

**LOCAL GOVERNMENT PECUNIARY
INTEREST & DISCIPLINARY TRIBUNAL**

PIT No. 1 / 2004

**DIRECTOR-GENERAL, DEPARTMENT OF
LOCAL GOVERNMENT**

**RE: COUNCILLOR IAN LONGBOTTOM,
LANE COVE COUNCIL**

STATEMENT OF DECISION

Dated: 7 April 2005

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**RE: COUNCILLOR IAN LONGBOTTOM,
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STATEMENT OF DECISION

INTRODUCTION

1. The Tribunal received, on 13 October 2004, a report from the Director-General, Department of Local Government, of an investigation into a complaint, dated 14 April 2004, by the Director-General pursuant to s.460 of the *Local Government Act 1993* that Councillor Longbottom, being a councillor of Lane Cove Council, had committed breaches of Chapter 14, Part 2 of the *Local Government Act 1993* in that he had failed to lodge his 2001-2002 pecuniary interest return by 30 September 2002 in accordance with s.449 of the *Local Government Act 1993* and in the form prescribed by the Regulations.
2. Having considered the Director-General's report, the Tribunal determined to conduct proceedings into the complaint and on 3 November 2004 issued a Notice of Decision to Conduct Proceedings, which detailed the alleged breaches of the *Local Government Act 1993* and the Regulations. Details of those alleged breaches are set out in paragraph 4 below.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

3. (a) Statute

Section 449(3) of the *Local Government Act 1993* provides:

"[s 449] Returns disclosing interests of councillors and designated persons

(1) ...

(2) ...

(3) **[30 June]** A councillor or designated person holding that position at 30 June in any year must complete and lodge with the general manager within 3 months after that date a return in the form prescribed by the regulations.

[subs (3) am Act 112 of 2000 s 3 and Sch 2, opn 1 Apr 2001]"

3. (b) Regulations

In construing the Regulations regard should be had to the definitions contained in Regulation 40A.

(i) Clause 40D, subclauses (2), (3) and (4) of the *Local Government (General) Regulation 1999* provide:

"Real property

40D (1) ...

(2) A person making a return under section 449(3) of the Act must disclose:

(a) the address of each parcel of real property in which he or she had an interest at any time since the last return under Part 2 of Chapter 14 of the Act was made, and

(b) the nature of the interest.

(3) An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:

- (a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or
- (b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to his or her duties as the holder of a position required to make a return.

(4) In this clause, interest includes an option to purchase."

(ii) Clause 40G of the said Regulation provides:

"Interests and positions in corporations

40G (1) A person making a return must disclose:

- (a) the name and address of each corporation in which he or she had an interest or held a position (whether remunerated or not) on the return date (in the case of a return under s.449(1) of the Act) or at any time since the last return under Part 2 of Chapter 14 of the Act was made (in the case of a return under section 449(3) of the Act), and
- (b) the nature of the interest, or the position held, in each of the corporations, and
- (c) a description of the principal objects of each of the corporations, except in the case of a public company.

(2) An interest in, or a position held in, a corporation need not be disclosed if the corporation is:

- (a) formed for the purpose of providing recreation or amusement or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
- (b) required to apply its profits or other income in promoting its objects, and

(c) prohibited from paying any dividend to its members.

(3) An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company."

(iii) Clause 40J of the said Regulation provides:

"Sources of Income

40J (1) A person making a return must disclose:

(a) in the case of a return under section 449(1) of the Act - each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and

(b) in the case of a return under section 449(3) of the Act - each source of income received by the person since the last return under Part 2 of Chapter 14 of the Act was made.

(2) A reference in subclause (1) to each source of income received, or reasonably expected to be received, by a person is a reference to:

(a) in relation to income from an occupation of the person

(i) a description of the occupation, and

(ii) if the person is employed or the holder of an office, the name and address of his or her employer or a description of the office, and

(iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or

(b) in relation to income from a trust, the name and address of the settlor and the trustee, or

(c) in relation to any other income, a description

sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.

(3) The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be."

PARTICULARS OF ALLEGED BREACHES

4. The Notice of Decision to Conduct Proceedings, referred to above, particularised the alleged breaches as follows:

"A. Councillor Ian Longbottom, being a Councillor of Lane Cove Council was required by s.449 of the *Local Government Act 1993* to complete and lodge with the General Manager of the said Council, within three months after 30 June 2002 a pecuniary interest return in the form prescribed the Regulations.

