

## **LOCAL GOVERNMENT**

### **PECUNIARY INTEREST AND DISCIPLINARY TRIBUNAL**

#### **ANNUAL REPORT 2006**

The Local Government Pecuniary Interest and Disciplinary Tribunal was established by the *Local Government Amendment Act 2005* which commenced on 1 January 2005. Section 440N of Part 1, Division 3 of the *Local Government Amendment Act 2005* permits the referral to the Tribunal by the Director-General of the Department of Local Government of matters alleging misbehaviour by a councillor.

Certain other amendments to the *Local Government Act 1993* include amendments to ss.442, 443, 448, 451 and the insertion of a contempt power in s.468A. This section permits the Pecuniary Interest and Disciplinary Tribunal to report certain matters to the Supreme Court of New South Wales to be dealt with by that Court as if those matters were a contempt of that court.

The Tribunal retains its former function to determine complaints of contravention of Part 2 of Chapter 14 of the *Local Government Act 1993*. 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 on part-time member appointed by the Governor. On 11 April 2001 I was appointed to hold the office for a period of five years, and on 12 April 2006 I was appointed to hold the office for a period from April 2006 to 11 April 2011.

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 2005 to 30 June 2006. 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 steps 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 proceedings into the complaint, or it may decide, for reasons to be stated in writing, not to conduct proceedings. It may decide to refer the matter to another authority to be dealt with if it considers that is more appropriate than the authority deal with the matter and the authority agrees to the referral.

## **NOTICE OF INVESTIGATION**

In the period 1 July 2005 to 30 June 2006 the Tribunal received from the Director-General one Notice of Decision by him to investigate a complaint:

**1. PIT 1/2006 (Notice received 19/5/2006) - Councillor Joanne Morris, Hurstville City Council**

Breach of s.449(1A) and non-compliance with s.449(3) of the *Local Government Act 1993* in that:

"Clr Morris lodged her written disclosure of interests return for the period 1 July 2003 to 30 June 2004, knowing it to be false and that the return is not in the form prescribed by the regulations. In doing so, it is alleged that she has breached s.449(1A) and failed to comply with s.449(3) of the *Local Government Act 1993*.

It is alleged that Clr Morris at the time had an interest in a corporation, Australian Franchisees Alliance (AFA) Pty Ltd; that she held positions of Director and Secretary with this company; and those interests and positions were ones that should have been disclosed on her return for the period 1 July 2003 to 30 June 2004."

### **REPORTS OF INVESTIGATIONS - ACTION BY TRIBUNAL**

The Tribunal's actions in respect to reports referred to in the Tribunal's 2005 Annual Report are as follows:

**1. PIT 1/2003 - Councillor David Taylor - Weddin Shire Council**

This matter is referred to in paragraph 2, page 6 of the Annual Report 2005 and involved allegations of alleged contraventions of s.451 of the *Local Government Act 1993*.

The matter involved a development application lodged in respect of a grain and seed business at Grenfell. Councillor Taylor's brother and sister-in-law jointly owned premises in close proximity to the premises the subject of the development application.

The development application involved the construction of a new weighbridge and the reconfiguration of truck movements on the premises of the stockfeeds business. A council officer's report to the Council prior to its consideration of the development application clearly foreshadowed adverse impacts on neighbouring properties from the proposed development arising from, in particular, noise and dust. Councillor Taylor had read those parts of the business papers that related to noise and other adverse alleged affectations on his brother's and sister-in-law's land prior to the Council meeting of 13 December 2001.

The Tribunal concluded that the impacts of the proposed development were such that any ordinary reader of the report who diligently applied their mind to the question would have been alerted to the real possibility of appreciable financial impact to Councillor Taylor's brother's and sister-in-law's property. The Tribunal considered that the breach which took place was flagrant in the sense that the facts which gave rise to the breach were patent for all to see, or at least all who cared to properly apply their minds to the questions raised by the provisions of the *Local Government Act 1993*. The Tribunal considered that Councillor Taylor's conduct exhibited not only a serious breach of the provisions of the *Local Government Act*, but exhibited a cavalier and irresponsible attitude to his duty as a councillor to acquaint himself with the relevant provisions of the legislation so that he could discharge his functions according to the law. Councillor Taylor failed to make any proper enquiry or to seek any proper advice as to his obligations.

The Tribunal considered that Councillor Taylor's breach of the Act warranted him being suspended from civic office for a period of 4 months and it so ordered.

