

# **LOCAL GOVERNMENT**

# **PECUNIARY INTEREST TRIBUNAL**

  

## **ANNUAL REPORT 1999**

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 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 1998 to 30 June 1999`. 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 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.

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**NOTICES OF INVESTIGATION**

In the period 1 July 1998 to 30 June 1999 the Tribunal received from the Director-General five notices of decisions by him to investigate complaints.

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

1. **PIT1/1998** (Notice received 15 July 1998) – **Councillor Sylvia Phyllis Hale, Marrickville Council**: Alleged contravention of section 449 of the Local Government Act, 1993 by failure to disclose certain interests in the Returns required under that section for the Return date 15 September 1995 and the Return periods 1995/1996, 1996/1997 and 1997/1998. Alleged contravention of section 451 of that Act by failing to declare a pecuniary interest and by participating in the debate and voting on the adoption of the Council's draft budget at a meeting of the Council on 17 June 1997.
2. **PIT2/1998** (Notice received 24 July 1998) – **Councillors Allan Leslie Bennett, Guiseppe Staltare and Bernadino Zappacosta – Griffith City Council**: Alleged contravention of section 451 of the Local Government Act, 1993 by failing to disclose their pecuniary interests and by participating in the debate and voting on questions relating to a proposal to amend the Griffith Local Environmental Plan which were considered at a meeting of the Council's Planning Review Committee held on 5 June 1997 and meetings of the Council on 1 July, 2 September and 16 December 1997 and 10 February 1998.
3. **PIT3/1998** (Notice received 2 September 1998) – **Councillor Pamela Emma Virgona – North Sydney Council**: Alleged contraventions of section 451 of the Local Government Act, 1993 by failing to declare her pecuniary interest and by participating in the debate and voting on questions relating to a Draft Heritage Local Environmental Plan and a Draft Heritage Development Control Plan at Council meetings held on 15 and 29 September 1997 and questions relating to the Draft North

Sydney Local Environmental Plan 1998 at a meeting of the Council held on 14 April 1998.

4. **PIT4/1998** (Notice received 3 September 1998) – **Councillor William Peter Smits – Snowy River Shire Council**: Alleged contravention of section 451 of the Local Government Act, 1993 by failing to disclose a pecuniary interest and by participating in or voting on proposals to amend the existing Snowy River Local Environmental Plan by adopting a new Local Environmental Plan for the Shire which were considered by meetings of the Council's Environmental Services Committee held on 5 March and 5 November 1996 and 1 July 1997 and by meetings of the Council held on 19 March and 19 November 1996 and 20 May and 15 July 1997.
5. **PIT1/1999** (Notice received 11 May 1999) – **Councillor James Treloar – Tamworth City Council**: Alleged contraventions of section 451 of the Local Government Act, 1993 in relation to matters before the Council concerning a proposed expansion of the Tamworth Shopping Centre and of section 449 of that Act in relation to the returns required under that section.

#### **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. **PIT3/1997 – Councillor Barry Noel Cotter, Mayor, Marrickville Council** (Report received 11 June 1998)

This matter was mentioned in the Tribunal's Annual Report 1998 at pp.3 and 15. The alleged contraventions related to section 449(3) of the Local Government Act, 1993 and the failure to disclose certain interests in Returns required by that section. At the time of the last Annual Report a date for hearing had not been appointed.

The hearing took place on 24 November 1998. The Director-General and Councillor Cotter were both represented by counsel. The Tribunal had provided the parties with a Statement of Prima Facie Facts and

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Issues setting out the alleged deficiencies in Councillor Cotter's Returns. At the hearing Councillor Cotter did not dispute the facts as set forth in that Statement. They established a number of omissions and inaccuracies in the Returns all of which were consistent with ignorance, carelessness or indifference on the part of Councillor Cotter in attending to his Returns but the question whether they were the result of a deliberate attempt at concealment had to be considered. Councillor Cotter entered the witness box to give an account of his actions and offer himself for cross-examination.