B. Councillor Ian Longbottom failed to lodge his 2001/2002 pecuniary interest return at all until 30 April 2003.

C. The return that was so lodged, was not in the form prescribed by the Regulations because:

(i) It was undated.

(ii) Contrary to clause 40D(2)(b) of the *Local Government (General) Regulation 1999* it did not disclose the nature of the interests of Councillor Longbottom in the parcels of real property set out in the return.

(iii) Contrary to clause 40G(1)(a) and (c) of the said Regulations, there was not disclosed the address or a description of the principal

objects of any of the corporations disclosed in the said return.

- (iv) Contrary to the provisions of clause 40J(2)(a) of the said Regulations, there was not disclosed the addresses of any employers.
- (v) Contrary to clause 40J(2)(b) of the said Regulations, there was not set out the name and address of the Settlor or the Trustee in relation to income disclosed as being derived from a trust.
- (vi) Contrary to clause 40J(2)(c) of the said Regulations, in relation to sources of other income disclosed, there was not a description sufficient to identify the person from whom or the circumstances in which the income was, or was reasonably expected to be received.

BACKGROUND

- 5. Councillor Ian Longbottom was first elected to Lane Cove Council in 1991. He has served as a Councillor continuously since then. Following the Local Government elections held on 27 March 2004 Councillor Longbottom was elected Mayor of Council.
- 6. Councillor Longbottom resides in Lane Cove and through a family company, Horizon Management Services Pty Limited, is the owner of "The Village Observer", a local newspaper that circulates in the municipalities of Lane Cove and Hunters Hill. He has other business interests associated with the delivery of the newspaper and with advertising material. He was, in the relevant year, Chairman of the Lane Cove Club Limited and a director of Lane Cove Community Aid Limited, a charitable organisation that exists to provide Meals on Wheels, home nursing and welfare for the community. It is funded, in part, by Lane Cove Council. He was, in the relevant year, also a member of two professional associations.

THE RETURN

7. In circumstances which are detailed below, the pecuniary interest return for the period ending June 2002, which ought to have been lodged by 30 September 2002, as required by s.449, subsection (3), was not in fact lodged by Councillor Longbottom until on or about 30 April 2003.
8. Councillor Longbottom has, at all relevant times, admitted that the return was not so lodged. He gave an explanation which is detailed below.
9. By reference to the particulars of the breaches alleged in the Notice of Decision to Conduct Proceedings, as set out in paragraph 4 above, the return disclosed the following:
 - (i) It was undated.
 - (ii) While it listed the addresses of six parcels of real estate, in which Councillor Longbottom disclosed he had an interest, the return did not disclose the nature of his interest in any of those parcels.
 - (iii) While the return disclosed (in section E) his interest or position held in five corporations, the addresses of those corporations were not set forth and nor was there set forth a description of any principal object of any of them.
 - (iv) Under section B of the Return, Sources of Income, while his position as director/publisher or owner in the entities associated with The Village Observer is set forth, there is not set forth any address of any of those entities (as an employer). It will be necessary to return to the evidence about this allegation.
 - (v) Under the heading on the pecuniary interest return "Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30th June: Sources of income I received from a trust during the return period: Name and address of settlor: Name and address of Trustee" Councillor Longbottom had written:

"Nil except managed funds and listed property funds/trusts".

It will be necessary to return to the evidence concerning this aspect of the return.

- (vi) Under the heading on the pecuniary interest return "Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the 30th June: Sources of income I received at any time during the period: (including description sufficient to identify the person from whom, or the circumstances in which, that income was received)" Councillor Longbottom had written: "Dividends from shares in public companies and managed funds
Interest from Bank deposits
Rental income from property"

Again it will be necessary to return to the evidence in relation to this aspect of the return.

THE NON-LODGMET OF THE RETURN

10. By memorandum dated 4 July 2002 the General Manager of Lane Cove Council sent two copies of the returns to each Councillor and also attached a circular from the Department of Local Government, No.99/31, which dealt with the need for and the care necessary to complete the returns. The General Manager also advised Councillors that the decisions of the Local Government Pecuniary Interest Tribunal relevant to the completion of the pecuniary interest returns were available for perusal in his office.
11. When first confronted with the complaint concerning non-lodgment of the return, Councillor Longbottom, in a letter of 7 July 2003, readily admitted, as was evident, that the return had been lodged late. He has consistently acknowledged so much. In the said letter, he said "I can only put this down to an oversight as the papers, as forwarded by Council, were in a different format (white A4 as opposed to green A3) and these papers were caught up with other papers and not attended to in time". Councillor Longbottom has consistently maintained this explanation.

