Councillor MacKenzie should be suspended from civic office for a period of two months expiring 26 January 1997. A written statement of the Tribunal's decision dated 26 November 1996 was provided to the parties and the Independent Commission Against Corruption.

3. **PIT4/1995 - Councillor Dianne Virginia Judge - Strathfield Municipal Council** (Report received 2 August 1996)

Reference was made to the Notice of Investigation of this matter in the Annual Report 1996 (No. 1 under "**Notices of Investigation**"). The complaint was made by the Director-General.

The complaint was that Councillor Judge may have contravened section 451 of the Local Government Act, 1993 with respect to consideration by the Council's Planning and Building Committee on 26 September 1995 of an application to the Council for approval of the development of land at Strathfield owned by the Presbyterian Ladies College, Croydon (PLC).

It was alleged that Councillor Judge had a pecuniary interest in that matter by virtue of her involvement with a firm of real estate agents which was negotiating an arrangement with PLC which, if successful, would have profited the firm. She was employed by the firm, held an option to purchase a share of the firm's business and had a commission -sharing arrangement with a fellow employee who was handling the matter.

She had not declared a pecuniary interest at the meeting and had participated in the debate and voted on the matter.

The Tribunal decided to conduct a hearing into the complaint. A preliminary hearing took place on 8 October 1996 after which there were further hearings on 28 October and 13 and 14 November, 1996. A number of issues arose in the course of the hearing but the ultimate issues for determination by the Tribunal were, firstly, whether Councillor Judge had a pecuniary interest in the matter before the meeting in question and, secondly, whether, even if a pecuniary interest did exist, she had a defence under section 457 of the Act. Section 457 provides that a person does not breach sect 451 if the person did not know and could not reasonably be expected to have known that the matter under consideration was a matter in which he or she had a pecuniary interest.

On the evidence, the Tribunal found that, although a pecuniary interest did exist, Councillor Judge did not know nor could she reasonably be expected to have known, that the development application under consideration at the Council's Planning and Building Committee on 26

September 1995 was a matter in which she had a pecuniary interest. Accordingly, the Tribunal found that there had been no contravention of section 451 of the Act and dismissed the complaint.

The Tribunal's written Statement of Decision dated 9 January 1997 was delivered to the parties.

4. **PIT3/1996 - Former Councillor John Oastler Ward, Mayor, Ashfield Municipal Council** (Report received 22 November 1996)

Two residents of Summer Hill in the area of Ashfield Municipal Council lodged complaints that the then Mayor, Councillor Dr John Oastler Ward had contravened section 451 of the Local Government Act, 1993 in relation to a meeting of a Council committee and an ordinary Council meeting on 4 October 1994.

The meetings were considering proposals for revision of a road traffic plan known as the North Summer Hill Local Area Traffic Management Plan. One proposal was designed to reduce traffic movements in a street in which Councillor Ward owned a residence in which he lived. Councillor Ward was present at both meetings when the proposal was under consideration and addressed the committee meeting in favour of the proposal but did not declare a pecuniary interest in the matter at either meeting. Both meetings passed resolutions in favour of the proposal.

The complaints alleged that the reduction of the traffic flow in the section of the street where Councillor Ward lived which would be achieved if the proposal adopted by the Council was implemented would both improve the amenity of his environment and enhance the value of his property. On this basis it was alleged that Councillor Ward had a pecuniary interest in the proposal within the meaning of the Act because of "a reasonable likelihood or expectation of appreciable financial gain" if the proposal was adopted by the Council and put into effect: Section 442 of the Act.

On 4 May 1995 the Director-General decided to investigate the complaint and gave the requisite notices.

Because the basis of the claim that Councillor Ward had a pecuniary interest in the proposal was that it was calculated to enhance property values in his street the Director-General sought a report from Valuer-General on that question. The Valuer-General reported to the Director-General on 13 October 1995 that there was no evidence to suggest that there would be any increase or decrease in the value of the subject property if any of the various traffic measures involved in the proposal was to be carried out and that the Valuer-General considered that the value of the property would not be affected. Having considered the Director-General's Report, the Tribunal concluded that, in the absence of some persuasive evidence as its effect on property values, the question whether the proposals which Councillor Ward supported at the meetings in question were calculated to affect the value of his property would remain a matter of speculation. The Tribunal took the view that, without such evidence, it would not be proper to conclude that Councillor Ward had a pecuniary interest in the matter within the meaning of the Act. The Tribunal decided, therefore, not to conduct a hearing into the complaint.

