

# **LOCAL GOVERNMENT**

## **PECUNIARY INTEREST AND DISCIPLINARY TRIBUNAL**

### **ANNUAL REPORT 2007**

#### **GENERAL**

The Local Government Pecuniary Interest and Disciplinary Tribunal is established pursuant to s.487 of the *Local Government Act, 1993* and was established in that form by the *Local Government Amendment (Discipline) Act, 2004*

The Tribunal replaced the former Local Government Pecuniary Interest Tribunal and 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 them from civic office and, in the case of council employees, recommend disciplinary action or dismissal.

Division 3 of Part 1 of Chapter 14 of the *Local Government Act*, inserted by the 2004 Amendment Act, deals with misbehaviour of a Councillor and permits an appeal to the Tribunal by a councillor against whom an order of suspension is made by the Director General. The Division also provides for the referral to the Tribunal by the Director General of a matter being considered under that Division instead of suspending the Councillor.

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.

The Tribunal's functions under Division 3 of Part 1 Chapter 14 are initiated by the making of an appeal to the Tribunal by a Councillor, or by the making of a referral to the Tribunal by the Director General.

The Tribunal is constituted by one part-time member appointed by the Governor. On 30 May 2007, I was appointed to hold the office for a period of five (5) years to 29 May, 2012. I replaced Mr D.P.F. Officer QC who retired from the position.

Section 490 of the *Local Government Act* obliges the Tribunal to furnish an annual report to the Minister concerning proceedings that have been conducted before it during the year within two (2) months after the end of each year.

This report covers the period from 1 July 2006 to 30 June 2007. 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 proceedings conducted before the Tribunal in respect of those reports during that period.

## **NOTICES OF INVESTIGATION**

In the period 1 July 2006 to 30 June 2007 the Tribunal received from the Director-General three (3) Notices of Decision to investigate a complaint:

- 1. PIDT 2/2006 – (Notice received 19 July, 2006) – Councillor Lynette Lawry, Great Lakes**

## **Council**

It is alleged that Councillor Lynette Lawry was in breach of s.451 of the *Local Government Act, 1993* in failing to declare a pecuniary interest in a matter before council on 9 March 2004 in respect of consideration of the adoption of the Draft Great Lakes Rural Living Strategy, and failed to absent herself from the said council meeting when such matter was considered and voted upon.

### **2. PIDT 1/2007 (Notice received 10 April, 2007) - Councillor John Finkernagel, Shoalhaven City Council.**

It is alleged that Councillor John Finkernagel was in breach of s.451 of the *Local Government Act, 1993* in failing to declare a pecuniary interest in matters before council and to absent himself from relevant council meetings when the following matters were considered and voted upon:

- In the ordinary council meeting of 2 November 2005 in relation to the consideration of and the resolution on the funding of the construction and maintenance of roads in a number of estates, including the Verons Estate.
- In the extraordinary council meeting of 24 January 2006 in relation to the consideration of and the resolution on the funding of the construction and maintenance of roads and rezoning costs in a number of estates, including the Verons Estate.
- In the ordinary council meeting of 28 March 2006 in relation to the consideration of and the resolution on the Sussex Inlet Settlement Strategy.

### **3. PIDT2/2007 (Notice received 16 April, 2007) – Councillor Ernest Bennett and Councillor Bryan Hannigan of Kyogle Council.**

It is alleged that **Clr Ernest Bennett** was in breach of s.451 of the *Local Government Act, 1993* in:

- failing to declare a pecuniary interest in, taking part in the consideration and discussion of, and voting at the ordinary meeting of Kyogle Council on 17 May 2004, in respect of a matter concerning the construction standards of rural roads and developer contributions; and
- failing to declare a pecuniary interest in, taking part in the consideration and discussion

of, and voting at the ordinary meeting of Kyogle Council on 21 February 2005 in respect of Item 10A.2 “Minutes Road Network Committee” concerning amendments to the Public Gates and Bypass Management Plan” to remove the requirement to maintain the road 20 metres either side of a public gate or grid.

It is alleged that **Clr Bryan Hannigan** was in breach of s.451 of the *Local Government Act, 1993* in failing to declare a pecuniary interest in, taking part in the consideration and discussion of, and voting at the ordinary meeting of Kyogle Council on 17 May 2004 in respect of a matter concerning the construction standards of rural roads and developer contributions, contrary to section 451 of the *Local Government Act, 1993*.

## **REPORTS OF INVESTIGATIONS**

On 12 February 2007 pursuant to s.468 of the *Local Government Act* the Tribunal received from the Director General a report of an investigation into a complaint against **Councillor Lynette Lawry, Great Lakes Council, PIDT 2/2006**.

## **PROCEEDINGS CONDUCTED BEFORE THE TRIBUNAL**

There have been no proceedings that have been conducted before the Tribunal in the period 1 July 2006 to 30 June 2007.

25 July 2007

**Adrian Galasso SC**  
**Local Government Pecuniary Interest and Disciplinary Tribunal**