12. In his oral evidence before this Tribunal Councillor Longbottom repeated this explanation and said that in the past he had always seen the green document on his desk because it was of a different size and it stood out but when it was changed in size and colour it got caught up (in other papers).
13. By memorandum dated 12 September 2002, sent to, amongst others, Councillor Longbottom, Mr Wong, the General Manager, pointed out that the pecuniary interest return had not been received and he attached an additional form requesting that it be completed and returned by 30 September 2002. In his evidence to this Tribunal Councillor Longbottom said that he did not recall receiving that memorandum but "I'm not saying it didn't come".
14. A record, internal to Lane Cove Council, indicates that on 8 October Anita Holesgrove, inferentially at the request of the General Manager, made a phone call to Councillor Longbottom reminding him of the non-lodgment of the pecuniary interest return. In oral evidence Councillor Longbottom said that he did not recall getting the phone call and that if he had he would have reacted very quickly and gone to Council and filled in the form.
15. On 23 April 2003 Councillor Longbottom received a phone call on the instructions of the General Manager, who had apparently received a phone call from the Department of Local Government. Councillor Longbottom went to the Council and completed the return referred to above.

DOCUMENTARY EVIDENCE

16. In addition to the abovementioned material, Mr Robinson, Counsel on behalf of the Director-General, tendered certain documentary material, including the said Pecuniary Interest Report prepared on behalf of the Director-General and the annexures, including an interview with Councillor Longbottom.
17. Mr Robinson also tendered Councillor Longbottom's pecuniary interest returns for the years ended 30 June 1997 to 2000 inclusive and his return for the year ended June 2003.

It is clear that each of these returns was lodged by Councillor Longbottom within the prescribed period ending on 30 September in each year. As was made clear in the cross-examination of Councillor Longbottom in respect of each year, some criticism could be made of the lack of information contained in the returns consistent with the complaints made in respect of the year in question.

18. Mr Robinson also tendered four Departmental circulars relating to the lodgment of pecuniary interest returns. Those returns, dated 14 July 1997, 18 May 1999, 6 September 1999 and 5 March 2001, each drew the attention of (among others) councillors to their statutory obligation concerning the lodgment of pecuniary interest returns. The circulars gave advice and guidance for the completion of the returns and emphasised the need for care and attention to the accuracy, detail and content of the disclosures required in the returns. Two of the circulars expressly drew attention to a decision of this Tribunal concerning these matters.
19. Councillor Longbottom tendered some 27 character references. Counsel on behalf of the Director-General, very properly, acknowledged that there was no issue concerning what these references revealed. The references are from a diverse range of eminent persons, be they politicians, professionals, academics, ministers of religion or business and community leaders. They clearly reveal Councillor Longbottom to be a person of honesty, integrity and sincerity and a person who in a forthright and energetic way has worked for and supported a range of community interests and services. There is no issue but that Councillor Longbottom is a person of fine character and reputation. The references confirm Councillor Longbottom's oral evidence to this Tribunal of his embarrassment, regret and contrition as to what has occurred in the present case.

ORAL EVIDENCE

20. Councillor Longbottom gave oral evidence to the Tribunal and was cross-examined by counsel for the Director-General. In addition to the evidence referred to above, the following matters emerged in the course of Councillor Longbottom's evidence:
 - (a) Councillor Longbottom emphasised that he was aware of his obligations under

the Act and that he knew that he had to put in a return, and that what occurred in the present circumstance was a complete oversight.

- (b) Councillor Longbottom emphasised that he had absolutely nothing to hide and that the subject return was largely consistent with the returns both before that in question and subsequent to it.

The Tribunal observes that apart from the allegations of the incompleteness of the return in the manner specified above, there is no suggestion in the evidence that there was any relevant omission in the sense of "something to hide" and there is no suggestion in the evidence that in the period when the return had not been lodged, that the proper content of the return was relevant to any subject matter before the Council.