After reviewing the whole of the evidence the Tribunal concluded that Councillor Cotter's failures to disclose interests that should have been disclosed in the Returns were not for the purpose of concealment or for financial or other gain or any other improper purpose. The Tribunal was satisfied that errors in the Returns resulted from a combination of misconceptions, voluntary ignorance of the statutory requirements and undue haste in completing his Returns. However, Councillor Cotter unequivocally admitted to the Tribunal that he had been in error, that he had come to realise that, contrary to a previous misconception by him, full and correct disclosures in Returns was an important matter, and that he needed to take more care with his Returns in the future.

Being satisfied that Councillor Cotter was sincere in accepting that he had been in error and was resolute in his attitude towards performance of his statutory obligations in the future, the Tribunal decided that it was sufficient to issue a severe reprimand on this occasion. The Tribunal's Statement of Decision was delivered on 3 December 1998.

2. **PIT6/1997 – Councillor Ivor John Burrell, Gilgandra Shire Council**  
(Report received 8 July 1998)

The complaint was mentioned in the Tribunal's last Annual Report at p.4. It was alleged that Councillor Burrell had breached section 451 of the Local Government Act, 1993 in relation to each of two resolutions proposed at a meeting of the Council on 17 April 1997. The first resolution proposed that the Council adopt a certain draft Local Environmental Plan (LEP) for submission to the Department of Urban

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Affairs and Planning for a certificate under the Environmental Planning & Assessment Act, 1979 permitting it to be publicly exhibited. The second resolution proposed that an area of land which was the subject of an application for approval of a subdivision made by Councillor Burrell's brother-in-law be rezoned under the draft LEP. The basis of the complaint was an allegation that Councillor Burrell's brother-in-law had a pecuniary interest in both of these resolutions and that therefore, under sections 442 and 443 of the Act, Councillor Burrell was deemed to have a pecuniary interest and was bound to comply with section 451. It was alleged that Councillor Burrell failed to declare that pecuniary interest and participated and voted on the first resolution. As to the second resolution it was alleged he again failed to declare the pecuniary interest although he refrained from participating and remained silent when the vote was taken.

The Tribunal conducted a hearing into the complaint on 22 September 1998 with the Director-General and Councillor Burrell both being represented by counsel.

The essential facts, including an opinion by a qualified valuer that the proposed rezoning would substantially increase the value of the brother-in-law's land, were not disputed. (The relevance of the land's increase in value was that because of such increase in value an exemption from the obligation to disclose interests in proposals relating to environmental planning instruments contained in section 448 would not apply to Councillor Burrell in this case).

It was established at the hearing that, due to the absence of any new planning map at the time of the meeting, the first resolution, in fact, made no change to the zoning of the land in question and, therefore, its value was not affected. Counsel for the parties agreed that because of that, and because of the exemption in section 448, no breach of section 451 could be established in relation to the first resolution. The Tribunal concurred in the views expressed by counsel and dismissed the complaint as regards the first resolution.

Councillor Burrell gave evidence to the Tribunal that he did not declare an interest in the resolutions in question because, as the evidence proved to be correct, when his brother-in-law's subdivision application had come before a previous meeting of the Council he had declared a pecuniary interest in the matter and left the Chamber until after the application was resolved. The Council had resolved it by approving the subdivision subject to the land being rezoned. Councillor Burrell said that, at the time of the subsequent meeting, he considered that he did not have to declare his interest again because the further resolutions were just mechanical steps that gave effect to a proposal for rezoning which the Council had already approved. He also said that, because a Councillor had raised a question as to his right to participate in the first resolution, he deliberately resolved to take no part in the second resolution and, for that reason, remained silent throughout the proceedings. However, he did not declare a pecuniary interest in the matter and remained present at the meeting.

Counsel for the Director-General contended that Councillor Burrell must be taken to have voted because clause 23(1) of the Local Government (Meetings) Regulations provides that unless the Councillor does not vote because of a pecuniary interest in a matter, a councillor who is present at a meeting and fails to vote on a motion is taken to have voted against it. The Tribunal held that a breach of section 451(3) of the Act (which prohibits voting) contemplated a conscious and deliberate act of voting on a question. On the facts of the present case that did not occur. However, the Tribunal held that Councillor Burrell's failure to declare his pecuniary interest in the second resolution was a breach of section 451(1) of the Act. The Tribunal ordered that he be severely reprimanded.