## **2. PIT 2/2003 - Councillor Barry Hinde, Weddin Shire Council**

This matter is referred to in the Annual Report 2005, page 6, paragraph 3 and involved allegations of alleged contraventions of s.451 of the *Local Government Act 1993*.

The Tribunal gathered further evidence relating to the employment of Councillor Barry

Hinde's wife in order to clarify whether or not there was any relevant pecuniary interest involved.

The evidence established that Councillor Hinde's wife was not employed in any capacity which gave rise to any relevant pecuniary interest in Councillor Barry Hinde and it found that, in the circumstances, there was no relevant breach of s.451 of the *Local Government Act 1993*.

**3. PIT 1/2005 - (Notice received 1/5/2005) - Councillor Rod Fernance, Moree Plains Shire Council (Report received in September 2005)**

This matter is referred to in the Annual Report 2005, page 3, paragraph 1.

It was alleged that Councillor Fernance being a councillor of Moree Plains Shire Council committed a breach of s.451(2) of the *Local Government Act 1993* in respect to the consideration by the Council at a meeting on 5 October 2004 of matters relating to a development application and that at the said meeting he also breached s.451(1) of the Act. It was alleged that Councillor Fernance had a pecuniary interest in relation to the matter, that he failed to disclose the nature of that interest to the said meeting and that he was present at or in the sight of the meeting of the Council when the matter was being considered by the Council.

The development application in question was lodged on behalf of Councillor Fernance and his wife and sought to subdivide certain land owned by them. The Council officers recommended that the development application be refused in its then current format. Councillor Fernance formed the view that in the circumstances he should address the Council on the issue, although he was aware that he had a pecuniary interest with regard to the development application.

Councillor Fernance formed the view that he was able to speak to the development application as an ordinary rate payer, addressing the Council during the public forum part of the meeting. He did so.

Councillor Fernance was aware that he had a pecuniary interest in the development application. The Tribunal found that he had ample time in which to investigate, research and take proper advice concerning his obligations under the pecuniary interest provisions of the Act, but that he had failed to do so. In the particular circumstance of the case, the Tribunal considered that the appropriate response to the admitted breaches of the Act was that Councillor Fernance be reprimanded in respect of those breaches and it so ordered.

**4. PIT 2/2006 - Councillor Rick D'Amico, Lane Cove Municipal Council (Report received on 8 March 2006)**

This matter is referred to in the Tribunal's Annual Report 2005, page 3, paragraph 2.

During the period covered by this Annual Report the Tribunal held a hearing into a complaint by the Director-General that Councillor D'Amico, being a councillor of the Lane Cove Municipal Council, had committed breaches of s.451 of the *Local Government Act 1993* with respect to the consideration by the Council at a council meeting on 21 July 2004 of a proposal by Woolworths Ltd to build a retail development at Austin Street, Lane Cove. In July 2006 the Tribunal delivered its decision and subsequently determined the question of what order ought be made. Details of this decision and the order will be referred to in the Tribunal's Annual Report of 2007.

**5. PIT 3/2005 - Councillor Caroline Stott, Ashfield Council (Report received on 2 March, 2006)**

This matter is referred to in the Annual Report 2005, page 3, paragraph 3.

It was alleged that Councillor Stott had committed a breach of s.449 of the *Local Government Act 1993* in that she had failed to complete and lodge to the General Manager of the Ashfield Municipal Council within 3 months after 30 June 2003 a pecuniary interest return in the form prescribed by the Regulations.

Councillor Stott conceded the breach. The relevant pecuniary interest return was subsequently lodged on 28 February 2005.

With the consent of the Director-General and Councillor Stott, the Tribunal determined to exercise its power pursuant to s.470 of the *Local Government Act 1993* to determine the proceedings without a hearing, it being satisfied that the pre-requisites to the exercise of such power had been established.

The Tribunal again emphasised the importance of the careful, complete and due compliance with the legislation in respect of the lodgment of pecuniary interest returns. In the present case, however, Councillor Stott had serious medical reasons to be distracted from her compliance with the legislation which, up to and subsequent to the return in question, had been duly and fully observed. The Tribunal was also mindful of the fact that there was no evidence that Councillor Stott's interests had ever been affected by Council's business being transacted or that she had ever voted on matters in which she had a pecuniary interest.

In the special circumstances, the Tribunal ordered that Councillor Stott be counselled to take greater care in the future to ensure that her obligations in respect of lodgment of pecuniary interest returns were complied with.

27 October 2006

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**D.P.F. Officer QC**  
**Pecuniary Interest and Disciplinary Tribunal**