- (c) Councillor Longbottom emphasised, by reference to Regulation 40J(2)(b) and paragraph 2 under "Sources of Income" in the return as referred to above, that he did not receive or expect to receive any income from a "private or family" trust, such as would require him, as he understood it, to disclose the name of the settlor and the address of a trustee, although he acknowledged, as he always has, that he held shares in various listed property trusts, such as the American Pipeline Trust, Westfield America Trust, Lend Lease US Office Trust, although the maximum number of shares owned in each case was less than .003 percent of the issued capital of those entities.
- (d) Councillor Longbottom was cross-examined concerning a self-managed superannuation fund that he had referred to. The trustee was a family company, Horizon Management Services Pty Limited. There was no suggestion in the evidence, which included, on a confidential basis, the accounts of the superannuation fund, that Councillor Longbottom received, in the relevant period any income from the superannuation fund. Indeed, as one would expect, he said in evidence he was not entitled to receive any income although he naturally hoped that in the years to come when he retired the superannuation fund may provide financial support for him.

- (e) Councillor Longbottom readily acknowledged, in his terms "openness", the reason for the existence of the legislation in relation to pecuniary interest returns, or as was put to him in cross-examination, public disclosure in a Register of Returns accessible to Councillors and the general public, so that the pecuniary and other specified interests of councillors are set for in a manner that enables these persons to understand what are the councillor's particular interests, so facilitating the prevention of conflicts of interest.
- (f) The return which was filled in by Councillor Longbottom was filled in by him at the offices of the executive secretary. As he said: "I filled them in at her desk on the spot. I did not have supporting documents when I filled the form in". In some respects the omissions from the form, as filled in, were attributed by Councillor Longbottom to the fact that "I did this form in haste" or "it's an oversight" or "I blame haste".
- (g) The evidence does not disclose that Councillor Longbottom is employed by any entity within the meaning of Regulation 40J(2)(a)(ii) as opposed to him holding an office, such as director. The evidence discloses that he received directors' fees from Horizon Management Services Pty Limited but that, of course, of itself does not constitute that company his employer. The source of the income from his occupation, on the evidence, could be accurately described as income from his position as a director. He described the income as directors' fees and there is no suggestion in the evidence that he received a salary or some other form of remuneration appropriate to the position as an employee.
- (h) In relation to the question of trusts, as referred to above, the evidence of Councillor Longbottom was that he did not receive and did not reasonably expect to receive income from a trust as he understood the form and the Regulation in the sense of a "private or family" trust. He did not understand the phrase to refer to listed property trusts. On his understanding of the form and the Regulation he thought he ought to have finished his answer referred to in paragraph 9(v) above at the word "Nil".

- (i) For the purposes of Regulation 40J(3) Councillor Longbottom acknowledged that his dividends from shares and public companies and managed funds exceeded \$500, that the interest from bank accounts deposits exceeded \$500 and that the rental income from property also exceeded \$500, such that that aspect of the pecuniary interest return did not contain a description sufficient to identify the entity from which the income was received. Councillor Longbottom, in his evidence acknowledged that he had not included sufficient information as required by clause 40(J) of the Regulations.

- (j) Councillor Longbottom acknowledged that in respect of his interests and positions in corporations he had not set forth the addresses of the corporations or a description of their principal objects as required by clause 40(G)(1) of the Regulations.

CONCLUSIONS AS TO THE EXTENT OF THE BREACH OF THE ACT AND REGULATIONS

- 21. There is no doubt that Councillor Ian Longbottom failed to lodge his 2001/2002 pecuniary interest return within three months after 30 June 2002 as required by s.449(3) of the *Local Government Act 1993*.

- 22. There is no doubt that the return, when lodged on or about 30 April 2003, was undated and to that extent was not in the form prescribed by the Regulations. On the face of the form which he completed, it was required to be dated and it wasn't.

- 23. Contrary to clause 40D(2)(b) of the Regulation, the return when lodged did not disclose the nature of Councillor Longbottom's interest in the parcels of real estate which he set out in the return. His previous and subsequent returns had, to greater or lesser extent, disclosed the nature of the interest and the form on its face required the nature of the interest to be disclosed, as did the Regulations and it was not disclosed.

- 24. Councillor Longbottom, contrary to clause 40G(1)(a) and (c) of the Regulations, did not disclose the address or a description of the principal objects of the corporations in which

he held an interest or position, which corporations were listed in subparagraph E of the return.