3. **PIT1/1998 – Councillor Sylvia Phyllis Hale, Marrickville Council**  
(Report received 24 August 1998)

The nature of the complaints against Councillor Hale has been described earlier in this Report (Notices of Investigation, para.1). After considering the Director-General's Report the Tribunal decided that a

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number of the allegations of contraventions of section 449 of the Act did not warrant a hearing. Pursuant to section 470 a Statement of Decision dated 25 November 1998 setting out the Tribunal's reasons was delivered to the parties. The Tribunal decided to conduct a hearing into the remaining allegations. They related to both section 449 and section 451. The hearing was held on 3 March 1999. Both parties were represented by counsel.

Councillor Hale did not dispute that in her Returns under section 449(3) for the period 1 July 1996 to 30 June 1997 she had failed to disclose a Trust as a source of income. She gave evidence to the Tribunal and called her accountant to give evidence of the circumstances. The Tribunal found that there had been a breach of the Act in relation to the Trust but that it was due to a lack of awareness on her part of the significance and legal operation of the Trust as a source of income. She had sought to disclose the income but had inaccurately described its source in her Return.

The hearing dealt with a further complaint as to her Returns under section 449(1) and (3), namely, that in her Returns relating to 15 September 1995 and the periods 1995/1996 and 1996/1997 she had failed to disclose liabilities to pay debts that the section required to be disclosed. She had made conflicting and incorrect statements to the Department concerning such liabilities. This was found to be due to her failure to give sufficient attention to her own financial and professional arrangements which were complicated and were largely left by her to her accountant. There was no intent to conceal her interests. In the result the Tribunal found the compliant proved as to one item and not proved as to another.

The Tribunal reprimanded Councillor Hale for her breaches of section 449.

In relation to section 451 the allegation was that Councillor Hale had a pecuniary interest in an item of the Council's budget which proposed to spend \$12,000 on the reprinting of a publication, "Vol.1. of the History of Marrickville", for the Council's Library. The contemplated publisher and

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printer were two companies in each of which Councillor Hale was a director and beneficial shareholder. When the same item had come before the Council at a meeting about two months before the Council's Budget meeting of 17 June 1997, Councillor Hale had disclosed her pecuniary interest but she failed to do so at the later meeting.

Councillor Hale's explanation for her breach was that at the later meeting, distracted by her concentration on other aspects of the budget, she had forgotten about the Library item which was just one of a very large number of items. When made aware of her breach, Councillor Hale had made public apologies to the Council, the ratepayers and residents and the Department of Local Government. She repeated it to the Tribunal at the hearing. The Tribunal found the complaint proved and that her contravention was due to carelessness and lack of due attention to her obligations under the Act for which she should be reprimanded.

4. **PIT3/1998 – Councillor Pamela Emma Virgona, North Sydney**

**Council** (Report received 17 December 1998)

The complaint in this matter is referred to earlier in this Report (Notices of Investigation, para.3).

Councillor Virgona owned and resided in a property in the North Sydney Council area which was proposed to be listed as a Heritage Item in a new Heritage Schedule contained in a draft Heritage Local Environmental Plan (amending the existing North Sydney LEP 1989) which was before the Council for consideration at its meetings on 15 and 29 September 1997. Under the existing North Sydney LEP 1989 the zoning of her property would permit approval by the Council of subdivision and some further development which she was contemplating. At its meeting on 14 April 1998 the Council had before it for consideration a new draft Local Environmental Plan which it was proposed would amend and replace the existing LEP 1989. This new draft LEP proposed a rezoning of Councillor Virgona's land under the terms of which the Council would be prohibited from consenting to the subdivision and development then being contemplated by Councillor

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Virgona.

It was alleged in respect of both of the proposals under consideration at the meetings in question that Councillor Virgona had a pecuniary interest because, if adopted, they would result in a substantial reduction in the value of her property and this would constitute a pecuniary interest within the meaning of the act. It was alleged that notwithstanding the existence of this pecuniary interest Councillor Virgona failed to disclose her interest to the meetings and participated in the consideration of and voted on the proposals in contravention of section 451.

The Tribunal conducted a hearing into the complaint on 22 March 1999. Councillor Virgona had retained a solicitor who notified the Tribunal before the hearing that whilst Councillor Virgona wished to contest the allegations and would be contending that by virtue of sections 442(2) and 448 of the Act she did not have a pecuniary interest at the relevant times, she did not propose to appear or be represented at the hearing other than by presenting written submissions. The hearing proceeded in her absence.

