

LOCAL GOVERNMENT

PECUNIARY INTEREST TRIBUNAL

ANNUAL REPORT 2003

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 the 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 2002 to 30 June 2003. 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 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 2002 to 30 June 2003 the Tribunal received from the Director-General two notices of decision by him to investigate a complaint.

1. **PIT1/2003** (Notice received 17 April 2003) - **Councillor David Taylor, Weddin Shire Council** - Alleged contravention of s.451 of the *Local Government Act 1993* in that he:
 - (i) Failed to disclose his pecuniary interests and participated in the consideration and discussion of, and voted on resolutions regarding Development Application numbered DA25/2002 lodged by P & S Mawhinney, which was before the Council on 13 December 2001.
 - (ii) Failed to disclose his pecuniary interests and participated in the consideration of, and voted on resolutions regarding Development Application numbered DA72/2002 lodged by P & S Mawhinney, which was before the Council meeting on 18 April 2002.
 - (iii) Failed to disclose his pecuniary interests and participated in the consideration of, and voted on resolutions regarding Development Application numbered DA25/2002 lodged by P & S Mawhinney which was before the Council meeting on 18 April 2002.

2. **PIT2/2003** (Notice received 17 April 2003) - **Councillor Barry Hinde, Weddin Shire Council** - Alleged contraventions of s.451 of the *Local Government Act 1993* in that he:
 - (i) Failed to disclose his pecuniary interests and participated in the consideration and discussion of, and voted on resolutions regarding Development Application numbered DA25/2002 lodged by P & S Mawhinney which was before the Council meeting on 18 April 2002.

REPORTS OF INVESTIGATIONS - ACTION BY TRIBUNAL

There have been no Reports of the Director-General's investigations received by the Tribunal during the period under review. Reports received by the Tribunal in the period 1 July 2002 to 30 June 2003 and the Tribunal's actions in respect thereof are as follows:

1. **PIT2/2001** (Notice received 18 December 2001) - **Councillor Christopher Gulaptis, Maclean Shire:**

This matter was referred to in the Tribunal's Annual Report 2002 at page 3 and involved allegations of alleged contraventions of s.451 of the *Local Government Act 1953* concerning a decision that a Gulmarrad s.94 Road Contribution Plan be prepared, a decision by the Council to acquire certain land from Dovani Pty Ltd and an application by Australian Indigenous Christian Ministries Ltd for the establishment of a recreation establishment at Ashby.

On 29 October 2002 the Tribunal determined to conduct proceedings into the complaints and issued a Notice of its decision. Thereafter Councillor Gulaptis made an application to the Tribunal that the proceedings be summarily dismissed without a hearing on the basis that there was no case to answer.

Following submissions from the Department and further submissions by Councillor Gulaptis, the Tribunal determined that the application for summary dismissal be refused. The matter will now be determined following a hearing.

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

2. **PIT1/2000** (Notice received 11 June 2001) - **Councillor Carmel Del Duca, City of Canada Bay Council:**

The matter was referred to in the Tribunal's Annual Report 2002 at pages 3 and 6 and involved an allegation that Councillor Del Duca failed to complete and lodge a written return within the prescribed period of time under s.449(1) of the *Local Government Act 1993*.

During the period covered by this report hearings were conducted in March and May 2003 and the final submissions have now been received from the parties.

The final decision in relation to this matter will be made shortly and will be reported in the next Annual Report of the Tribunal.

3. **PIT3/2001** (Notice received 10 December 2001) - **Councillor Brian Eichorn, Uralla Shire Council:**

This matter was referred to in the Tribunal's Annual Report 2002 at page 3 and involved allegations of alleged contraventions of s.451 of the *Local Government Act 1993* concerning the purchase and sale by the Council of certain property and the marketing of that property for sale.

Since the last Annual Report, further investigations have been made and a decision taken by the Tribunal to conduct proceedings into the allegations. A notice of the Tribunal's decision has issued.

The Tribunal anticipates being in a position to report on the final outcome of this matter in the next Annual Report of the Tribunal.

4. **PIT4/2001** (Notice received 10 December June 2001) - **Councillor Peter Kemper, Uralla Shire Council:**

This matter was referred to in the Tribunal's Annual Report 2002 at page 4 and involved alleged breaches of s.451 of the *Local Government Act 1993* concerning the purchase and sale of certain real estate.

Since the last Annual Report further investigations have been made and the Tribunal has determined to conduct proceedings into the complaint.

The Tribunal would expect to be in a position to report the final outcome in relation to this matter in the next Annual Report of the Tribunal.

5. **PIT 3/2000** (Notice received August 2001) - **Councillor Balla Balendra, Auburn Council:**

This matter was referred to in the Tribunal's Annual Report 2002, page 6 and involved alleged contraventions of s.451 of the *Local Government Act 1993* by failing to disclose an alleged pecuniary interest and participating in debates before Auburn Council concerning the Auburn Development Control Plan.

The further investigations referred to in the Tribunal's Annual Report 2002 were completed and further valuation advice received from the State Valuation Office. This in turn led to the Department obtaining advice from an independent town planning expert which dealt with the implications, from a planning point of view, of various amendments made to the DCP so far as it related to the property in which Councillor Balendra had an interest. This in turn led to the Department engaging an independent valuer who determined that the limitations of development, when considered on a potential and economic basis, resulted in there being no appreciable impact on the property in which Councillor Balendra had an interest and that any hypothetical development would be uneconomic due to the high cost involved.

With the concurrence of the Director-General and at the request of the solicitors for Councillor Balendra the Tribunal decided to determine the proceedings without a hearing and to dismiss them on the basis that in the particular and special factual circumstances of this case the evidence did not support the proposition that there was a "reasonable likelihood or expectation of appreciable financial gain" within the meaning of s.442 of the *Local Government Act 1993*.

The Tribunal made it clear that its decision was based upon the evidence that had now emerged in the particular case and that the decision ought not to be read as any support for the proposition that a consideration of a DCP could not, in other circumstances, give rise to a pecuniary interest within the meaning of the Act.

OUTSTANDING COMPLAINTS

The Investigations and Review Branch of the Department has reported to the Tribunal that five complaints under s.460 of the Act were received in the twelve months to 30 June 2003. The Director-General made on complaint pursuant to s.460.

1 September 2003