25. Based on the evidence referred to above, the Tribunal is not satisfied that there has been a breach of clause 40J(2)(a) of the Regulations in relation to the non-disclosure of the addresses of any employers of Councillor Longbottom. The Tribunal is not satisfied, on the evidence before it, that he received income as an employee as distinct from income in the nature of directors' fees, or income as the owner or operator of the publishing and/or delivery company.
26. The Tribunal is not satisfied, on the evidence before it, that there has been a breach of clause 40J(2)(b) of the Regulations by Councillor Longbottom's non-disclosure of the name and address of the settlor or trustee of either the self-managed superannuation fund or the listed property trusts.

As to the former, the Tribunal is of the opinion that, as a matter of construction of the Regulation, what is required to be disclosed is the name and address of the settlor and trustee where the Councillor either has received or reasonably expects to receive income from the trust in the period commencing on the first day after the return date and ending on the following 30th June. This is plainly what the Regulation says. In this period in fact Councillor Longbottom received no income from the trust and did not expect to receive any. He said he didn't expect to receive any income from the superannuation fund until he retired. This is certainly the normal expectation with self-managed superannuation funds. The taxation consequences of accessing the income prior to retiring is considered by most people to be prohibitive. The accumulation of the income within the fund, in the meantime, does not, in the Tribunal's opinion, fall within the words of the Regulation.

27. So far as the listed property trusts are concerned, as a matter of construction of the Regulations the Tribunal is of the opinion that it was not intended that such entities fall within the concept of a trust within Regulation 40J(2)(b) although they would clearly fall within 40J(2)(c) and be required to be disclosed as a source of income under that Regulation. The primary reason for so concluding is that the Regulation is intended to

impose upon the councillor an obligation to disclose information which either is, or ought reasonably to be available to him. The Tribunal is not convinced that to impose an obligation to disclose the settlor and trustee of a listed property trust such as the Westfield America Trust or the Lend Lease US Office Trust is something that was within the reasonable contemplation of the Regulation. Nevertheless the sources of income were required to be disclosed with the particularity set out in clause 40(J)(2)(c) and they were not.

28. In breach of Regulation 40J(2)(c) the return by Councillor Longbottom, so far as it dealt with sources of other income was clearly deficient. Merely setting forth the description referred to in paragraph 9(vi) above is not sufficient. What was required, in the circumstances disclosed in the evidence, is that there be an identification of the person from whom, or the circumstances in which that income was received. That is what the Regulation requires. The form spells it out as well. This requires an identification of the companies, the managed funds from whom the dividends were received, an identification of the banks from whom the interest was received and the property the source of the rental income. To merely permit the generality of phrases such as "shares in public companies" does not satisfy either the wording of the Regulation or the intent that there be sufficient public disclosure so that other councillors and members of the public can know, with sufficient particularity, when and if a position of conflict could arise.

THE COURSE OF THE PROCEEDINGS

29. Primarily because of the extent of the admissions made by Councillor Longbottom, he and Counsel for the Director-General agreed that both the question of the extent of the breaches and the question of the penal consequences ought be dealt with at the one hearing. Evidence and submissions have been received on both aspects from both parties.

THE TRIBUNAL'S POWERS

30. Section 482(1) of the *Local Government Act 1993* provided:

- "(1) The Pecuniary Interest Tribunal may, if it finds a complaint against a councillor is proved:
- (a) counsel the councillor; or
 - (b) reprimand the councillor; or
 - (c) suspend the councillor from civic office for a period not exceeding six months; or
 - (d) disqualify the councillor from holding office for a period not exceeding three years."

SUBMISSIONS ON APPROPRIATE PENALTY

31. Mr Robinson on behalf of the Director-General submitted that the available range was from a suspension of Councillor Longbottom from civic office for a brief period, down to a reprimand which, if it were to be applied, ought to be expressed in the strongest of terms. He emphasised the use of the word "must" in s.449(3) and he referred the Tribunal to the Tribunal's decisions in three cases, to which the Tribunal will return in due course. Mr Robinson, very fairly, as one would expect, said that the factors going to a lighter range of the scale included the fact that the pecuniary interest forms had changed substantially, as referred to by Councillor Longbottom in his evidence, that the councillor did not appear to have an earlier record of breaches of the Act in relation to pecuniary interest returns, that the councillor's references were good, that the Council did not appear to have followed the strict form and layout of the Regulations in the provision to the Councillor of the relevant form. Mr Robinson also acknowledged that Councillor Longbottom was plainly embarrassed by what he had done and had expressed remorse, that he had stated his errors early and at the first opportunity, and that he had already suffered some adverse newspaper publicity regarding the complaint.
32. On the other hand, Mr Robinson submitted that Councillor Longbottom's explanations that the matter was "purely an oversight" or was due to "slackness", or that "life is busy", or "I overlooked it", or "I blame haste", were clearly insufficient as explanations for the councillor's conduct and for his breaches of the Act and Regulations. Mr Robinson contended that the councillor was experienced, he held high office as Mayor, that he had had numerous circulars provided to him by the Department about the operation,

relevance and importance of the applicable laws and that he had had specific and personal reminders to complete and return the forms to the General Manager, but that this hadn't occurred for some seven months and it was only when told of active investigation being undertaken by Departmental officers, that Councillor Longbottom had acted.