As well as written submissions made by both parties before and after the hearing, oral testimony was received from a qualified planner who was Councillor Virgona's adviser but had been summonsed by the Tribunal to give evidence at the request of the Director-General.

In the result, the facts on which the complaint was based and which had been set out in the Tribunal's Notice to the parties of its decision to conduct a hearing were not disputed by Councillor Virgona but it was strongly asserted in arguments made by the written submissions presented on her behalf that, as a matter of law, she could not be found to have contravened the Act.

The principal contention of law relied on was that, on its proper interpretation, a provision of section 448 of the act exempted Councillor Virgona from compliance with the requirements of section 451 as to disclosure, non-participation and voting at meetings.

The provision of section 448 was the sixth of a series of provisions exempting a number of specified interests from the requirement of

disclosure and (by section 442(2) of the Act) from being considered to be a pecuniary interest in a matter. In summary, this sixth provision exempts an interest in a proposal relating to an environmental planning instrument **except one that “effects a change of permissible uses of land” owned by the person in question such that the value of the land would be appreciably increased.**

It was argued that the changes proposed by the two LEPs here in question did not change the “permissible uses” of Councillor Virgona’s land within the meaning of the above exception and that, therefore, Councillor Virgona’s interest was within the exemption and she was not obliged to comply with section 451. The Director-General submitted oral and written arguments to the contrary.

The issue is of particular importance in the operation of the disclosure of interest provisions of the Local Government Act, 1993 because of the potentially large number of occasions that similar questions as to pecuniary interest will arise to confront councillors, and other persons to whom the Act applies, when called upon to consider or deal with proposals in environmental planning instruments that affect their land. After considering the opposing arguments and the relevant legislation the Tribunal for the reasons set forth in its statement of Decision dated 23 April 1999, held that, both in law and on the facts of the case, the exception applied to Councillor Virgona and, therefore, she was not relieved by the exemption in section 448 or by section 442(2) from compliance with section 451 of the Act.

The Tribunal found that Councillor Virgona had a pecuniary interest in both of the proposals before the Council and that the complaints had been proved. As no submissions had been received on what action the Tribunal should take if the complaint was proved, the Tribunal reserved that question to allow for such submissions to be received.

Written submissions were subsequently received from both parties and were dealt with by the Tribunal in a further Statement of Decision dated 7 May 1999 which reviewed all of the circumstances in which the contraventions had occurred and the written submissions made by the

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parties on the question of appropriate action by the Tribunal. For the reasons given in that Statement of Decision the Tribunal concluded that Councillor Virgona should be disqualified from holding civic office for a period of three years and made an Order accordingly.

The Tribunal took the occasion to condemn as erroneous an idea which Councillor Virgona claimed was being followed by her and fellow Councillors that, if a matter in which a Councillor had an interest was being dealt with in general or as a whole (such as an area wide LEP), the interest did not have to be disclosed; but, if the Councillor's own land was being dealt with individually or specifically, it did have to be disclosed. Similar excuses had been put forward in other cases before the Tribunal. They are contrary to the provisions of the Act which expressly specifies, as in sections 448 and 452, interests and questions in respect of which Councillors are excused from compliance with the pecuniary interest provisions of the Act. The Tribunal expressed the hope that, whatever its origin, the fallacy in the idea advanced by Councillor Virgona would not be perpetuated.

5. **PIT2/1998 Councillors Allan Leslie Bennett, Guiseppe Staltare and Bernadino Zappacosta, Griffith City Council** (Report received 4 January 1999)

The nature of the complaint against the above three Councillors is listed in this Report under Notices of Investigation, para.2. The matter before the meetings referred to was a proposal to amend the existing Griffith Local Environmental Plan (LEP) to give the holders of certain lands zoned Rural 1(a) "rights" to subdivide their land to produce an "excised" lot on which they would be entitled to erect a dwelling as well as maintaining a dwelling on the residue lot. Such rights did not exist under the existing LEP. Each of the Councillors held a proprietary interest in land to which such "rights" would attach. There was evidence, which the Councillors disputed, that the attachment of the proposed new rights to their land would substantially increase its value.

