

LOCAL GOVERNMENT

PECUNIARY INTEREST TRIBUNAL

A N N U A L R E P O R T 2 0 0 0

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. The Tribunal appointed the Hon K J Holland QC as the founding member of the Tribunal on 9 February 1994 and reappointed him on 9 February 1997 for a further period of three years due to expire on 8 February 2000. Due to factors not related to the Tribunal, the Hon K J Holland QC was unable to complete his second term of office. On 25 November 1999 I was appointed as a Deputy Member of the Tribunal for a period of six months or until the finalisation of a review of statutory bodies and tribunals, whichever occurred last. Further to that appointment I was subsequently appointed as the member for the Pecuniary Interest Tribunal on 7 June 2000 to hold office for five years. I would like to express my thanks to the former Tribunal member, the Hon K J Holland for his assistance to me on my appointment.

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 1999 to 30 June 2000. 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.

NOTICES OF INVESTIGATION

In the period 1 July 1999 to 30 June 2000 the Tribunal received from the Director-General one notice of a decision by him to investigate a complaint.

1. **PIT2/1998** (Notice received 24 July 1999) - **Councillor Christopher Ringstad - North Sydney Council**: Alleged contravention of 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 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 for the period ended 30 June 1998.

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. **PIT1/1999** (Notice received 11 May 1999) - **Councillor James Treloar - Tamworth City Council**. This matter was mentioned in the Tribunal's Annual Report 1999 at p.4. The alleged contraventions related to 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.

After two directions hearings held at the offices of the Tribunal, the matter proceeded to hearing on 24 and 25 February, 2000, the decision being given on 11 May 2000.

The central issue in the matter was whether Councillor Treloar had a “reasonable likelihood or expectation of appreciable financial gain or loss”. The Tribunal applied the test utilised in the decision in **Roberts** (PIT1/1995, 3 August 1995) where it was pointed out that the legislation is focussing upon potential conflicts between public duty and private interest. The test was formulated for the word “expectation” as “*applying to cases where the prospects of financial gain or loss fall short of being a probability but consisted of a reasonable chance of possibility*”. The Tribunal also applied an objective approach to the question of whether a pecuniary interest existed.

Although the Tribunal was unable to form a precise judgment as to the extent of any financial impact upon Councillor Treloar and the interests of his family, the Tribunal was satisfied that there was a reasonable likelihood of appreciable financial loss, either by a reduction in his income or the value of real estate holdings or both, if the proposed Tamworth shopping centre expansion was approved. The Tribunal also found that Councillor Treloar’s wife, father brother and other family members had similar interests. Those interests were such that they should be regarded as likely to influence Councillor Treloar’s decision.

The Tribunal accepted that Councillor Treloar was motivated by a desire to ensure that a decision was made which was in the best interests of Tamworth but, because his family has such a significant land holding and trading enterprise, any decision which could protect that holding from competition raised serious problems for him as a councillor.

In determining the appropriate action to be taken, the Tribunal concluded that Councillor Treloar believed that he did not have the relevant interest. It also noted that none of his actions was clandestine or dishonest. His interests were a matter of public debate.

The Tribunal concluded that Councillor Treloar's actions warranted a period of suspension from office and imposed a period of four (4) months' suspension. The Tribunal believed this period of suspension would be sufficient to recognise the serious nature of the breach and its potential to seriously undermine the confidence of the community in local government and prejudice effective decision-making.

With respect to the matter of inaccurate returns, the Tribunal accepted that the omissions were inadvertent and determined that the appropriate action was to counsel Councillor Treloar to exercise greater care in ensuring that his returns are full and accurate. Any further breach would be expected to be met with a far more severe response from the Tribunal.

OUTSTANDING COMPLAINTS

The Investigations and Review Branch of the Department has reported to the Tribunal that 95 complaints under section 460 of the Act were received in the twelve months to 30 June 2000 of which only eight (8) met the criteria of a formal pecuniary interest complaint. Of these only one (1) has resulted in a pecuniary interest complaint 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: 16 October 2000



P D MCCLELLAN QC

Pecuniary Interest Tribunal