33. Councillor Longbottom submitted that any penalty ought to be at the lower end of the scale. He said that although he may not have put the required particulars, he had listed everything he owned, relevant to the return. He submitted that admittedly the return was late, but that it was due to a complete oversight. He emphasised that there was nothing for him to hide and so there was no reason for him to hold up the lodgment of the return. He submitted that when he was, finally, galvanised into action he reacted very quickly and that this was the cause for some of the omissions in the content of the form. He reiterated that he was embarrassed by what had occurred, that he had received adverse newspaper publicity and that contrary to Mr Robinson's submissions, he did appreciate the significance of his breaches and he asked that the admitted mistakes which he had made be taken into account in determining what penalty ought to be imposed.

CONCLUSIONS ON PENALTY

34. The Tribunal's conclusions as to the nature and extent of the breaches of the Act and Regulations are set out above.
35. The evidence establishes that Councillor Longbottom, in the years both before and after the year in question, lodged a return within the required period. He does not have a record of formal breaches of the Act. While some criticism may be levelled in relation to the content of those earlier and subsequent returns, they nevertheless were lodged within the prescribed period. It is true that in the year in question the pecuniary interest forms did change substantially from the earlier form of return and the Tribunal accepts Councillor Longbottom's explanation that the change in the form from a green A3 form to a white A4 form resulted in it being caught up with other papers and not readily apparent to him. Nevertheless, it is difficult to understand, even if it were caught up with other papers, how it came not to have been discovered for a period of seven months, particularly in circumstances where it is clear there was a written reminder from the

General Manager and the records of the Council indicate an oral reminder from Ms Holesgrove. One can only surmise that whatever system Councillor Longbottom had to read Council memoranda it was totally inadequate for the purpose.

36. Councillor Longbottom's explanations that his omission to lodge the return was purely an oversight because of his busy life, while on the evidence is accepted, is nevertheless an insufficient explanation as to his lengthy omission to complete and lodge a return required by the legislation and which plays, as explained below, a significant part in the scheme of his position as a councillor.
37. Councillor Longbottom's omissions on the one hand can be viewed as more serious and more flagrant in the sense that he was a very experienced councillor. To that extent, he ought to have been even more vigilant and aware of his obligations and to have led by example. On the other hand, notwithstanding that experience, and notwithstanding that high office, in circumstances where there is no suggestion that he had "anything to hide", his explanation as to an oversight and a busy life, while inexcusable, has a credibility which is not called into question in the present case.
38. Councillor Longbottom has been a councillor since 1991. The Department has issued, as particularised above, four circulars sent to the General Managers of Councils and to be provided to councillors, detailing the operation, relevance and importance of the applicable laws. Those circulars give detailed instruction as to the primary obligation to lodge the returns and repeatedly emphasise that care, accuracy and detail is required in the completion of the returns. Detailed assistance is provided in at least two of the circulars, as to how the forms are to be completed.
39. Not only has the Department gone to considerable effort to convey to councillors the nature and extent of their obligations under the Act, this Tribunal, on three occasions, has dealt with the subject matter.
40. In *The Director-General, Department of Local Government Re Councillor Barry Noel Cotter, Marrickville Council*, PIT No.3/1997, the Tribunal dealt with a situation where there had been a failure to include in the return two real estate properties of which the

Councillor was an owner because they were outside the Local Government area. He had also failed to disclose certain companies in which he held a position of director and two companies in which he held a position of shareholder and director.

41. This Tribunal, at page 13 of that decision said:

"The deficiencies in his returns as a whole also suggest an inadequate appreciation by Councillor Cotter of the purpose of the legislation, which is to require public disclosure in a register of returns accessible to councillors and the general public of the pecuniary and other specified interests of councillors and designated persons as an aid to the prevention of conflicts of interests arising on Council business and promoting in the public interest accountability and transparent decision-making in local government."