The Tribunal conducted a hearing into the complaint at Griffith on 15 and 16 March 1999. The Director-General was represented by counsel. The three Councillors appeared in person and conducted their own cases, two of them giving oral testimony and all three making submissions.

The operation of the exemption provision in section 448 of the Act which was considered and ruled on by the Tribunal in Councillor Virgona's case (see para.4 above) arose again in this case. The Tribunal applied the same ruling and held that the exemption from compliance with section 451 did not apply to the three Councillors, that each of them had had a pecuniary interest in the matter before the meetings and had failed to comply with the requirements of section 451. The Tribunal found that the complaint had been proved.

An incidental question dealt with by the Tribunal was whether in relation to the meeting which was a meeting of the Council's Planning Review Committee, of which each of the Councillors was an appointed member, section 451 of the Act did not apply to them because section 446 of the Act provided that "A member of a Council Committee other than a Committee that is wholly advisory must disclose pecuniary interests in accordance with section 451" and the Tribunal was of the view that the Planning Review Committee was "wholly advisory." The Tribunal ruled that section 446 did not apply to members of a Council committee who were councillors, whether or not the committee was "wholly advisory", because, on a proper interpretation of the Act, Councillors were bound by section 444 of the Act which expressly required Councillors to disclose pecuniary interests "in accordance with section 451" and section 451 was expressed so as to require a Councillor who had a pecuniary interest in any matter with which the Council was concerned and "who is present at a meeting of the Council **or committee** at which the matter is being considered" to disclose the interest to the meeting and otherwise conform to the prohibitions in the section against participation and voting.

All three Councillors put forward as a reason why they considered themselves excused from disclosing a pecuniary interest, even if they had one, the fact that the proposal to introduce the changes to the LEP which was under consideration constituted a matter of “general policy” applicable to the whole area and was not directed to them or their parcels of land individually. In substance, this excuse resembled that advanced by Councillor Virgona in her case as described above (in para.4). The excuse had no foundation in the legislation and was rejected by the Tribunal.

On the question of appropriate action to be taken for the breaches that had been proved, the Tribunal was satisfied that although their properties would be benefited by the proposals none of the Councillors was in fact motivated by financial self interest in supporting the proposals or had acted with intent personally to realise the benefit to their lands that would become available. There was strong pressure from a substantial section of the local community for the proposed changes to be made and they had acted in the belief that they were serving a community need. They had done so in the Council for a lengthy period of time before any suggestion was made that they were precluded from doing so because of financial interests of their own. The Tribunal decided that disqualification from holding civic office would be too harsh a penalty but that they should each be suspended from civic office for the maximum period of two months which then applied under the legislation.

The Tribunal’s Statement of Decision with its findings and reasons was delivered on 7 May 1999.

6. **PIT4/1998 – Councillor William Peter Smits, Snowy River Shire Council** (Report received 12 January 1999)

The complaint is listed above in para. 4 under Notices of Investigation. Councillor Smits after many years of service as a senior local government officer in other country councils, had served as the Shire Clerk and General Manager of the Snowy River Shire Council before he became a Councillor. He had settled in Berridale in 1987. He and his

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wife had bought land on the outskirts of Berridale and established their home on land with the intention of becoming permanent residents. Their land was zoned Rural 1(a) under the existing Local Environmental Plan (LEP) by which the land could be used for agriculture without consent with one single dwelling permitted on their lot. Further subdivision, dual occupancy and use of the land for purposes inconsistent with agriculture were prohibited.

The complaint against Councillor Smits arose out of his participation in meetings of the Council's Environmental Services Committee and the Council while he was a Councillor. In the course of a revision of the Council's existing LEP these meetings were dealing with a draft new LEP which included a proposal to rezone the area in which Councillor Smits' land was located to "Zone 2(v) – Village" under which subdivision of the land and a new broad range of uses would become permissible.

The complaint alleged that this proposed rezoning, if adopted, would appreciably increase the value of Councillor Smits' land and that, therefore, he had a pecuniary interest in the proposal which was not exempt from disclosure under section 448 and required him to comply with section 451 of the Act.