The Tribunal's Statement of Decision dated 16 January 1997, setting out its reasons, was furnished to the two complainants, the Director-General and Councillor Ward.

5. **PIT3/1996 - Councillor Jillianne Patricia Deering - Sutherland Shire Council** (Report received 18 February 1997)

The complaint against Councillor Deering has been mentioned above. It was made by a fellow Councillor.

The Tribunal decided to conduct a hearing into the complaint and, after a preliminary hearing on 24 March 1997 on procedural matters, the hearing took place on 1, 2 and 22 May and 30 June 1997. The matter was complicated and became extended when two of the

Council's officers who were witnesses became legally represented at the hearing.

Although occurring outside of the period covered by this Annual Report, it is convenient to record here that the Tribunal found the complaint proved and ordered that Councillor Deering be suspended from civic office for two months commencing 1 September 1997 and expiring on 31 October 1997. The Tribunal's Statement of Decision was published to the parties and the complainant on 21 August 1997.

6. **PIT6/1996 - Councillor Raymond Wadsworth - Wentworth Shire Council** (Report received 17 March 1997)

The complaint against Councillor Wadsworth has been mentioned above. The complaint was made by two fellow Councillors.

The outcome of the issues before the Council in regard to its advertising policy had potential effects upon the future revenues of a local newspaper called the "Sunraysia Daily". Councillor Wadsworth was an employee of that newspaper and, as the newspaper had a pecuniary interest in the outcome, Councillor Wadsworth was to be taken as having a pecuniary interest in the matter by virtue of section 443(1) and (2)(a) of the Act.

The Tribunal decided to conduct a hearing into the complaint and notified Councillor Wadsworth and the Director-General of its decision and the date for hearing, which was 6 May 1997.

Full particulars of the allegations against him and a copy of the Tribunal's Procedures Manual were provided to Councillor Wadsworth and he was invited to notify the Tribunal of his intentions with respect to the hearing. He notified the Tribunal that he had elected not to attend and would not be legally represented at the hearing but that he believed that he did not have a pecuniary interest in the matter in question at the Council meeting on 17 April 1996.

The Tribunal notified Councillor Wadsworth that it was required by the Act to conduct a public hearing into the complaint and would do so on the date previously appointed.

The evidence before the Tribunal established that Councillor Wadsworth clearly had a pecuniary interest in the matter before the Council. It also established that the existence of his pecuniary interest had been forcefully brought to his attention by the General Manager of the Council well before the meeting and by objections taken by other Councillors at the meeting, yet he had persisted in declining to acknowledge that he had a pecuniary interest and had participated in the debate and voted on the matter in contravention of section 451 of the Act.

The Tribunal found the complaint proved and ordered that Councillor Wadsworth be disqualified from holding civic office for a period of two years from 21 May 1997. The Tribunal's Statement of Decision of that date was furnished to the parties and the complainants.

### **OUTSTANDING COMPLAINTS**

The Investigations & Review Branch of the Department has reported to the Tribunal that twenty-three new complaints under section 460 of the Act were received in the twelve months to 30 June 1997.

In the same period there were fifteen complaints carried over from the previous year, making thirty-eight in all. Their status as at 30 June 1997 was as follows:

- 17 were declined formal investigation.
- 12 were undergoing preliminary inquiries (no notice to the Tribunal under section 465 having yet been given).
- 6 were subject to formal investigation under section 462 (continuing).
- 3 were the subject of reports to the Tribunal under section 468. (They are additional to three complaints the subject of earlier

reports which were finalised by decisions of the Tribunal during the year).

**ACKNOWLEDGMENT**

The Tribunal continues to receive the benefit of full support and assistance from the Director-General, Officers of the Department and the Tribunal's staff, for which, once again, I express my appreciation.

Dated: 26 August, 1997



**K J HOLLAND Q.C.**

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