42. That was, and clearly still remains, the policy behind the legislation. Careful, complete and due compliance with the legislation is of great significance to the proper transparent and accountable decision-making process in Local Government. It is not an obligation to be taken lightly by councillors, either in the lodgment of the return or in the careful attention to the detail required for inclusion in the return.

43. As the Tribunal said in *Cotter's* case, at page 17, in the present case, in part the failure of Councillor Longbottom to promptly complete the return was due to:

"wilful ignorance and careless inattention of the part of Councillor ... to the information and documents provided to him to assist councillors correctly to complete their returns, in accordance with the legislation ... The Tribunal is satisfied that a further factor was the undue haste in which Councillor ... completed the returns".

44. In light of the importance of the due and complete lodgment of the returns, it is not an acceptable excuse for councillors to be ignorant of, or to pay careless attention to, either the legislation, or the guidelines issued by the Department, or the previous decisions of this Tribunal. Undue haste is no excuse. The Department has been cautioning care and attention at least since the issue of the said circulars. This Tribunal has been urging the same since its decision in *Cotter's* case in December 1998.

45. This Tribunal again considered the question of the lodgment of pecuniary interest returns in the matter of *The Director-General, Department of Local Government, Re Councillor Sylvia Phyllis Hale, Marrickville Council* in a Statement of Decision of 6 April 1999 and in the matter of *The Director-General, Department of Local Government, Re Councillor Carmel Del Duca, City of Canada Bay Council*, PIT No. 1/2001.
46. There can be no doubt but that the breaches by Councillor Longbottom of his obligations to lodge the return at all for a period of seven months, and when lodged, for it to be incomplete and lacking the detail required by the Regulations, are breaches of a very serious kind. The incompleteness of a return can have, although it was not suggest that in fact it had in the present case, the very serious consequence of frustrating the very object of the policy where councillors and members of the public cannot readily ascertain from an incomplete pecuniary interest form whether or not a potential conflict of interest arises. The breaches are made more serious in the sense that they were committed by a very experienced councillor, and the explanations of "an oversight" or "haste", while accepted by this Tribunal as factually accurate, are totally unsatisfactory.
47. There is no doubt that Councillor Longbottom is a man of fine character and repute. He is clearly embarrassed by what has occurred and he has expressed contrition and remorse. The Tribunal accepts these expressions of embarrassment, contrition and remorse. He has already suffered adverse publicity following this complaint. He has readily acknowledged, at the first opportunity, the late lodgment of the return and has, in his evidence before this Tribunal, frankly acknowledged where there have been omissions as to the content, as found by the Tribunal and as set out above.
48. While the Tribunal has given serious consideration to acceding to the submission, made on behalf of the Director-General, that Councillor Longbottom be suspended from civic office for a short period of time, the Tribunal has concluded that, in the particular circumstances of this case, the appropriate penalty is that Councillor Longbottom be reprimanded for his breaches of the Act and Regulations as set out above.
49. This Tribunal wishes to make it plain, if it is not already plain from the terms of this Decision, that this Tribunal is fast losing patience with those who do not, in a timely

manner, fully and accurately disclose what is required by the Regulations. There have been more than ample warnings from this Tribunal and the Department of the importance of timely and careful and complete returns. If a person takes on the responsibility of the office of a councillor, then part and parcel of that responsibility is an obligation to comply with the provisions of the Act relating to pecuniary interest returns and to do so in a thorough and complete manner. An incomplete return can frustrate the very policy behind the legislation. To date, three councillors have been reprimanded for failure to comply with their obligations to do so and this decision represents the fourth. There should be no misapprehension but that the Tribunal's powers are those set out in s.482 of the *Local Government Act 1993* and those powers include the power to suspend a councillor from civic office for a period not exceeding six months, or to disqualify a councillor from holding civic office for a period not exceeding five years (in addition to the Tribunal's powers to counsel a councillor, or to reprimand him). If councillors cannot or will not heed the numerous warnings then they should fully appreciate the possible consequences.

50. In accordance with the provisions of s.484(1) of the Act, the Tribunal will furnish a copy of this Statement of Decision to Councillor Ian Longbottom and the Director-General. A copy will be forwarded to Lane Cove Council and to such other persons as the Tribunal thinks fit.

DATED: 7 April 2005

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D.P.F. Officer QC
Pecuniary Interest & Disciplinary Tribunal