The Tribunal conducted a hearing into the complaint on 29 March 1999 at Cooma. Counsel appeared to represent the Director-General and Councillor Smits appeared in person. He gave oral evidence and was cross-examined.

Councillor Smits also made oral submissions the essence of which was that whilst the proposed re-zoning would provide the land with development potential which it did not previously have any suggested increase in the value of the land was only theoretical because of practical difficulties and uncertainties as to future action by the Council that stood in the way of realising that potential. He challenged a qualified valuer's opinion on which the Director-General relied that there would be an appreciable increase in the value of the land as a result of

the rezoning even when allowance was made for the costs and risks involved in any application to the Council for development approval.

Councillor Smits also contended that the new development potential was of no significance or value to him and his wife because they had no intention of subdividing their land as it would spoil the home and living conditions which they had purposely created for their own enjoyment on a permanent basis.

He argued that, for the reasons he put forward, he could not, as a matter of law, be considered to have had a pecuniary interest in the proposals within the meaning of the legislation. He also told the Tribunal that as a matter of “gut-feeling” and “conscience” he had always been comfortable with his view that he did not have a pecuniary interest when the proposal was being considered at the meetings which he attended.

After reviewing all of the material that was in the Director-General’s Report and put before the Tribunal at the hearing, the Tribunal found that, notwithstanding Councillor Smits’ arguments to the contrary, the development (including subdivision) potential under the proposed new LEP would appreciably increase the value of the land and this gave him a pecuniary interest in the proposals in question within the meaning of the legislation. The Tribunal found that the complaint had been proved. Its findings and reasons were set out in its Statement of Decision dated 30 June 1999.

In the course of its decision the Tribunal found it necessary to repeat and emphasise its view expressed in previous cases that, on its true construction, the legislation calls for an objective judgement to be made on the question whether a pecuniary interest in a matter existed at the relevant time, a judgement based not on feeling but on reason. Thus an appeal to “gut-feeling” and “conscience” can be an unreliable guide for a Councillor to rely on when considering whether disclosure of an interest is required by the Act.

Councillor Smits had told the Department's investigators that there was a consensus amongst all Councillors on the Snowy River Shire Council that in dealing with the LEP they were dealing with an "interest in common" as opposed to an "interest of an individual" as practically all of the Councillors owned land in the shire. Therefore, they need not be concerned about disclosure of pecuniary interests. He said, "We all had peace of mind to act under this concept of interest in common."

The concept is similar to the ideas put forward by Councillor Virgona and the Griffith Councillors although expressed in different terms (see paras. 4 and 5 above). In its Statement of Decision, the Tribunal pointed out in relation to LEP changes which affected land values, this "interest in common" concept was just as erroneous as the similar ideas put forward by the Councillors in the other cases.

The Tribunal gave Councillor Smits credit for having addressed his mind to the question whether he should declare a pecuniary interest in the proposals in the draft LEP, thereby recognising that it was a matter that required consideration. However, he chose to act without seeking any advice, taking the risk that his answer, which in fact was self-serving, might be wrong. The Tribunal decided that in all the circumstances he should be suspended from civic office for the period 5 July to 2 August 1999.

### **OUTSTANDING COMPLAINTS**

The Investigations & Review Branch of the Department has reported to the Tribunal that twenty-two (22) complaints under section 460 of the Act were received in the twelve months to 30 June 1999.

In the same period there were nine (9) complaints carried over from the previous year, making thirty-one (31) in all to be dealt with. Their status as at 30 June 1999 was as follows:

- 20 were declined formal investigation by the Director-General in exercise of his powers under section 463 of the Act.
- 6 were made the subject of a formal investigation under section 462 of the Act. (Five of these investigations were completed with Reports to the Tribunal. They were all disposed of by the Tribunal by 30 June

1999: See Reports of Investigations – Action by the Tribunal, paras. 2-6 above. The sixth investigation has yet to be made the subject of a Report to the Tribunal under section 468.)

- 5 were still undergoing preliminary inquiries with no Notice to the Tribunal under section 465 of a decision to conduct an investigation under section 462 having yet been given.

#### **ACKNOWLEDGEMENT**

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

Dated:

**K J HOLLAND Q.C.**  
**Pecuniary Interest Tribunal**

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1999